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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Respondent v. ALBERT C., Minor/Appellant and Petitioner	No. S231315 (Court of Appeal No. B256480) (Los Angeles County Juvenile Court No.MJ1492)

REQUEST TO FILE ERRATA TO THE APPELLANT'S OPENING BRIEF ON THE MERITS

After filing the Appellant's Opening Brief on the Merits in this case, , counsel discovered it contained a number of inadvertent clerical errors. Appellant therefore now wishes to correct those errors with the Errata filed concurrently with this request. The Errata provides the corrections only of the inadvertent errors, but counsel will be happy to provide completely new copies

of a corrected Opening Brief on the Merits if the Court would prefer.

I declare under penalty of perjury that this statement is true.

Executed on July 25, 2016, at New York, New York.

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Respondent v. ALBERT C., Minor and Petitioner	No. S231315 (Court of Appeal No. B256480) (Los Angeles County Juvenile Court No.MJ1492)

APPELLANT'S OPENING BRIEF ON THE MERITS: CORRECTION OF ERRATA

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Respondent v. ALBERT C., Minor and Petitioner	No. S231315 (Court of Appeal No. B256480) (Los Angeles County Juvenile Court No.MJ1492)

OPENING BRIEF ON THE MERITS: ERRATA

The Appellant's Opening Brief on the Merits included a number of inadvertent clerical errors. Appellant now wishes to correct it with the attached Statement of Errata and corrected pages of the brief.

Dated: July 25, 2016

Respectfully submitted,

Laini Millar Melnick
Attorney for Albert C.

Statement of Errata

I On page 32 of the Appellant's Opening Brief on the Merits, in the following sentence, the words "709" and "not" were inadvertently omitted. The sentence reads:

"*Jackson* left it to the states to determine a standard of reasonableness, but Welfare and Institutions Code section does specify what constitutes a reasonable period of time during which a minor may be detained while delinquency proceedings are suspended because of his incompetence. "

The sentence should read:

" *Jackson* left it to the states to determine a standard of reasonableness, but Welfare and Institutions Code section 709 does not specify what constitutes a reasonable period of time during which a minor may be detained while delinquency proceedings are suspended because of his incompetence. "

II. On page 38 of Appellant's Opening Brief on the Merits, in the following sentence there is a typographical error and a repetition of the phrase "other than to facilitate." The sentence reads:

"A rebuttable presumption affecting the burden of proof, such as the onesin *McLaughlin,* supra, is "a presumption established to implement some public policy other than to facilitate other than to facilitate the determination of the particular action in which the presumption is applied." (Evid Code § 605.) "

The sentence should read:

"A rebuttable presumption affecting the burden of proof, such as the one in *McLaughlin,* supra, is "a presumption established to implement some public policy other than to facilitate the

determination of the particular action in which the presumption is applied." (Evid Code § 605.)"

III. On page 40 of Appellant's Opening Brief on the merits, a sentence was inadvertently omitted in the first paragraph. The paragraph reads:

"All have specialized training in forensic issues and expertise in child mental health and meet with juveniles an average of three times per week for one and half hours per session. (Id at 72.) Results from the Florida program were similar. (Id at 82.) "

The paragraph should read:

"All have specialized training in forensic issues and expertise in child mental health and meet with juveniles an average of three times per week for one and half hours per session. (Id at 72.) Data from the Virginia program showed that the majority of juveniles were either restored to competence or found to be incapable of attaining competence within 3 to 4 months. (Id at 76.) Results from the Florida program were similar. (Id at 82.)"

The omitted sentence does not change the substance of appellant's contentions but clarifies the nature of the comparison with Florida's program by repeating a statement about the Virginia data made earlier in the paragraph, on page 39.

IV. On page 41 of Appellant's Opening Brief on the Merits, there is a typographical error. In the following sentence, the word "rebbutabble" should be spelled ""rebuttable."

" The rebbutabble presumption that detention of a minor for competency training should last no more than 120 days does not

conflict with the statute but puts the meat on the bones of the *Jackson* mandate. "

V. On page 42 of Appellant's Opening Brief on the Merits, there is a typographical error. In the following sentence, the: the word "Competecny" should be spelled "Competency. "

"The minor also asks this court to find that his detention beyond the 120 day limit of the Los Angeles Amended Competecny to Stand Trial Protocol constituted a rebuttable violation of his right to due process that cannot be rebutted on the facts of this case. "

As corrected:

"The minor also asks this court to find that his detention beyond the 120 day limit of the Los Angeles Amended Competency to Stand Trial Protocol constituted a rebuttable violation of his right to due process that cannot be rebutted on the facts of this case. "

In re Albert S., S231315

Appellant's Opening Brief on the Merits: Corrected Pages, 32, 38, 40, 41, 42

and violated his right to due process under the standard set forth by the United State Supreme Court in *Jackson v. Indiana* and this Court in *In re Davis.*

II

A VIOLATION OF THE PROTOCOL'S 102 DAY LIMIT ESTABLISHES A REBUTTABLE PRESUMPTION OF A DUE PROCESS VIOLATION BECAUSE DETAINING A MINOR FOR MORE THAN 120 DAYS FOR COMPETENCY TRAINING WITHOUT EVIDENCE OF PROGRESS IS UNREASONABLE WITHIN THE MEANING OF *JACKSON V. INDIANA* AND *IN RE DAVIS*

A. Introduction

In Part I of the argument, the minor discussed the reasons why the fact of his lengthy detention in juvenile hall for competency training without evidence of progress toward attainment of competency was unreasonable and thus violated the due process right of defined in *Jackson v. Indiana* and *In re Davis. Jackson* left it to the states to determine a standard of reasonableness, but Welfare and Institutions Code section 709 does not specify what constitutes a reasonable period of time during which a minor may be detained while delinquency proceedings are suspended because of his incompetence. Accordingly, the unreasonableness of the minor's detention without progress towards competency rests not upon the violation of a specific statutory time frame but upon the facts of his case, viewed within the context of the analogous criminal statute and what is reliably known about the time frame within which juvenile will likely achieve competency. Both point to the conclusion that detention for more than six months to determine whether there is a substantial likelihood that a minor will regain competence in the foreseeable future is unreasonable. The outer limit of six months detention for

had not provided sufficient guidance, and had led to a flurry of systemic challenges to city and county practices. (Id at 56.)

A rebuttable presumption leaves in place the flexibility recognized as a important by the Court of Appeal in this case A presumption is an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action. " (Evid Code § 600 subd (a).) It is not evidence. (Ibid.) A rebuttable presumption affecting the burden of proof, such as the onesin *McLaughlin,* supra, is "a presumption established to implement some public policy other than to facilitate the determination of the particular action in which the presumption is applied." (Evid Code § 605.) In *McLaughlin,* the public policy was the requirement of reconciling the appropriate needs of local authorities for some flexibility in their procedures with the constitutional rights of an arrested to a limit on the time he or she might be held in police custody before a judicial determination of probable cause. (Id. at 55.) Here, a rebuttable presumption that the detention of a minor for more than 120 days solely to attain competence violates due process implements the public policy of accommodating the court's interest in restoring a minor to adjudicative competency, with the minor's right to the prompt provision of competency services and his liberty rights not to be detained indefinitely or for a longer period than is reasonably necessary for him to attain competency or to be determined to be unable to do so.

In *McLaughlin,* the court made clear there would be instances when an individual might constitutionally be held in policy custody for more than 48 hours without a judicial determination of probable cause. In evaluating whether

counselors have a background in special education, social work, or psychology. All have specialized training in forensic issues and expertise in child mental health and meet with juveniles an average of three times per week for one and half hours per session. (Id at 72.) Data from the Virginia program showed that the majority of juveniles were either restored to competence or found to be incapable of attaining competence within 3 to 4 months. (Id at 76.) Results from the Florida program were similar. (Id at 82.)

As noted in Part I, before the enactment of Welfare and Institutions Code section 709, "the protective reach of Penal Code section 1368 " extended to section 602 proceedings in juvenile court (*In re John Z.*, supra, 223 Cal. App. 4th at 1055.) In California, after a person is deemed incompetent under Penal Code section 1368, a report indicating whether there has been progress toward restoration of competency and whether there is a likelihood competency would be restored in the foreseeable future, must be submitted to the court within 90 days of commitment. (Pen. Code § 1370 (subd (b)(1). In the minor's case, 90 days after the IST planning hearing , there was no evidence of progress toward attainment of competency and no reports there was a substantial likelihood he would attain competency in the foreseeable future.

Moreover, in enacting section 709, the legislature recognized that " despite the Penal Code procedures for determining competency in juvenile proceedings, a determination of juvenile competency lives only in case law and the Rules of Court. (Assembly Committee on Public Safety, April 13, 2010 hearing on AB2212 as amended April 8, 2010, Bill Analysis, p.3) Because the criminal statutes failed to address the "nuanced application" of developmental immaturity, codification

of a juvenile statute for competency to stand trial was necessary " to address a void in the statute that unambiguously provides guidance on the rule of law for competency in delinquency proceedings. " (Ibid.)

Section 709 addresses the suspension of delinquency proceedings generally; it does not differentiate between detained and no-detained minors. The rebuttable presumption that detention of a minor for competency training should last no more than 120 days does not conflict with the statute but puts the meat on the bones of the *Jackson* mandate. It accommodates the interests of all parties, protects the minor's important liberty interest and promotes judicial economy by providing a constitutional benchmark.

In *In re Jesus G.*, the court did not decide whether the presumption of a constitutional violation was rebutted. (*In re Jesus G.*, supra, 218 Cal. App. 4th at 171. In this case, as discussed in Part I above, the facts compel the conclusion that the minor's length detention violated *Jackson v. Indiana,* because at no time was there evidence he was making progress toward competency nor was there a timely determination whether there was a substantial likelihood he would attain it. Thus, on the facts of the minor's case, the violation of his right to due process is shown even without a presumption of a constitutional violation.

But the facts also show that his detention routinely violated the Protocol's guidelines. The minor was detained in juvenile hall for 294 days after he was found incompetent. The juvenile court failed to set an Attainment of Competency hearing within sixty days of the Incompetent to Stand Trial Planning Hearing as required by the Protocol and therefore failed to make any of the required determinations in a timely fashion. Over the objections of counsel, the court

repeatedly continued the competency hearings without any evidence that the minor was making progress towards attainment of competency. When the minor had spent one hundred and twenty days in juvenile hall receiving competency training without achieving competency, the court wrongfully denied the minor's motion to dismiss the petitions against him.

The circumstances of this case reveal the serious and pressing need for a rebuttable presumption that detention for more than 120 days is a violation of due progress. As in *McLaughlin,* supra, it is important to provide some degree of certainty so that courts "may establish procedures with confidence that they fall within constitutional bounds. " (See *McLaughlin,* supra, 500 U.S. at 56.) At the same time, a rebuttable presumption also retains the courts' flexibility to determine in individual cases what is a "reasonably necessary" period of detention for the attainment of competency and therefore permits the juvenile court to exercise its "sound discretion " in deciding whether sufficient progress is being made to justify the continued detention of juvenile while delinquency proceedings are suspended. (See *In re Davis,* supra, 8 Cal.3d at 807.)

CONCLUSION

For all the reasons stated herein, the minor asks this court to find that the juvenile court violated his rights under the Fourteenth Amendment to due process of law when it detained him for 294 days while delinquency proceedings were suspended and when there was no evidence of his making progress towars competency. The minor also asks this court to find that his detention beyond the 120 day limit of the Los Angeles Amended Competency to Stand Trial Protocol

PROOF OF SERVICE BY MAIL

I am employed in the county of Santa Barbara, State of California. My business address is 1187 Coast Village Road, Suite 1-573, Santa Barbara, California 93108. I am over the age of 18 and not a party to the action herein.

On the date written below, I served the attached **APPELLANT'S REQUEST TO FILE ERRATA TO THE APPELLANT'S OPENING BRIEF ON THE MERITS, AND CORRECTION OF ERRATA WITH ATTACHMENTS** on all interested parties in this action by placing a copy in envelopes with postage fully prepaid, addressed as follows:

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I deposited the aforesaid envelopes in the mail at New York, New York. I declare on penalty of perjury that the foregoing is true and correct. Executed on July 26, 2016

Laini Millar Melnick