IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,	Supreme Court Case No. S237602
Plaintiff and Appellant,	
	Court of Appeal Case No. E064099
v.	Riverside County Superior Court Case No. SWF1208202
STEVEN ANDREW ADELMANN,	
Defendant and Respondent.	

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

Appeal From the Judgment of the Riverside County Superior Court
Honorable Edward Webster, Judge

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By Appointment of the Court of Appeal under
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INTRODUCTION & SUMMARY OF ARGUMENT

Pursuant to California Rule of Court 8.500, subdivision (a)(2), defendant and respondent Steven Andrew Adelmann submits the following answer to the appellant's petition for review.

While there may be a need for this Court to decide, at some point, whether, following a complete jurisdictional transfer pursuant to Penal Code section 1203.9, a receiving court has jurisdiction to hear a Proposition 47 resentencing petition (§ 1170.18),[1] this case contains unique facts that make it a poor vehicle to decide that issue.[2] Since Mr. Adelmann successfully completed his probation in the receiving court (Riverside County) in September 2015, there no authority to transfer Mr. Adelmann's case back to the original court of conviction (San Diego County). Also, Mr. Adelmann did attempt to file his petition in San Diego County and was rebuffed by that court because the entire file had been transferred to Riverside County. Moreover, it is undisputed that Mr. Adelmann is entitled to Proposition 47 relief he already received in Riverside County.

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[1] *People v. Adelmann* (2016) 2 Cal.App.5th 1188, petition for review pending S237602, petn. filed October 5, 2016; but see *People v. Curry* (2016) 1 Cal.App.5th 1073, petn. for review pending S237037, petn. filed September 6, 2016).

[2] All future unassigned references are to the Penal Code.

These facts create unique legal issues and policy concerns, which are not likely to be replicated in the vast majority of cases in which the issue presented for review is likely to arise. Accordingly, resolution of the question presented should await another, more typical, case. Proposition 47 is a fairly new voter initiative and courts of appeal have not had a lot of opportunity to address this issue.

OBJECTION TO APPELLANT'S STATEMENT OF FACTS AND PROCEDURAL HISTORY

Respondent adopts the Court of Appeal's statement of facts and procedural history. (*Adelmann, supra,* 2 Cal.App.5th at pp. 1191-1192.) However, respondent objects to appellant's characterization of the Court of Appeal's opinion in this case as being based "on the plain language" of section 1203.9. (Petition for Review, p. 11.)

The Court of Appeal's decision affirming the transferee court's grant of respondent's Proposition 47 resentencing petition was based, in pertinent part, on harmonization of sections 1203.9 and 1170.18.[3] Specifically, the Court of

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[3] The Court of Appeal also concluded that respondent waived his right to have the court of original jurisdiction decide the petition. (*Adelmann, supra,* 2 Cal.App.4th at p. 1194, citing *People v. Superior Court* (*Kaulick*) (2013) 215 Cal.App.4th 1279, 1301.)

Appeal rejected appellant's statutory construction arguments premised on the alleged irreconcilable conflict between the two statutes. Instead, the Court of Appeal held that section 1203.9, subdivision (b), and section 1170.18, subdivision (a), should be reasonably read together as permitting the superior court that currently has jurisdiction over the case to decide the section 1170.18 resentencing petition. (*Adelmann, supra,* 2 Cal.App.5th at pp. 1195-1196.) The Court of Appeal also concluded that such harmonized reading of both statutes is the wisest and most appropriate public policy:

> The People's proposal that defendant must somehow compel the San Diego court to accept his petition—although entire jurisdiction over his probationary case has been transferred to Riverside—seems wholly unfeasible and not an economical or practical use of judicial resources. Based on a practical, reasonable, commonsense analysis, allowing the court that currently has entire jurisdiction over a case to decide a section 1170.18 petition is the wisest and most appropriate policy.

(*Adelmann, supra,* 2 Cal.App.5th at pp. 1195-1196.)

ARGUMENT

I.

This Court Should Deny Review Because Certain Unique Facts of This Case Make it a Poor Vehicle to Address the Question Presented for Review

Even if the issue of whether sections 1203.9 and 1170.18 can be properly read together to give the receiving court authority to consider a section 1170.18

petition is one that this Court will eventually need to decide, this is not the right case to do so.

First, Mr. Adelmann's probation was completed in September 2015. (*Adelmann, supra,* 2 Cal.App.5th at p. 1192.) This creates an additional unique jurisdictional problem for the class of similarly-situated probationers. The transferee court's jurisdiction over a probationer ends once he or she is discharged from probation. (*Hilton v. Superior Court* (2014) 239 Cal.App.4th 766, 773.) Section 1203.9 does not provide for an automatic return of the case to the original county of conviction upon completion of probation supervision. As a result, any rule requiring filing of the resentencing petition in the original county of conviction, even in cases involving a complete jurisdictional transfer under section 1203.9, would appear to deny Proposition 47 relief to this entire class of individuals.

Second, unlike a prototypical scenario involving this issue described in *Curry,* 1 Cal.App.5th at page 1073, Mr. Adelmann actually did first go to the original court of conviction, but was rebuffed because the entire file had been transferred to Riverside County Superior Court. (RT 5.) This fact creates legal,

policy, and equitable concerns that are not likely to be replicated in most cases presenting this issue.

Third, it was never disputed that Mr. Adelmann is entitled to Proposition 47 relief. (*Adelmann, supra,* 2 Cal.App.5th at p. 1192.) The prosecution has not identified any factors, as to which it would have made any practical difference whether this case was heard in San Diego County or in Riverside County. If the prosecution is claiming that there are practical reasons supporting its proffered statutory interpretation, the discussion of this issue should await a case where those alleged concerns are actually present. That is not this case.

Finally, appellant is mistaken in claiming that review should be granted because the Court of Appeal incorrectly distinguished *Curry* as involving a post-release community supervision transfer. (Petition for Review, p. 11.) While the probation transfer in *Curry* appears to have been done under section 1203.9, not a PCRS transfer under section 3460, it is a factual mistake originating in the *Curry* opinion itself. (*Curry, supra,* 1 Cal.App.4th at pp. 1082-1083.) The *Curry* court erroneously cited this very fact in trying to harmonize its decision with the contrary conclusion reached by Couzens & Bigelow, an authoritative treatise on Proposition 47. (*Id.* at p. 1082; see J. Richard Couzens, Tricia A. Bigelow and

Gregg L. Prickett, Sentencing California Crimes, § 25:11.) Appellant could have filed a rehearing petition in the Court of Appeal to correct that error, which does not impact the core of the Court of Appeal's analysis, but appellant failed to do so. (Cal. R. of Court 8.504, subd. (b)(3).)

To the extent the Court of Appeal did not correct the error *Curry* made, this fact alone is not a reason to grant review. The crux of the Court of Appeal's analysis is on harmonizing sections 1203.9 and 1170.18. As explained in Argument II, the Court of Appeal's analysis of that issue is right.

II.

Review Should Be Denied Because the Court of Appeal Reasonably Harmonized Sections 1203.9 and 1170.18 to Give Effect to Both Statutes and to Achieve the Wisest Policy

Review should also be denied because the Court of Appeal's resolution of the question of whether the receiving court, after a section 1203.9 full jurisdictional transfer, has the authority to hear a Proposition 47 resentencing petition was right. The Court of Appeal correctly rejected appellant's claim that sections 1203.9 and 1170.18 are in an irreconcilable conflict and, thus, one must prevail over another.

Instead, the Court of Appeal held that both statutes can be quite reasonably harmonized to authorize the superior court that has jurisdiction over the entire case to hear a section 1170.18 resentencing petition. (*Adelmann, supra,* 2 Cal.App.5th at pp. 1195-1196.) The Court of Appeal further held that such reading of both statutes is the wisest and most appropriate policy. (*Ibid.*) The Court of Appeal's resolution of these issues was apt and there is no reason to disturb it.

The Court of Appeal was right that reliance on plain language of Proposition 47 does not resolve this issue. (*In re Derrick B.* (2006) 39 Cal.4th 535, 539 [the statutory language is the starting point of the statutory construction analysis].) Indeed, nothing in the plain language of section 1170.18 addresses the issue of whether the defendant must file a resentencing petition in the county of conviction even when the entire jurisdiction over the defendant's case has been transferred to another county pursuant to section 1203.9. Section 1203.9(b)'s command to transfer the entire jurisdiction to the transferee county could be quite plausibly read as making the transferee court "the trial court that entered the judgment of conviction" under section 1170.18, subdivision (a). (*Adelmann,* 2

Cal.App.5th at p. 1195; see also J. Richard Couzens, Tricia A. Bigelow and Gregg L. Prickett, Sentencing California Crimes, § 25:11.)

Accordingly, it was appropriate for the Court of Appeal to turn to canons of statutory interpretation to decide whether the two statutes can be properly harmonized. Because the duty of the judiciary is to interpret the law, not to write it, the courts are required to read together the statutes on the same subject, giving effect to all parts of all statutes, if possible. (*People v. Chenze* (2002) 97 Cal.App.4th 521, 526.) The courts also have to give "a reasonable and commonsense interpretation consistent with the apparent purpose and intention of the lawmakers, practical rather than technical in nature, which upon application will result in wise policy rather than mischief or absurdity." (*Adelmann, supra,* 2 Cal.App.5th at p. 1195, quoting *In re Reeves* (2005) 35 Cal.4th 765, 771, fn. 9.)

That is precisely what the Court of Appeal did in this case. On the one hand, the appellate court reaffirmed section 1170.18, subdivision (a)'s general requirement that a resentencing petition must be filed in the original court of conviction. The Court of Appeal merely *allowed,* but did not compel, a filing of the petition in the receiving court *if* a petitioner makes a decision to waive his

right to have the original court of conviction decide the petition by filing the petition in the receiving court. (*Adelmann, supra,* 2 Cal.App.5th at p. 1196.) But on the other hand, in allowing the receiving court to decide the resentencing petition, the Court of Appeal also gave effect to section 1203.9, subdivision (b)'s command that jurisdiction is transferred in its entirety. (*Id.*)

Also, the Court of Appeal was correct in observing that appellant's proposed rule inflexibly requiring a person whose case has been completely transferred to a different court to somehow compel the original court of conviction to accept the petition is "wholly unfeasible and not an economical or practical use of judicial resources." (*Adelmann, supra,* 2 Cal.App.5th at p. 1196.) Requiring a defendant currently on probation in the transferee jurisdiction to transfer the case back to the court of conviction to accomplish Proposition 47 resentencing, and then transfer it back to the transferee jurisdiction, is a procedure cumbersome for the courts, prosecution and defense agencies, and the defendant himself.

It must be remembered that the voters' intent in passing this initiative was to maximize non-prison alternatives for non-violent and non-serious crimes, and to channel those savings into crime prevention, victim services, and mental

health and drug treatment. (*Proposition 47: Text of Proposed Law,* California Ballot Pamphlet: General Election Nov. 4, 2014 (hereafter "Pamphlet"), p. 70; see also Voter Information Guide, Gen Elec. (Nov. 4, 2014) argument in favor of Prop. 47, p. 38.) Similarly, the declaratory sections of Proposition 47 reflect the voters' intent to generate money savings by reducing prison population, and to channel the resulting monetary savings to specific rehabilitation, treatment, and children's programs. (Pamphlet, p. 70.) The ballot arguments in favor of Proposition 47, which are considered evidence of voters' intent in passing an initiative, emphasized the exact same goals. (Voter Information Guide, Gen Elec. (Nov. 4, 2014) argument in favor of Prop. 47, p. 38.) Appellant's proposed rule runs directly counter to these stated fiscal goals.

Finally, appellant's proposed rule becomes even more problematic when, as here, the defendant's probation has already been completed. There appears to be no legal mechanism to transfer the case back to the original court of conviction. The transferee court's jurisdiction over probationer ended when probation was complete and the probationer is discharged from probation. (*Hilton* , 239 Cal.App.4th at p. 773.) Section 1203.9 does not provide for an automatic return of the case to the original county of conviction upon completion

of probation supervision. Section 1170.18, subdivision (a), cannot be construed in a way that renders section 1170.18, subdivision (f), a nullity. (*Young v. Gannon* (2002) 97 Cal.App.4th 209, 223 [words of a statute will not be construed to render related provisions nugatory].)

CONCLUSION

Based on the foregoing, this Court should deny review.

Date: October 17, 2016

Respectfully submitted,

By: /s/ Gene P. Vorobyov

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STEVEN ADELMANN

CERTIFICATE OF WORD COUNT

I certify that this brief consists of 2,119 words (including footnotes, but excluding this certificate, proof of service, and tables), as indicated by the Microsoft Word program in which the brief is prepared.

DATE: October 17, 2016

Respectfully submitted,

By: /s/ Gene P. Vorobyov

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PROOF OF SERVICE

I declare that I am an active member of the bar and not a party to this action. My business address is 450 Taraval Street, # 112, San Francisco, CA 94131. On the date shown below, I served the within ANSWER TO PETITION FOR REVIEW to the following parties hereinafter named by:

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Fourth District Court of Appeal, Division Two

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I declare under penalty of perjury the foregoing is true and correct. Executed on October 18, 2016, at San Francisco, California.

/S/

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