

# SUPREME COURT COPY

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF  
CALIFORNIA,

Petitioner and Respondent,

v.

THE SUPERIOR COURT OF SAN  
BERNARDINO COUNTY,

Respondent,

JOHNNY MORALES,

Real Party in Interest and  
Petitioner.

Case No. S228642

SUPREME COURT  
FILED

SEP 08 2015

Frank A. McGuire Clerk  
Deputy

Fourth Appellate District, Division Two, Case No. E061754  
San Bernardino County Superior Court, Case No. FVA 015456  
The Honorable Ingrid Uhler, Judge

## ANSWER TO PETITION FOR REVIEW

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

### INTRODUCTION

On September 12, 2005, real party in interest Johnny Morales was sentenced to death following his conviction of first degree murder with special circumstances. The automatic appeal from that judgment is currently pending before this Court in case number S127307.

On July 9, 2014, the Superior Court of the County of San Bernardino granted Morales's motion to preserve evidence. The court's order required multiple public agencies and departments to preserve 22 categories of documents and other materials allegedly related to the criminal proceedings against Morales.

The People filed a petition for writ of mandate with the Court of Appeal in which it argued the trial court lacked jurisdiction to issue the preservation order. The Court of Appeal filed a written opinion granting the petition, finding that this Court's decisions in *People v. Johnson* (1992) 3 Cal.4th 1182, and *People v. Gonzalez* (1990) 51 Cal.3d 1179, were dispositive. The Court of Appeal ordered that a peremptory writ of mandate issue, directing the superior court to vacate its order for preservation of evidence, and to enter a new order denying Morales's motion. The opinion was subsequently ordered published.

Morales is seeking review of the decision because he believes the superior court does in fact have jurisdiction to issue the preservation order he requested, and therefore that the Court of Appeal's decision is wrong. Morales asks this Court to grant review to settle an important question of law. (Petn. for Rev., at p. 1; see Cal. Rules of Court, rule 8.500(b)(1).)

The petition for review should be denied because the Court of Appeal's decision is consistent with already settled law. The arguments advanced by Morales seek a change in the law and, therefore, are properly addressed to the Legislature, not the courts.

### ARGUMENT

#### **REVIEW SHOULD BE DENIED BECAUSE THE COURT OF APPEAL'S DECISION IS CONSISTENT WITH ALREADY SETTLED LAW**

The Court of Appeal's decision is consistent with settled law. After judgment has been pronounced and absent statutory authority, a trial court lacks jurisdiction to issue an order for discovery or for preservation of evidence. (*People v. Johnson, supra*, 3 Cal.4th at pp. 1256-1258; *People v. Gonzalez, supra*, 51 Cal.3d at p. 1257.) This is because “[a]s with any other motion, a discovery motion is not an independent right or remedy. It is ancillary to an ongoing action or proceeding. After the judgment has become final, there is nothing pending in the trial court to which a discovery motion may attach.” (*Gonzalez*, at p. 1257, quoting *People v. Ainsworth* (1990) 217 Cal.App.3d 247, 251.) Penal Code section 1054.9 provides statutory authority for a defendant sentenced to death or life without the possibility of parole to seek limited discovery “[u]pon the prosecution of a postconviction writ of habeas corpus . . . .” (Pen. Code, § 1054.9, subd. (a); see also *In re Steele* (2004) 32 Cal.4th 682, 691 [construing statute to provide defendants a right to seek certain discovery while preparing to file a habeas petition as well as after such petition has been filed].) However, the statute goes no further than that; in particular, it “imposes no preservation duties that do not otherwise exist.” (*Steele*, at p. 695.) Because there is no statutory authority for the postjudgment preservation order issued in this case, the Court of Appeal's decision was compelled by *Johnson* and *Gonzalez*.

Morales argues the preservation order is authorized or, at least, that authorization is suggested by, sections 187 and 916 of the Code of Civil Procedure and this Court's opinion in *Townsel v. Superior Court* (1999) 20 Cal.4th 1084. (Petn. for Rev., at pp. 8-12.) Morales misconstrues these authorities.

Code of Civil Procedure section 187 "grants every court all means necessary to carry its jurisdiction into effect." (*People v. Gonzalez, supra*, 51 Cal.3d at p. 1257.) Code of Civil Procedure section 916 provides, in relevant part, that "the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order, but the trial court may proceed upon any other matter embraced in the action and not affected by the judgment or order." "Thus, during the pendency of an appeal (including, we assume, an appeal in a capital case), the trial court 'retains certain powers over the parties and incidental aspects of the cause....'" (*Townsel v. Superior Court, supra*, 20 Cal.4th at pp. 1089-1090, quoting *People v. Johnson, supra*, 3 Cal.4th at p. 1257.)

In *Townsel v. Superior Court*, 20 Cal.4th 1084, a capital case, the trial court issued a no-contact order respecting jurors while presiding over proceedings to correct the record on appeal. (*Id.* at p. 1090.) This Court held that the trial court had authority to issue the order because the order addressed "other matter[s] embraced in the action and not affected by the judgment," within the meaning of section 916 of the Code of Civil Procedure. (*Ibid.*)

This Court in *Townsel* did not, however, overrule the holding in *Johnson* that "the process of record correction is not a 'criminal proceeding' sufficient to support orders relating to *discovery*"; rather, this Court rejected Townsel's argument that this holding in *Johnson* was

apposite to the issue in that case. (*Townsel v. Superior Court*, *supra*, 20 Cal.4th at p. 1090.) To be sure, the underlying court order at issue in *Johnson* directed the preservation of evidence (*People v. Johnson*, *supra*, 3 Cal.4th at p. 1256), whereas the underlying order at issue in *Townsel* directed the defense not to contact jurors without prior court approval (*Townsel*, at p. 1088).

Moreover, this Court in *Johnson* expressly rejected the notion that Code of Civil Procedure section 916 conferred jurisdiction to issue postconviction orders related to discovery. (*People v. Johnson*, *supra*, 3 Cal.4th at p. 1256-1258.) Similarly, this Court in *Gonzalez* rejected the notion that Code of Civil Procedure section 187 provided jurisdiction to issue postconviction discovery orders because, “[b]y its terms, . . . section 187 operates only where some other provision of law confers judicial authority *in the first instance*.” (*People v. Gonzalez*, *supra*, 51 Cal.3d at p. 1257, italics in original.)

Morales also argues that the trial court *should* have jurisdiction under the above statutes to issue preservation orders such as the one at issue in this case because California’s habeas corpus review system in capital cases is marked by excessive delay in the appointment of habeas counsel, and such jurisdiction is, therefore, necessary to protect his ability to receive meaningful habeas corpus review. (Petr. for Rev., at pp. 18-23.) This Court found a similar suggestion was unpersuasive in *People v. Johnson*, *supra*, 3 Cal.4th at page 1258—a finding that is only strengthened by the subsequent enactment of Penal Code section 1054.9, which conferred a statutory right to obtain limited discovery during the preparation of a habeas corpus petition, a right defendants did not have when *Johnson* was decided. In any event, a trial court’s direct jurisdiction over a criminal case that is pending on appeal “is strictly limited by statute” (*People v. Gonzalez*, *supra*, 51 Cal.3d at p. 1257), and this Court is not free to confer jurisdiction where the



Legislature has chosen not to (see *California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 349 [“We may not, under the guise of construction, rewrite the law or give the words an effect different from the plain and direct import of the terms used.”]). Morales’s argument here is grounded in policy, not law, and therefore is appropriately addressed to the Legislature, not this Court.

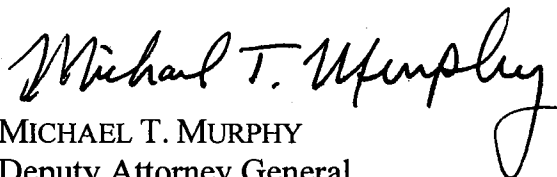
### CONCLUSION

For the foregoing reasons, the People respectfully request that the petition be denied.

Dated: September 3, 2015

Respectfully submitted,

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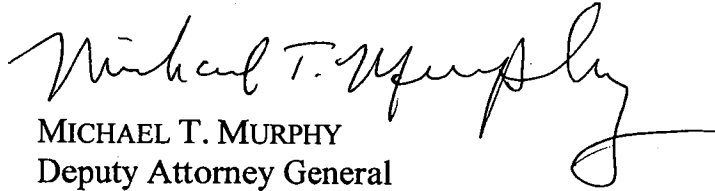


**CERTIFICATE OF COMPLIANCE**

I certify that the attached Answer to Petition for Review uses a 13 point Times New Roman font and contains 1,279 words.

Dated: September 3, 2015

KAMALA D. HARRIS  
Attorney General of California

A handwritten signature in cursive script that reads "Michael T. Murphy". The signature is written in black ink and is positioned above the printed name and title of the signatory.

MICHAEL T. MURPHY  
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**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: ***People v. Superior Court of San Bernardino County, Johnny Morales***

No.: **S228642**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On September 4, 2015, I served the attached **answer to petition for review** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 600 West Broadway, Suite 1800, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

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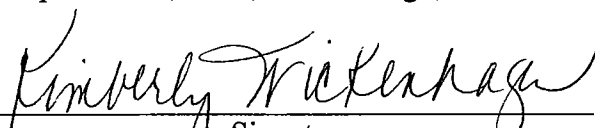
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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on September 4, 2015, at San Diego, California.

Kimberly Wickenhagen

Declarant

  
Signature