IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. S259999

In re MOHAMMAD MOHAMMAD
on Habeas Corpus.

Court of Appeal of California
Second District, Division Five
No. B295152

Superior Court of California
Los Angeles County
No. BA361122
Hon. William C. Ryan

Answer to Petition for Review

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ANSWER TO PETITION FOR REVIEW

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Comes now Mohammad Mohammad, habeas petitioner in the court below, in Answer to the Petition for Review filed January 6, 2020, by respondent Secretary of the California Department of Corrections (CDCR or Department). That petition seeks review of the decision of the Court of Appeal in its opinion filed November 26, 2019, granting habeas relief that ordered the Department to consider Mohammad for early parole under Proposition 57. For the reasons set forth below, the Court should deny the petition.

Question Presented

Does Proposition 57 entitle Mohammad to early parole consideration where he was sentenced to an aggregate term of 29 years that consisted of a principal term for a nonviolent felony conviction and subordinate terms for offenses that included violent felony convictions?

Argument

This Court may grant review of a decision by a Court of Appeal "[w]hen necessary to secure uniformity of decision or to settle an important question of law." (Cal. Rules of Court, rule 8.500(b)(1).) The petition fails to show any such need. Rather, as explained below, this case is not worthy of this Court's consideration.

I. The Court Should Deny the Petition for Review as Unnecessary to Secure Uniformity of Decision or Settlement of an Important Question of Law.

"California voters approved Proposition 57, dubbed the Public Safety and Rehabilitation Act of 2016, at the November 2016 general election." (*In re Edwards* (2018) 26 Cal.App.5th 1181, 1185.) Among other things, Proposition 57 added section 32 to the California Constitution, which provides for early parole consideration and additional credit-earning "to enhance public safety, improve rehabilitation, and avoid release of prisoners by federal court order, notwithstanding anything in this article or any other provision of law." (Cal. Const., art. I, § 32, subd. (a) [hereafter § 32(a)].)

"'Section 32(a) grants eligibility for early parole consideration to any person convicted of a nonviolent felony offense after completing the full term of his or her primary offense." (Typ. opn. 6, quoting § 32(a)(1); see also *id.* at p. 3. [same].) "The newly enacted constitutional provision further states 'the full term for the primary offense means the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence.' (§ 32(a)(1)(A)." (*Id.* at p. 3.)

"There is no dispute that [Mohammad's] primary offense as the Constitution defines it ("the longest term of imprisonment imposed by the court for any offense") is the principal term prison sentence he received for the count 11 receiving stolen property conviction" – a nonviolent offense. (Typ. opn. 9.) "Nor is there any dispute that the 'full term' in prison for that conviction, 'excluding the imposition of an enhancement, consecutive

sentence, or alternative sentence' was three years. Therefore, under the plain meaning of section 32(a)(1), Mohammad is eligible for early parole consideration now that he has served three years in prison." (Typ. opn. 9.)

The Court of Appeal's reasoning here is simple, straightforward, and uncontroversial. Yet CDCR resists it, citing cases of this Court to the effect that a "literal construction" of an initiative must bow to the "manifest purpose of the enactment as a whole." (Petn. Rev. 11.) But in its next breath CDCR admits that "t]he Court of Appeal was aware of these precedents.'" (Petn. Rev. 11, citing typ. opn. 11.) Thus, there is no need to grant review here to secure uniformity of decision.

The Court of Appeal added: "The Constitution's text compels the result we reach, and we are not prepared to declare that result so absurd [citation] as to disregard the Constitution's plain meaning—and, indeed, the Attorney General does not ask us to." (Typ. opn. 11.) Yet, the Attorney General now seeks to enlist this Court to do so. (See, e.g., typ. opn. 11 ["This absurd outcome should have counseled against adopting this interpretation."].) (Petn. Rev. 11.) This Court should not indulge the Attorney General's argument at this point in the litigation.

CDCR also fails in its attempt to utilize this Court's decision in *Brown v. Superior Court* (2016) 63 Cal.4th 335 to further its cause. (See Petn. Rev. 14.) *Brown* has no relevance here because *Brown* did not interpret Proposition 57's language. Not having considered the scope or meaning of this language, "[the] opinion is not authority for propositions not considered." (*Chevron U.S.A.,*

Inc. v. Workers' Comp. Appeals Bd. (1999) 19 Cal.4th 1182, 1195.). *Brown* thus offers no insight on or guide to construction of the critical text here.

Brown, rather, simply engaged in a comparative analysis of the two versions of the ballot measure then at issue to determine if the changes comported with the Election Code's requirements. (See *Brown v. Superior Court*, *supra*, 63 Cal.4th at p. 339.) In doing so, the Court made clear that its decision was limited to the resolution of the Election Code issues before it, with "no consideration to possible interpretive or analytical problems that might arise should the measure become law." (See *id.* at p. 352, fn. 11.) Even so, the Court there emphasized that the amended ballot measure expanded parole consideration to "*all* state prisoners 'convicted of a non-violent felony offense.'" (*Id.* at p. 341, italics in original.)

Having failed to establish any need to grant review to secure uniformity of decision, CDCR posits that this Court should grant review to settle an issue of law that is important "because of the very real practical effects [the opinion] will have on the scope and administration of the early parole consideration program and public safety." (Petn. Rev. 15.) To make its case here, CDCR argues that "more than 90,000 inmates statewide … would now be eligible should the Court of Appeal's decision stand." (Petn. Rev. 15.)

CDCR reaches its outlandish number only by misconstruing the opinion as applying to all "inmates … who … are currently incarcerated for both violent and nonviolent felonies." (Typ. opn. 15.) But the opinion by its own terms applies only to inmates like Mohammad, whose nonviolent felony conviction is his primary

offense under the proposition. (Again, see typ. opn. 9 ["There is no dispute that [Mohammad's] primary offense as the Constitution defines it … is the principal term prison sentence he received for" a nonviolent offense].) Presumably, a nonviolent offense rarely will be designated the principal term with a violent offense subordinated to it, as here occurred pursuant to Mohammad's plea -- and the Court of Appeal recognized as much. (See typ. opn. 12, incl. fn. 3.) In this regard, the Court of Appeal aptly observed:

> [I]t bears emphasizing that Mohammad's case is an unusual one. The court at Mohammad's sentencing designated one of the receiving stolen property convictions—i.e., one of the nonviolent felonies—as the principal term of Mohammad's sentence. Often, however, an inmate convicted of both violent and nonviolent felonies will have the most serious of his or her violent felonies set as the principal term. Thus, the situation we confront in this case when an inmate becomes eligible for early parole consideration before serving time for any of his or her violent felony offenses will not frequently arise.

(Typ. opn. 12.)

The Court of Appeal accordingly found that "[t]he only certain consequence of our decision is that the Board of Parole Hearings will be busier" (typ. opn. 6) -- but by all appearances not very much busier. (See also typ. opn. 12 ["So the bottom line consequence of our decision today is that more inmates like Mohammad will receive individualized parole consideration earlier than they otherwise would have." (Typ. opn. 12.)

The answer to CDCR's protest that the Court of Appeal's decision will "increase the risk that persons who may reoffend will be released," contrary to voter intent (typ. opn. 16), can be found in that court's opinion itself:

> If the Board is convinced one of these inmates poses no unacceptable risk to public safety, the Board can approve the inmate for release; if instead there are violent aspects of an inmate's history that were not part of an early parole hearing eligibility determination, the Board can take those into account and issue a parole denial where it deems it prudent

(Typ. opn. 13.) Thus, the lower court's opinion is fully consistent with both the letter and the spirit of the constitutional provision at issue here, which aims to reduce the prison population by advancing the parole of as many non-dangerous prisoners as possible to the benefit of all. Again, the provision's purposes are "to enhance public safety, improve rehabilitation, and avoid release of prisoners by federal court order, notwithstanding anything in this article or any other provision of law." (§ 32(a).)

Conclusion

For these reasons, the Court should deny CDCR's petition for review.

Respectfully submitted,

Dated: January 17, 2020 By: /s/ Michael Satris

Attorney for Petitioner
Mohammad Mohammad

CERTIFICATE OF COMPLIANCE

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Dated: January 17, 2020 By: /s/ Michael Satris

DECLARATION OF SERVICE

Case Name:In re Mohammad
No.: S259999

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause. I am employed in the County of Marin, State of California. My business address is P.O. Box 337, Bolinas, California 94924. My electronic service address is satrislaw.eservice@gmail.com. On January 22, 2020, I electronically served the attached ANSWER TO PETITION FOR REVIEW by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants are unable to be served though the Court's TrueFiling system, on January 22, 2020, I have emailed a copy of the to the recipient at the email address as stated below or placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Law Office of Michael Satris, addressed as follows:

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Charles Chung, Deputy Attorney General Via TrueFiling	Attorney General of California Via TrueFiling
LA County District Attorney's Office Via TrueFiling	Sherri R. Carter, Clerk of the Court Los Angeles County Superior Court 111 North Hill Street Los Angeles, CA 90012 Attn: The Hon. William C. Ryan, Judge Via US Mail

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 22, 2020, at Bolinas, California.

/s/ Sarah Slater
Signature

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **MOHAMMAD (MOHAMMAD) ON H.C.**
Case Number: **S259999**
Lower Court Case Number: **B295152**

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