In the Supreme Court of the State of California

Donald Smith, Petitioner, vs. **The Superior Court of the City and County of San Francisco,** Respondent.	Case No.S188068 **Petitioner Smith's Answer Brief on the Merits**
The People of the State of California, Real Party in Interest.	

First Appellate District, Division Five, A124763
San Francisco trial court no. 207788
The Honorable Ksenia Tsenin, Judge

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Issues Presented

Court's question 1:

1. When a defendant has asserted his or her statutory right to a speedy trial within 60 days, but a jointly-charged codefendant has requested a trial beyond the 60-day period because of his or her counsel's unavailability for good cause, may the 10-day grace period described in Penal Code section 1382, subdivision (a)(2)(B), be applied to the objecting defendant?

Smith's response

Under 1382, if "*the* defendant" consents to a trial date after the 60-day presumptive period, Penal Code section 1382 (a)(2)(B) gives the state a 10-day grace period. The legislature did not write "the defendant *or any joined defendant.*" May the court judicially add "joined defendant" to section 1382 in light of the plain language here?

Court's question 2:

In such circumstances, does good cause exist under Penal Code section 1382 (a), or Penal Code section 1050.1 to continue the objecting defendant's trial to maintain joinder?

Smith's response:

Here, no good-cause request or finding was made to continue Smith's case. Did the Court of Appeal successfully resolve any tension between the statutes? Can "good cause" be assumed by operation of law, without legislative authorization, under either sections 1382 or 1050.1?

Topical Index

Table of Authorities

Federal Constitution

State Constitution

Cases

Statutes

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Donald Smith, Petitioner, vs. **The Superior Court of the City and County of San Francisco,** Respondent.	Case No. S188068
The People of the State of California, Real Party in Interest.	

Introduction

The plain language of Penal Code sections 1050.1 and 1382[1] address this Court's questions and do not conflict if read in harmony consistent with the Court of Appeal's decision: that under 1050.1, so long as there is good cause to continue the case, the objecting defendant is joined, but once co-defendant's good cause ends then, unless there is a new good-cause finding, a trial should commence on defendant's case.

To interpret these statutes differently requires reading Smith's consent by operation of law to the new date, thereby triggering the 10-day grace period. But this is to engage in a judicial rewriting of the statute, changing

[1] All further code references are to the Penal Code unless otherwise noted.

"the defendant" in section 1382 (a) (2) (B) who consents to a date beyond the time period, to "the defendant, *or any jointly charged defendant.*" The legislature could have done this, but did not.

This Court must give deference to the legislature's language and should not engage in rewriting when the statute is reasonably susceptible to an interpretation that harmonizes the joinder preference with Smith's statutory speedy-trial rights without doing harm to the legislature's language and intent. (*People v. Garcia* (1999) 21 Cal.4th 1, 6.)

Though the state constitution (Cal. Const. art. 1 sec. 30), statute (Pen. Code, §§1050.1, 1098) and case law (*People v. Sutton* (2010) 48 Cal.4th 533) recognize that the state has a strong interest in joint trials, the federal (U.S. Const. Amend. VI) and state constitutions (Cal. Const. art. 1 sec. 15), state statute (Pen. Code, § 1382), and case law (*People v. Clark* (1965) 62 Cal.2d 870) also show a strong interest in speedy trials.

Real party would advance the preference for joint trials over all other interests. But the statutes showing a joinder preference have not been elevated above those that preserve speedy-trial rights. And since the plain language of the statutes can be read harmoniously to resolve any tension — as the Court of Appeals has demonstrated— it should be.

Statement of the Case

An information jointly charged Smith and Christopher Sims with felony first-degree residential burglary (§ 459). Both were arraigned on the next day, and Smith asserted his statutory right to a trial within 60 days of that date (§1382). Three days before the last day for trial, the court learned that codefendant's counsel was ill and unavailable for trial. As to Smith, the court indicated its intent to sever or dismiss, because the last day for trial

was the following Monday. But the state argued that, if there was good cause to continue one joined defendant, there was good cause as to both.

A. Good cause found to continue both cases beyond last day because codefendant's counsel was ill.

On the last statutory day for trial, Sims's counsel remained ill and unavailable. Smith objected to any continuance. The court, however, found good cause to continue the trial for both defendants based on the interest in joinder, and then trailed Smith's case day by day.

The court made two further findings of good cause to continue the trial of both defendants, over Smith's objection, based on Sims's attorney's illness. Four days after the original last day, Sims's counsel appeared and stated that he anticipated being ready to try the case in a week. The court found good cause to continue the matter five more days, two days before co-counsel's expected return to wellness, to ensure that all parties would be ready and the court able to send the case out to trial on his return.

B. Co-defendant's counsel informs the court of his expected return.

Though Sims's counsel remained ill, he sent word to the court that he would be ready to try the case in an additional five days, on April 27.

The court stated: "For the record, [Sims's counsel] will be available and ready to try this and fully recovered on Monday, which means the last day for trial, according to case law, would be 10 days after Monday, April [ ] 27th. [¶] So by my calculations, May 7th would be the last day." Smith maintained his objection to further continuances.

On April 27 — fourteen days after the original last day — the court "rolled" the case over another day. Sims's counsel was present. The prosecution did not assert good cause for a continuance and the trial court and co-counsel assumed the last day for Sims's case (incorporating the ten-

day grace period) was the same for Smith. The court acknowledged that Smith objected to any further continuance.

C. Smith's motion to dismiss under Section 1382 denied.

The next day, Smith moved to dismiss for violation of his statutory speedy-trial rights, when the court continued his case without good cause. The court denied the motion.

D. Appellate history.

Smith petitioned the Court of Appeal for a writ of mandate to dismiss the charges. In a published opinion, the court granted Smith's petition and directed the Superior Court to enter a new and different order dismissing the Information against Smith. This Court granted Real Party's petition for review, eventually re-transferring this case back to the Court of Appeal with directions to vacate and reconsider its decision in light of *People v. Sutton* (2010) 48 Cal.4th 533.

The Court of Appeal reconsidered then filed a published opinion reiterating its earlier conclusion and finding *Sutton* largely inapplicable to the issues presented here.

Argument

1. *Sutton* and 1050.1 apply to continuances upon a finding of good cause; here, there was no good-cause finding.

Sutton and section 1050.1 apply to continuances granted upon a finding of good cause; here, there was no good-cause finding. The Court asks whether: 1) the 10-day grace period that applies to the consenting codefendant, applies also to an objecting defendant; and 2) some automatic good cause exists under 1382 or 1050.1. The answer to both is no.

The statutory plain language is clear — only "*the* defendant" and not "the defendant, *and any joined defendants*" — that the 10-day period applies only to the consenting defendant; b) this reading harmonizes both statute and constitutional clause. To rewrite the law, when it can be harmonized without absurdity or constitutional damage, violates statutory construction rules and treads on separation of powers.

Below, Smith examines: A) the range of the joinder preference announced in *Sutton* — good cause as to one codefendant is good cause to the other; and, B) the limits of that holding.

A. While a good–cause finding as to one co-defendant is good cause as to the joined defendant, here there was no good-cause finding.

Real party points out, and Smith agrees, that when there is a good-cause finding as to one co-defendant it serves as good cause to the other in the interest of a joint trial. (*People v. Sutton* (2010) 48 Cal.4th 533; Pen. Code, § 1050.1). But here the trial court made no good-cause finding to continue co-defendant's case (no party claimed it was unprepared, and the court did not try to send the case out to a trial department).

B. Neither *Sutton,* nor its logic, reaches the situation here: where a good-cause finding was not made.

Neither *Sutton*, nor Section 1050.1, reaches the issue here: when good cause ends for co-defendant, is the objecting defendant, whose last presumptive day under Section 1382 has expired, automatically joined to the co-defendant's statutory ten-day period, or is a good-cause finding required? The Court of Appeal's opinion deftly answered that question: Smith's trial could only be continued if there was further good cause, because Smith was beyond his last day for trial. Nothing in *Sutton* or real party's brief logically or legally contradicts the court's reasoning below.

All the cases cited by real party below and examined in *Sutton* involve a finding of good cause as to a co-defendant: in *Sutton* and *McFarland*, good cause was found because co-counsel was engaged in another trial (*People v. McFarland* (1962) 209 Cal.App.2d 772); in *Teale* and *Greenberger* good cause was found because counsel needed time to prepare for trial (*People v. Teale* (1965) 63 Cal.2d 178; *Greenberger v. Superior Court* (1990) 219 Cal.App.3d 487); in *Ferenz,* good cause was found because the co-defendants were unavailable, in federal jurisdiction. (*Ferenz v. Superior Court* (1942) 53 Cal.App.2d 639.) Here, the trial court made no good-cause finding.

Because Smith was beyond his presumptive statutory time limit, the cases cited by real party (Real Party's Opening Brief, page10) supporting the prosecution's right to continue *within* a statutory period are not helpful. The issue here is whether the 10-day period applies — not whether the state has a right to continue an objecting co-defendant once good cause is shown to another.[3]

This same confusion (between continuances *within* a statutory presumptive period and the analysis outside that period) seems to underlie real party's suggestion that prejudice need be shown to establish a violation of 1382. The prejudice analysis only comes into play when an objecting defendant is joined to a consenting codefendant under 1050; then, a good-cause finding as to the consenting codefendant permits joinder *unless* it appears to the court that it will be impossible for all defendants to be available within a reasonable time. The prejudice analysis only comes into

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[3] *People v. Graves* (see RP Opening brief at p. 10), a-then citable case, should be disregarded as that case was depublished (S188704) a few weeks after real party's filing and may not be cited. (See Cal. Rules of Court, Rule 8.1105, Rule 8.1110, Rule 8.1115, Rule 8.1120, and Rule 8.1125)

play in deciding what constitutes a "reasonable time" in a given case. Here, the good cause had ended, so no prejudice need be shown. (*People v. Clark* (1965) 62 Cal.2d 870.)

Real party cites *Sutton* for the proposition that Smith needs to show prejudice. But *Sutton* dealt with a joined case and that period of time during which there was good cause (co-counsel was in trial). In *Sutton*, as soon as the codefendant was available, the joint trial started. The prejudice standard applies only to the outside limit (a reasonable period of time); the period of time that an objecting codefendant can be continued on the basis of a consenting defendant's good cause.

Most telling is the Supreme Court's *Clark* decision (*People v. Clark, supra,* 62 Cal.2d 870, cited in *Sutton, supra,* 119 Cal.App.4th at 562), which held that where good cause was not shown as to the co-defendants — three days over the time limit — "the motion to dismiss for 1382 violation should have been granted." (*Clark, supra,* at 886 -887.) *Clark* ultimately did not prevail on the claim, as he was unable to show the required prejudice in his post-conviction appeal. (*Clark, supra,* 62 Cal.2d at 886.) But no showing of prejudice is required when, as here, Smith seeks relief by *pre-trial* writ petition. (*Cory v. Superior Court* (1984) 157 Cal.App.3d 1094, 1101; see also *Sutton, supra,* at 546, fn. 7.)

Finally, the prejudice issue should be viewed through the opposite lens: how would the Court of Appeal's harmonized analysis, applied consistently, prejudice the state? It wouldn't, because lacking good cause the prosecution could have proceeded with a joint trial. And this would real party's hypothetical of an unavailable witness necessary only as to one case is inapt. In that case, they would have good cause to continue and that good-cause finding would apply to both. So, the issue for the prosecution becomes one of mere convenience; even if lacking good cause on either case, would it be able to force the objecting defendant to wait ten days?

The answer is no, because this violates the speedy-trial interest without serving the joinder interest.

As shown in section 2 below, statutory interpretation supports Smith's position that, absent a new good-cause finding, dismissal was required.

2. Because the plain language of Section 1382 does not join the objecting defendant (Smith) to the consenting co-defendant (Sims) in a ten-day extension, Smith's trial had to proceed in the absence of a new good-cause finding.

The plain language of 1382 leaves real party to argue that the absent good-cause finding must be inferred or presumed somehow in the language of 1382 or 1050.1. But, as the Court of Appeal found below, nothing in the plain language of 1382 compels this result, and the rules of statutory construction require the Court to reject this interpretation.

Indeed, real party's Opening Brief hardly mentions statutory interpretation, and omits all reference to the state and federal constitutional speedy-trial rights. It unfairly urges this Court to view the issue as balancing a statute (1382) against a constitutional right (Cal. Const. art. 1 sec. 30), when in fact both the state and federal constitutions have speedy-trial clauses (U.S. Const. VI Amend. and Cal. Const. art. 1 sec. 15). So, the issue is closer than real party suggests.

Below, Smith shows: A) the importance of the state, federal, and statutory speedy-trial interests involved; B) that under the plain language of section 1382, the 10-day period does not apply to an objecting, joined co-defendant (Smith); C) the state constitutional prohibition against barring joinder is not impinged under the Court of Appeal's plain-language interpretation, because the prosecution can always choose to try the cases jointly; and, D) that nothing in 1382 or 1050.1 supports or requires a nonspecific finding of good cause by operation of law to secure joinder.

A. The right to a speedy trial is an important interest that must be balanced with a joint-trial preference under the plain language of both statutes.

Real party argues that Section 1382 should be construed in light of section 1050.1 and the state constitution (article 1 § 30[a]) to maintain a joint trial: if the grace period applies to Sims it also applies to Smith. But sections 1382, 1050.1, and the state constitution (art. 1 § 15), when read together, support Smith. His speedy-trial right need not be sacrificed in favor of a joint trial.

"The right to a speedy trial is a fundamental right. [Citation.] It is guaranteed by the state and federal Constitutions. (U.S. Const., 6th Amend.; Cal. Const., art. I, § 15.) The Legislature has also provided for "a speedy and public" trial as one of the fundamental rights preserved to a defendant in a criminal action. (§ 686 (1)' [Citation.] To implement an accused's constitutional right to a speedy trial, the Legislature enacted section 1382. [Citation.] [¶] That section 'constitutes a legislative endorsement of dismissal as a proper judicial sanction for violation of the constitutional guarantee of a speedy trial and as a legislative determination that a trial delayed more than [the prescribed period] is prima facie in violation of a defendant's constitutional right.' [Citation.] Thus, an accused is entitled to a dismissal if he is 'brought to trial' beyond the time fixed in section 1382. [Citation.]" (*Rhinehart v. Municipal Court* (1984) 35 Cal.3d 772, 776.)

Real party fails to give proper weight to a defendant's interest, as here, when he is waiting in custody, deprived of freedoms the legislature and constitution meant to protect. Every day lost to the ten-day rule is a day when he could perhaps be free or at least know his fate. If no good cause exists to continue his case, it must proceed consistent with the wording of section 1382 and his constitutional speedy-trial rights.

B. Under the plain language of section 1382, the 10-day period does not apply to an objecting joined co-defendant.

Applying basic rules of statutory construction — plain language and harmonizing statutes — the 10-day period does not apply to an objecting joined co-defendant.

(1) Language of 1382(a)(2)(B).

Section 1382, in relevant part, gives the state 60 days to try a felony case, requiring a dismissal unless good cause is shown:

"(a) the court, unless good cause to the contrary is shown, *shall* order the action to be dismissed in the following cases: . . . (2) In a felony case, when a defendant is not brought to trial within 60 days of the defendant's arraignment...." (Section 1382 (a), italics added.)

But 1382 (this applying to Sims) also allows a ten-day grace period if a defendant agrees to a date beyond the sixty days: "However, an action shall not be dismissed under this paragraph if either of the following circumstances exist: [¶] . . . (B) The defendant requests or consents to the setting of a trial date beyond the 60-day period. Whenever a case is set for trial beyond the 60-day period by request or consent, expressed or implied, of the defendant without a general waiver, the defendant shall be brought to trial on the date set for trial or within 10 days thereafter." (§1382(a)(2)(B).)

The statute therefore provides for a 10-day "grace period" when continuance beyond the 60-day felony limitation is attributable to "the defendant." Because the continuance was attributable to Sims and not Smith, he is not "the defendant" and the ten days does not attach to Smith.

(2) Rules of statutory construction.

Statutory interpretation aims to ascertain and effectuate the Legislature's intent. (*People v. Standish* (2006) 38 Cal.4th 858, 869.) In determining that intent, the courts "looks to the words the Legislature used, giving them their usual and ordinary meaning. [Citation.]" (*Ibid* [citations omitted].)

When the words are clear, "the court should not add to or alter them to accomplish a purpose that does not appear on [its] face ... or from its legislative history." [Citation.]" (*People v. Mackey* (1985) 176 Cal.App.3d 177, 184.) Courts should only look further if the statutes are ambiguous: "Only when ambiguity exists do we 'examine the context of the statute, striving to harmonize the provision internally and with related statutes, and we may also consult extrinsic indicia of intent as contained in the legislative history of the statute." (*Ramos v. Superior Court* (2007) 146 Cal.App.4th 719, 727 [Citation omitted.].) Finally, penal statutes are generally construed most favorably to the defendant. (*Ibid.*)

(3) Real party's interpretation is inconsistent with plain language.

Real party ignores the words of 1382 and claims to know that when the Legislature wrote, in 1959, the ten-day grace period for "the defendant" it meant to include an objecting joined defendant affected by 1050.1, passed in 1990. But the Legislature's intent — to have a 10-day grace period to bring a consenting defendant to trial — is clear in 1382's plain language.

Further, section 1382 is conspicuously silent as to an objecting, joined defendant. Real party's argument that the Legislature somehow considered this conundrum in 1959 becomes untenable in light of the fact that the constitutional joinder amendment (art. 1 sec. 30) and specific statute (Pen. Code §1050.1) were the result of a 1990 petition drive (Prop 115) – 31 years after the ten-day grace period amendment. It follows that the wording of 1382 must be respected.

Real party's interpretation leaves this court only one option: to judicially rewrite 1382. It would have to amend 1382 from, "The defendant requests or consents to the setting of a trial date beyond the 60-day period. . . . *the* defendant shall be brought to trial on the date set for trial or within 10 days thereafter." to "the defendant, and *any joined codefendants,* shall be brought to trial on the date set for trial or within 10 days thereafter."

This Court has condemned this type of judicial editing, for example in *Garcia*, where Justice Werdegar wrote, in sorting out a thorny statutory construction issue, the high court "may properly decide upon such a construction or reformation when compelled by necessity and supported by firm evidence of the drafters' true intent [Citation], *we should not do so when the statute is reasonably susceptible to an interpretation that harmonizes all its parts without disregarding or altering any of them.* 'It is fundamental that legislation should be construed so as to harmonize its various elements without doing violence to its language or spirit.' " [Citation]" (*People v. Garcia*, *supra,* 21 Cal.4th at 6 [italics added.].)

(4) The Court of Appeal properly harmonized the statutes.

The Court of Appeals fairly read and harmonized the statutes. Unable to fairly confront it, real party glosses over this plain-language analysis and skips to the need for joinder. "[F]or purposes of interpreting [. . .] statutes, however, it matters not whether the drafters, voters or legislators consciously considered all the effects and interrelationships of the provisions they wrote and enacted. [The Court] must take the language of [the statutes to be interpreted], as it was passed into law, and must, if possible without doing violence to the language and spirit of the law, interpret it so as to harmonize and give effect to all its provisions." (*Garcia*, *supra*, 21 Cal.4th at 14.)

Moreover, real party does not explain how the Court of Appeal's reading conflicts with the joinder preference, except that it results in a dismissal

here and, the argument goes, it would be unworkable when a consenting codefendant becomes available unexpectedly. That policy issue is examined in section 3.

C. The joinder preference merely prohibits a constitutional *bar* to joinder; the state was never barred from a joint trial here.

In contrast to the fundamental nature of a defendant's speedy trial right, Article 1 section 30(a) — the constitutional joinder provision — merely states that the "Constitution shall not be construed by the courts to prohibit the joining of criminal cases" as provided by statute. But Smith's interpretation does not *prohibit* joinder and, in fact, Smith was joined before and during the good-cause continuance due to illness of Sims's counsel. If a joint trial had started immediately after good cause dissipated, joinder would have been maintained. And if the state or either codefendant presented new good-cause, joinder would have been maintained. At no point was joinder prohibited, nor would it be under the Court of Appeal's harmonizing interpretation. The state could have *chosen* — out of convenience — to try Smith first, but it would not have been prohibited from trying the defendants together.

D. Nothing in section 1050.1 approves a nonspecific finding of good cause by operation of law to secure joinder.

Nothing in section 1050.1 approves a nonspecific finding of good cause by operation of law to secure joinder. It contains no language forcing Smith to join in Sims's 10-day grace period. Smith agrees that under 1050.1, good cause as to one codefendant is good cause as to both.[4]

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[4] "In any case in which two or more defendants are jointly charged in the same complaint, indictment, or information, and the court or magistrate, for good cause shown, continues the arraignment, preliminary hearing, or trial

Indeed, the second sentence prohibits severance on the grounds that one defendant is ready and one is not[5] — but that was not the case here. No party declared it was not ready, or asked for a continuance. (The last clause of the second sentence is not applicable here. It requires severance when "it appears to the court or magistrate that it will be impossible for all defendants to be available and prepared within a reasonable period of time." (§1050.1).)

That the state interest in a joint trial is *generally* good cause and can support a continuance (*Sutton*, *supra*, 48 Cal.4th at 562 [emphasis in original]), does not mean that it always, automatically, or *specifically* supports a continuance. The trial court must use its discretion, review the facts and make, or reject, a good-cause finding.

Indeed, real party's invitation to invent a generic or automatic good-cause finding was rejected in an analogous situation in *Sutton*, as explained in section 3 below.

3. This Court rejected automatic joinder in *Sutton*: a fact-specific good-cause finding is required.

Automatic joinder was rejected in *Sutton*, where the Court held that a good-cause finding was required to be found on a case-by-case basis. (*Sutton, supra*, 48 Cal.4th at 557, fn.13). So when, as here, an objecting defendant's last day looms, the trial court should ask the state and co-counsel if they are ready: if not, and counsel was legitimately unprepared or

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of one or more defendants, the continuance shall, upon motion of the prosecuting attorney, constitute good cause to continue the remaining defendants' cases so as to maintain joinder."

[5] "The court or magistrate shall not cause jointly charged cases to be severed due to the unavailability or unpreparedness of one or more defendants." (§1050.1.)

the state had good-cause-witness issues, then good cause would support the continuance.

But here, the trial court here made no inquiry and no finding. Thus, while the interest in joint trials may *generally* support good cause, the trial court must still *specifically* review and balance all of the interests involved to properly exercise its discretion.

4. Policy considerations support following the plain meaning of the harmonized statutes, rather than judicially rewriting the statute as real party requests.

First, there is neither constitutional, nor actual, conflict between the joinder and speedy-trial interests under the plain language of the statutes. The trial court and prosecution have workable options upon the expiration of the codefendant's good cause. They could:

- Try both cases together immediately;
- Try the objecting codefendant's (Smith) case immediately and the consenting defendant's (Sims) case within ten days;
- Inquire if the prosecution or codefendants has new good cause to continue and join, for a reasonable period under section 1050.1.

Real party's nightmarish scenarios of dismissal are farfetched. Once the rule is clear, trial courts are capable of managing the situation. Indeed, the trial court here originally demonstrated good court management when it inquired of counsel as to his expected recovery date and set a control date a week earlier, trailing as it received more information. This is how the master-calendar courts manage a last presumptive day: by setting and trailing cases.

So, in real party's scenario, a master-calendar court would have to set a control date while waiting for co-counsel to finish his trial. Assuming the

trial unexpectedly finished early and was added to the calendar for trial assignment, if the prosecution had, in good-faith reliance, re-subpoenaed its witnesses for the later date based on co-counsel's good-faith trial estimate, a good-cause continuance would lie so that the state could be ready (*People v. Shane* (2004) 115 Cal.App.4th 196, 203); if the newly ready co-counsel had now similarly lost witnesses then, again, a new good-cause finding would lie as to all. As noted in *Sutton*, the trial court has great discretion in granting continuances. (*Sutton, supra*, 48 Cal.4th at 546-547, fn8.)

The only rub would occur if, based on an unexpected dismissal (or. here, wellness) the master-calendar court did not have a courtroom available to begin trial. Of course in most situations, as here in Smith's, the court will have planned with a control date and would be ready to send out the case.

Whether the unexpected surprise appearance of ready counsel, when the master-calendar court has already filled all available courts, would constitute good cause to trail is not before this Court. And even if, as real party hints, this interpretation somehow provides an "opportunity for great mischief" or "game playing" (see real party's petition for review, pp. 3, 7) and that opportunity became an actual problem, the legislative branch could appropriately step in and perform its law-making function.

Conclusion

The *Sutton* court reaffirmed that a good-cause finding is not automatic but a "case-by-case" determination (*Sutton, supra* 48 Cal.4th at 557, fn. 13). Real party's interpretation requires a presumption of good cause in every case involving a co-defendant, even where, as here, no good-cause finding was ever requested, considered, or made. Nothing in the plain language of sections 1382 or 1050.1 mandates this result; indeed, statutory interpretation rules require a specific finding of good cause. This supposed

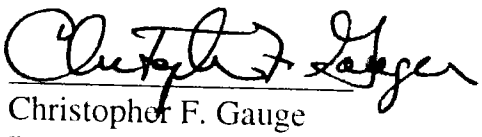
conflict — between the constitutional interest in speedy trials and constitutional rule barring prohibition of joinder — does not exist. Under the Court of Appeal's interpretation joinder is never prohibited. At worst, in some cases, the prosecution is inconvenienced if lacking good cause; it must choose to keep the parties joined or to try them separately, and the individual speedy-trial rights are honored.

To do as real party urges "would require the court to disregard or *rewrite* some portion of the statute, violating the fundamental principle that a court should interpret a statute or initiative so as to harmonize and give effect to all its provisions if such an interpretation is consistent with the language and purpose of the act." (*Garcia*, *supra*, 21 Cal.4th at 10. [italics added].) This is unnecessary, as the Court of Appeal's analysis harmonizes all interests (joinder while good cause exists but, an individual speedy trial in absence of good cause). No tension remains and both interests are served.

This harmonized interpretation is workable, does not require judicial rewriting of the statute, and balances the two constitutional interests of joinder and speedy trial as the legislature has designed. This Court should follow the Court of Appeal's reasoning below, ordering that Smith's case be dismissed.

Date: March 14, 2011.

Respectfully submitted,

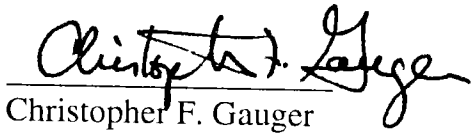


Christopher F. Gauge
Deputy Public Defender

Word Count Certificate

I, Christopher F. Gauger, declare and certify under penalty of perjury that I am an attorney licensed to practice law in the State of California (state bar number 104451) and employed as a Deputy Public Defender for the City and County of San Francisco. In this capacity, I prepared this Opposition and certify that the brief contains 4,802 words, according to the word count produced by the Word program used to produce the document.

Dated: March 14, 2011.



Christopher F. Gauger
Deputy Public Defender

Proof of Service

I, the undersigned say:

I am over eighteen years of age and not a party to the above action. My business address is 555 Seventh Street, San Francisco, California 94103.

On March 14, 2011, I personally served the attached petition on:

Court of Appeal First Appellate District 350 McAllister Street San Francisco, California 94102	Clerk of the Superior Court, (Dept 22 Judge Lee) 850 Bryant Street, Room 101 San Francisco, California 94103
	George Gascon, District Attorney Attn: Assist. District Attorney City and County of San Francisco 850 Bryant Street, Room 300 San Francisco, California 94103
The Attorney General of the State of California Stan Helfman, Deputy 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102	Donald Smith c/o Doug Welch Attorney of Record 555 7th Street San Francisco, CA 94103

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 14, 2011, at San Francisco, California.

_____