S235549

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PATRICK LOWELL JACKSON, Petitioner, v. SUPERIOR COURT OF CALIFORNIA, IN AND FOR THE COUNTY OF RIVERSIDE, Respondent, THE PEOPLE OF THE STATE OF CALIFORNIA, Real Party In Interest.	ANSWER BRIEF ON THE MERITS

SUPREME COURT
FILED

JAN 13 2017

Jorge Navarrete Clerk

Deputy

Fourth Appellate District, Division Two, No. E064010
Riverside County Superior Court No. INF1500950
Honorable Mark E. Johnson

ANSWER BRIEF ON THE MERITS

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v.

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PATRICK LOWELL JACKSON, Petitioner, v. SUPERIOR COURT OF CALIFORNIA, IN AND FOR THE COUNTY OF RIVERSIDE, Respondent, THE PEOPLE OF THE STATE OF CALIFORNIA, Real Party In Interest.	CASE NO. S235549 ANSWER BRIEF ON THE MERITS

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

QUESTION PRESENTED

This Court limited the question presented to the following when it granted review: "After an incompetent defendant has reached the maximum three-year commitment provided for by law, can the prosecution initiate a new competency proceeding by obtaining dismissal of the original complaint and proceeding on a new charging document?"

INTRODUCTION

In 2008, petitioner was charged with child molestation (Pen. Code, § 288, subds. (a), (b)) in Riverside and San Bernardino Counties for crimes committed a few months apart. Petitioner was eventually convicted in San Bernardino County, but petitioner was found incompetent to stand trial in

Riverside County. He was subsequently committed to Patton State Hospital and returned to the Riverside County Superior Court in 2015. Since petitioner's commitment period had expired, petitioner moved for his release in the trial court. The trial court denied his request. In order to pursue a Murphy conservatorship[1], the People secured a grand jury indictment and dismissed the original felony complaint. At the arraignment on the new indictment, petitioner renewed his motion for his release, arguing that he could no longer be confined because his commitment period had expired. The trial court denied his motion once again and declared a doubt as to petitioner's competency to stand trial. Petitioner sought relief by filing a petition for writ of mandate and/or prohibition in the Fourth District Court of Appeal reiterating his argument that he could no longer be confined because his commitment period had expired.

The Fourth District Court of Appeal denied the petition in a published opinion, reasoning petitioner had not proven he met the requirements for release. Specifically, he had not shown he was incompetent to stand trial *on the indictment* and that he was unlikely to regain competence in a reasonable period of time. (*Jackson v. Superior Court* (2016) 247 Cal.App.4th 767.) This Court granted review to determine whether the refiling of a felony charging document triggers new competency proceedings under Penal Code section 1370, particularly when a defendant's commitment period has expired.

In petitioner's Opening Brief, he argues that Penal Code section 1370 requires the release of an incompetent defendant who is returned to court because he or she is not likely to be restored to competency in a

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[1] This colloquial name of this type of conservatorship is based on the name of the legislator who sponsored the amendment that added the definition to the Act in 1974. (*People v. Karriker* (2007) 149 Cal.App.4th 763, 775.)

reasonable time. Petitioner also contends the continued confinement of an incompetent defendant, regardless of the purpose of the confinement, is unlawful and unconstitutional simply because he or she has been confined for the statutory maximum commitment period under Penal Code section 1370. According to petitioner, Penal Code section 1370 demands this result even if a new felony charging document is filed because the court's prior incompetency determination carries over into the new case. Petitioner is wrong.

Nothing in the plain language of Penal Code section 1370 demands this outcome. Rather, reading Penal Code section 1370 in the context of Penal Code section 1387 reveals that competency proceedings begin anew when the prosecution refiles a felony charging document after terminating the prior criminal case. As discussed in greater detail below, this interpretation effectuates the public policy goals of each section by balancing a defendant's statutory and constitutional rights with the prosecution's right to due process as well as its interest in prosecuting more serious crimes.

Yet, even if the refiling of a felony charging document does not restart competency proceedings, real party contends that a defendant need not be released after the expiration of his or her commitment period. Nothing in Penal Code section 1370 or other relevant statutory authority supports petitioner's assertion that a defendant cannot be confined for the duration of conservatorship proceedings prior to actual commitment if said proceedings exceed the three-year period provided in Penal Code section 1370.

Real party does not suggest that petitioner or any other defendant may be confined indefinitely during the pendency of conservatorship proceedings. Instead, real party argues that the plain language of Penal Code section 1370 and relevant provisions of the Lanterman-Petris-Short

Act (Welf. & Inst. Code, §§ 5000 et seq., 5350 et seq.), provide for the temporary confinement of a defendant while he or she is a proposed conservatee to ensure public safety. And indeed, this interpretation is consistent with the constitutional limitations of confining a mentally incompetent defendant. (See *Jackson v. Indiana* (1972) 406 U.S. 715 (*Jackson*); *In re Davis* (1973) 8 Cal. 3d 798 (*Davis*) [applying *Jackson* to California Law].) The applicable provisions of the Lanterman-Petris-Short Act have specific deadlines for conservatorship hearings to ensure the proceedings are conducted in accordance with the guarantees of due process. (See e.g., Welf. & Inst. Code, § 5350, subd. (d).)

Accordingly, the Court of Appeal correctly denied the petition for writ of mandate/prohibition seeking petitioner's release.

STATEMENT OF FACTS[2]

On May 3, 2008, Riverside County Sheriff's Deputy Michael Cassidy was dispatched to Agua Caliente Casino in the city of Rancho Mirage, Riverside County, reference a call for sexual assault. He arrived at 2:26 a.m. and spoke with the 16-year-old victim and casino security staff. When Deputy Cassidy met with the victim, he was in the security supervisor's room and visibly shaking. Deputy Cassidy used a security officer to translate as the victim only spoke Spanish. The victim told Deputy Cassidy that at 10:40 p.m. he was in his room with his parents and sister. His parents left the room and he decided to go to the sixteenth floor to check out the view.

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[2] The Statement of Facts is a summary of the details of the crime obtained from the police reports, attached hereto as Exhibits 9 and 16 attached to Real Party's formal response in Court of Appeal case number E064010, that were transmitted to this Court on June 30, 2016, and received on July 5, 2016.

After going to the sixteenth floor, the victim went to the first floor. The elevator ride made him feel sick and dizzy, so he went to look for his family on the casino floor. As he was looking for his family, he felt like he was getting sick, so he went into the bathroom. He was in the bathroom for about an hour. During this time, he noticed petitioner standing outside the stall looking in at him through the cracks. The victim did not understand much English, but understood petitioner said to him, "Big, big" and "3,000." The victim did not respond.

The victim tried to leave the bathroom, but petitioner blocked him. Petitioner grabbed the victim and walked him back to the handicap stall. Petitioner pushed the victim into a corner of the stall and started to touch the victim outside his clothes. Petitioner also tried to kiss the victim, but the victim backed away from petitioner. Petitioner kept saying "big, big" and offered the victim money.

Petitioner sat down on the toilet and the victim attempted to leave. Petitioner stood up and brought the victim back in. Petitioner grabbed the victim's hands, but the victim slipped out of his grasp. The victim tried to leave several times, but petitioner continued to bring him back into the stall each time.

Despite the victim's efforts to get away, petitioner forcefully orally copulated the victim. When the victim tried to push petitioner away and leave, petitioner would bite down on the victim's penis. The victim stated that this occurred for about 5 to 10 minutes until the victim ejaculated and petitioner stopped. Petitioner left the stall. The victim pulled up his pants, left the stall and immediately reported the incident to a bathroom attendant. The attendant took the victim to the security office where the incident was reported to the police. The victim told police that he never consented to being orally copulated by petitioner.

Following *Miranda*[3] advisements and waivers, petitioner admitted to orally copulating the victim. Petitioner said that he knew the victim wanted him to do it because he saw it in the victim's eyes. Petitioner also said that the victim told him to suck his penis. Petitioner said that he had been kicked out of two casinos for looking through or peeking into bathroom stalls. Petitioner further admitted to paying men at casinos to have sex with him.

SUMMARY OF RELEVANT PROCEEDINGS

Real party filed the original felony complaint in case number INF061963 on May 7, 2008, charging petitioner with forceful lewd and lascivious acts on a child under 14[4] in violation of Penal Code section 288, subdivision (b). On June 28, 2008, respondent court declared a doubt as to petitioner's competence to stand trial and suspended criminal proceedings, with a subsequent hearing scheduled for August 21, 2008. (Exhibit 2, pp. 30-33.)[5]

On August 12, 2008, a felony complaint was filed against petitioner in San Bernardino County Superior Court case number FMB800402. That complaint charged petitioner with a separate violation of Penal Code section 288, subdivision (a). (Exhibit 3, p. 35.) Petitioner failed to appear for his scheduled court appearance in case number INF061963 on August 21, 2008, because he was in the custody of the San Bernardino County Sheriff's Department, and eventually, Patton State Hospital due to

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[3] *Miranda v. Arizona* (1966) 384 U.S. 436.

[4] Real party mistakenly charged petitioner in its initial complaint with a violation of Penal Code section 288, subdivision (b), although the victim was 16-years-old. This mistake was rectified in the indictment.

[5] The exhibits referenced are those attached to Real Party's formal response in Court of Appeal case number E064010, that were transmitted to this Court on June 30, 2016, and received on July 5, 2016.

petitioner's incompetency proceedings in San Bernardino County. (Exhibit 3, pp. 72-73, 75-76.)

On February 24, 2010, petitioner pled guilty in San Bernardino County to a violation of Penal Code section 288, subdivision (a), in case number FMB800402, and on September 9, 2011, he was sentenced to three years in state prison, with credit for time served. All other charges were dismissed pursuant to a negotiated disposition with the prosecution. (Exhibit 3, pp. 44, 63-64.)

On March 8, 2012, petitioner appeared in Riverside County Superior Court and respondent court declared petitioner incompetent to stand trial for a third time with a scheduled placement hearing for March 29, 2012. On that date, respondent court ordered petitioner committed to Patton State Hospital for a period of three years, pursuant to Penal Code section 1370, based on his incompetence to stand trial in case number INF061963. (Exhibit 2, pp. 19-20.)

On September 18, 2014, while petitioner was committed at Patton State Hospital, respondent court ordered the Riverside County Public Guardian to conduct a conservatorship investigation pursuant to Welfare and Institutions Code section 5225 on the recommendation of Patton State Hospital personnel. (Exhibit 2, pp. 17-18.)

On April 2, 2015, while petitioner was already the subject of a temporary conservatorship pending an investigation for a potential conservatorship pursuant to Welfare and Institutions Code section 5008, subdivision (h)(1)(A), also known as an "LPS" or "Lanterman-Petris-Short" conservatorship, real party moved for a Murphy conservatorship investigation. Respondent court granted real party's motion over petitioner's objection. (Exhibit 2, pp. 8-16.)

On May 7, 2015, after petitioner's commitment period had expired, real party learned from the Public Guardian that it intended to dismiss the

LPS conservatorship proceedings against petitioner because he was a San Bernardino County resident. (Exhibit 16, 17, 18.)

On May 14, 2015, real party filed a motion asking respondent court to order petitioner to remain in Patton State Hospital while awaiting a potential Murphy conservatorship. (Exhibit 4.)

That same day, respondent court presided over real party's motion to maintain custody over petitioner pending the filing of a petition to institute a Murphy conservatorship. (Exhibit 5.) In support of this request, real party pointed out that petitioner's commitment period did not actually begin until May 1, 2012, when he was actually placed into Patton State Hospital, despite the fact that he was *ordered* committed on March 29, 2012. Furthermore, real party noted Patton State Hospital changed petitioner's legal classification to "temporary conservatorship hold" because petitioner became a temporary conservatee on March 2, 2015, at the Public Guardian's request. Based on these facts, real party argued petitioner's calculation was inaccurate and in reality, his commitment period under Penal Code section 1370 had not yet expired. (Exhibit 5, p. 94.)

Respondent court reasoned that because both the Public Guardian and real party represented the government, Penal Code section 1370 does not account for a "tolling period" when an incompetent defendant becomes a temporary conservatee. Thus, the court found that the existence of a temporary conservatorship did not toll the commitment period under Penal Code section 1370, and consequently, petitioner's commitment period had expired. Since real party had not yet initiated a Murphy conservatorship, respondent court indicated its intention to release petitioner because civil commitment proceedings were not ongoing. Respondent court ordered petitioner transported from Patton State Hospital for the next date, May 15, 2015. (Exhibit 5, pp. 122-123.)

Eventually, on May 21, 2015, an indictment was obtained from the

Riverside County grand jury proceedings in case number INF1500950 and an arrest warrant for petitioner was issued in the amount of $55,000. (Exhibit 8; Exhibit 9, p. 157.) The case was set for arraignment on May 22, 2015, at 1:30 p.m. in Department 3N. (Exhibit 9, pp. 156-157.)

On May 22, 2015, the Honorable Judge Dale Wells sent case number INF1500950 to Riverside Department 31 for May 26, 2015. Petitioner was not present in court, but was represented by Deputy Public Defender Dennette McIntyre. (Exhibit 9, p. 156.) Real party filed a Petition for a Permanent Conservatorship in Riverside County Superior Court case number RIP1500604 and properly noticed petitioner for a hearing on June 18, 2015. (Exhibit 10; Exhibit 11, p. 165.)

On May 26, 2015, the previously-issued warrant was recalled and bail was set by respondent court at $1,000,000. (Exhibit 9, p. 156.) Counsel for petitioner added the matter to the calendar for the next day, May 27, 2015. That day, the court unsealed the indictment, and petitioner made an oral motion to dismiss the temporary conservatorship. The motion was denied. (Exhibit 9, p. 155.)

On June 2, 2015,[6] respondent court declared a doubt as to petitioner's competence in case number INF1500950. The court suspended criminal proceedings and at the request of petitioner's counsel, referred petitioner to both the Inland Regional Center and Dr. Renee Wilkinson for evaluations. (Exhibit 9, pp. 154-155; Exhibit 11, pp. 163-164; Exhibit 14, pp. 179-180, 186-187; Exhibit 15.)

On June 30, 2015, petitioner moved again for his release and to dismiss the indictment in case number INF1500950 pursuant to Penal Code section 1385. Respondent court denied both motions. (Exhibit 9, p. 152.)

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[6] This hearing took place before the scheduled arraignment. Petitioner was never arraigned on the indictment.

Petitioner subsequently filed a petition for writ of mandate/prohibition in the Court of Appeal challenging the court's order denying petitioner's request for release. The Court of Appeal denied his petition in *Jackson v. Superior Court, supra*, 247 Cal.App.4th 767.

On August 24, 2016, this Court granted review.

ARGUMENT

I.

THE REFILING OF A NEW CHARGING DOCUMENT ALLOWS FOR THE PROSECUTION TO OBTAIN A NEW COMPETENCY EVALUATION BECAUSE IT IS A NEW CRIMINAL PROCEEDING

Since the plain language of Penal Code sections 1370 and 1387 does not resolve the interpretative question presented here, the rules of statutory construction task a reviewing court with interpreting the legislative intent behind the statutes and effectuating their purposes. Significantly, a reviewing court must be mindful that "'[e]very statute should be construed with reference to the whole system of law of which it is a part so that all may be harmonized and have effect.'" (*Conservatorship of Cabanne* (1990) 223 Cal.App.3d 199, 204, citing *Select Base Materials v. Board of Equal.* (1959) 51 Cal.2d 640, 645.) Real party contends that when the statutory schemes surrounding Penal Code sections 1370 and 1387 are read together, it becomes clear that the Legislature intended the trial court to consider anew any incompetency claim upon the refiling of felony charges.

A. *Penal Code section 1370*

Penal Code section 1370 in its current form dates back to 1974. The pivotal 1974 amendments were designed to modify the commitment procedure for mentally incompetent defendants in accord with the United States Supreme Court decision in *Jackson*, which prohibited an

incompetent defendant from being confined indefinitely. (*In re Polk* (1999) 71 Cal.App.4th 1230, 1235 (*Polk*), citing Stats. 1974, ch. 1511, § 16, p. 3323; see also *In re Davis, supra*, 8 Cal.3d 798.) Accordingly, in the amended version of Penal Code section 1370, the California Legislature enacted a three-year maximum commitment period while criminal proceedings are suspended in a criminal action. (Pen. Code, § 1370, subd. (c)(1).)

To further the public policy concerns behind *Jackson* and *Davis*, Penal Code section 1370 also provides for the possibility that a defendant, like petitioner here, may not be restored to competency within the three-year timeframe. Subdivisions (c)(1) and (c)(2) of Penal Code section 1370 require that a defendant be returned to the court at the end of the three-year commitment period, and furthermore, these sections require the court to order a conservatorship investigation if the defendant appears gravely disabled within the meaning of Welfare and Institutions Code section 5008.

In pertinent part, Penal Code section 1370 accounts for the possibility that either the court or the prosecution may dismiss the criminal case pending against an incompetent defendant. Penal Code section 1370, subdivision (d), declares that "the criminal action remains subject to dismissal pursuant to Section 1385," during competency proceedings, and Penal Code section 1370, subdivision (e), explains that "[i]f the criminal action against the defendant is dismissed, the defendant shall be released from commitment ordered under this section, but without prejudice to the initiation of any proceedings that may be appropriate under the Lanterman-Petris-Short Act."

However, nothing in the plain language of Penal Code section 1370 explains how the prosecution's ability to refile a felony charging document *after* a dismissal affects competency proceedings. Consequently, it is

necessary to examine Penal Code section 1387 and relevant case authority interpreting this section.

B. *The prosecution's ability to re-file felony charges under Penal Code section 1387 and its effect on the criminal proceedings*

Prior to 1975, Penal Code section 1387 permitted the prosecution to indefinitely re-file felony charges after dismissal. (*People v. Schlosser* (1978) 77 Cal.App.3d 1007, 1010.) In order to balance a defendant's rights with society's interest in prosecuting felony charges, the Legislature limited the prosecution's right to refile.

Thus, in its current form, Penal Code section 1387 provides in relevant part: "[a]n order terminating an action pursuant to this chapter . . . is a bar to any other prosecution for the same offense if it is a felony . . . and the action has been previously terminated pursuant to this chapter . . . except in those felony cases . . . where subsequent to the dismissal of the felony . . . the judge or magistrate [makes special findings]." (Pen. Code, § 1387, subd. (a).) This change "implements a series of related public policies. It curtails prosecutorial harassment by placing limits on the number of times charges may be refiled. The statute also reduces the possibility that prosecutors might use the power to dismiss and refile to forum shop. Finally, the statute prevents the evasion of speedy trial rights through the repeated dismissal and refiling of the same charges." (*Berardi v. Superior Court* (2008) 160 Cal.App.4th 210, 218-219, internal citations omitted; see also *People v. Schlosser, supra*, 77 Cal.App.3d at p. 1011.)

When a criminal case has been dismissed, the re-filing of a charging document based on the same underlying facts is generally treated as a separate and distinct criminal case. (*Paredes v. Superior Court* (1999) 77 Cal.App.4th 24, 28-29 (*Paredes*).) For instance, "[t]he filing of a new

information for the same offense commences a new period of time" for trial under Penal Code section 1382. (See *People v. Godlewski* (1943) 22 Cal.2d 677, 683.) And, "[w]hen the first action is terminated under this procedure and the People file a new complaint, a second preliminary hearing must be held and the evidence subjected anew to a magistrate's evaluation." (*Ibid.*, citing *People v. Superior Court* (*Martinez*) (1993) 19 Cal.App.4th 738, 745.)

To date, the Legislature has only carved out one exception to the general rule that all criminal proceedings are reset once a charging document has been dismissed and refiled – the defendant's custody status if the court has previously authorized release on the defendant's own recognizance. (Pen. Code, § 1388, subds. (a), (c).)

However, these rules only apply if the dismissal is deemed a "termination" within the meaning of Penal Code section 1387. (See e.g. *Paredes v. Superior Court, supra,* 77 Cal.App.4th 24; *People v. Superior Court* (*Martinez*), *supra*, 19 Cal.App.4th 738; *People v. Schlosser*, *supra*, 77 Cal.App.3d 1007.) Not every dismissal of a charging document constitutes a termination within the meaning of Penal Code section 1387.

In some instances, a dismissal constitutes a continuation of the existing prosecution because the new charging document is either duplicative or it supersedes the original. For example, the prohibition against multiple prosecutions is not triggered when a charging document is dismissed on non-statutory grounds as duplicative. (See *Berardi v. Superior Court*, *supra*, 160 Cal.App.4th at p. 220.) Similarly, Penal Code section 1387, subdivision (c), states, "an order terminating an action is not a bar to prosecution if a complaint is dismissed before the commencement of a preliminary hearing in favor of an indictment filed pursuant to Section 944 and the indictment is based upon the same subject matter as charged in the dismissed complaint, information, or indictment." (See also *People v.*

Schlosser, *supra*, 77 Cal.App.3d 1007.)[7] A dismissal of the charging document in these specific circumstances does not constitute a termination within the meaning of Penal Code section 1387 because it does not defy the purpose behind the statute.

C. *Penal Code section 1370 allows new competency proceedings to be initiated following the refiling of a new felony charging document because the dismissal necessarily constitutes a termination within the meaning Penal Code section 1387*

There are limited instances where the two statutory schemes at issue here intersect. For instance, the Legislature has explicitly acknowledged that society has an increased interest in prosecuting felony cases in the context of competency proceedings (see e.g., Pen. Code, § 1370, subd. (a)(1)(B)(ii), (D)-(F) [notice requirements for incompetent defendant charged with certain felony offenses]), and nowhere within Penal Code section 1370 did the Legislature choose to curtail the refiling of criminal charges under Penal Code 1387.

The Legislature's silence is what proves the most instructive here. In the context of the purpose behind each statute, the Legislature's failure to address this issue shows that it did not intend for competency proceedings in a felony criminal case to be an exception to the "single-refile" rule under Penal Code section 1387. By requesting this Court reach a different conclusion, petitioner is essentially asking this Court to write-in language to Penal Code section 1370 and its statutory scheme that conforms to petitioner's view of what the law should be. Yet, "[t]he rules of statutory construction provide that '"[u]nder the guise of construction, a court should not rewrite the law, add to it what has been omitted, omit from it what has

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[7] This opinion was filed before Penal Code section 1387 was amended to include the provision in subdivision (c), but its reasoning was the impetus behind the statutory amendment.

been inserted, give it an effect beyond that gathered from the plain and direct import of the terms used, or read into it an exception, qualification, or modification that will nullify a clear provision or materially affect its operation so as to make it conform to a presumed intention not expressed or otherwise apparent in the law."'" (*Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 334.) Simply put, had the Legislature intended to eliminate the presumption of competence found in Penal Code section 1369 in re-filed felony criminal cases or to somehow curtail the prosecution's ability to relitigate competency issues upon the refiling of a new felony charging document, it would have expressly done so. (See, e.g., Pen. Code, § 1388.)

This interpretation reconciles the statutory schemes of both sections and furthers the public policy behind them. The prosecution is afforded the ability to protect society's interests in prosecuting re-filed felony charges under 1387, while a defendant is afforded his right to a competency determination and to be free of prosecutorial harassment. (See Pen. Code, §§ 1369, 1370, subd. (b)(4) [provides for hearing re competency after 18 months of commitment].) A contrary interpretation would render section 1387 a nullity at the expiration of a commitment period and graft into the statute a prohibition the Legislature declined to express. The prosecution does not have less of an interest at the expiration of a defendant's commitment period. And, "[n]either justice nor due process of law is served if defendant is erroneously found to be incompetent to stand trial when, in fact, he is competent." (*People v. Superior Court* (*McPeters*) (1985) 169 Cal.App.3d 796, 798 [court erred by interpreting Penal Code section 1369 to only afford defendant the right to jury trial to determine competence].)

Indeed, to deny the prosecution the ability to relitigate competency issues by refiling a new felony charging document would limit the

prosecution to a single bite of the proverbial apple in felony cases, including those involving murder, violent sex offenses, and child molestation, regardless of the statute of limitations. A defendant would forever be deemed incompetent once an evaluator reports he or she is not likely to regain competence in the foreseeable future. Nothing in the language of Penal Code section 1370 or its public policy concerns mandates this conclusion. A defendant's incompetence to stand trial in a particular criminal action does not forever insulate a defendant from prosecution for his conduct and bar re-filing.

Notably, the Fourth District Court of Appeal recognized this possibility and similarly concluded that the prosecution could potentially relitigate competency proceedings upon refiling the charging document. The Court of Appeal opined:

> While it is true that the indictment in case No. INF1500950 stems from the same alleged conduct as the complaint in case No. INF061963, petitioner has offered no reason why the People could not prosecute him on charges related to his conduct on May 3, 2008, under a new case number if he were currently competent to stand trial. If the prosecution in case No. INF1500950 may continue, and the record and the briefing before us present no bar to that occurrence, we are aware of no reason why petitioner could not be confined in jail awaiting trial on those charges absent another incompetency finding. As we noted *ante*, the record contains no evidence that petitioner has actually been declared incompetent to stand trial in case No. INF1500950, *and it contains no other proof that the incompetency the court found to exist in case No. INF061963 still continues*.

(*Jackson v. Superior Court* (2016) 247 Cal.App.4th 767, 772, italics added.)

As the Court of Appeal recognized, a defendant's competency to stand trial is fluid. It is for this reason that Penal Code section 1370 requires an initial evaluation after the defendant is committed for a period of 90 days and a new evaluation at 180 days. (Pen. Code, §1370, subd. (b)(1), (4).) Indeed, even if the prosecution obtains a conservatorship under Welfare and Institutions Code section 5008, subdivision (h)(1)(B), the court is only permitted to take judicial notice of the prior finding of incompetence if it occurred within a reasonable timeframe before the conservatorship proceeding. When the prosecution seeks to renew the conservatorship after a year has passed, it must establish the defendant is still incompetent to stand trial by obtaining a new evaluation. (See *Conservatorship of Hofferber* (1980) 28 Cal.3d 161, 179-180.)

But, once competency proceedings are relitigated after the dismissal of the original charging document, the dismissal must be considered a termination rather than a continuation of an existing prosecution under Penal Code section 1387 (rather than a continuation of an existing prosecution), with all attendant statutory speedy trial rights under Penal Code section 1382. To hold otherwise would actually harm defendants and allow the prosecution to avoid speedy trial constraints and circumvent the refiling limitations of Penal Code section 1387. The prosecution could repeatedly refile charging documents to relitigate competency proceedings, which *would* potentially lead to indefinite commitments. Construing the dismissal as a termination places necessary limitations on the prosecution, thus harmonizing a defendant's rights with the prosecution's ability to re-file criminal complaints and its interest in prosecuting more serious crimes.

The procedural history and severity of the charges of this case demonstrates the need for that balance. Here, petitioner was committed

under Penal Code section 1370 for the three-year statutory maximum on a felony complaint charging him with child molestation to which he confessed. At the end of petitioner's three-year commitment period, the prosecution filed a separate indictment based on the same facts underlying the original complaint. At that point, the trial court correctly followed the plain language of Penal Code section 1369 by presuming petitioner was competent to stand trial. Then, as soon as petitioner's counsel requested it, the court followed the statutory requirements of Penal Code section 1368 by declaring another doubt as to defendant's competence to stand trial and ordering him to submit to psychiatric evaluations.

At this point, had a petition for writ of mandate not been filed in this case, the appointed psychological experts should have evaluated petitioner for both his competency *and* the likelihood that he would regain competence in the near future since he could no longer be committed under Penal Code section 1370. This procedure would be appropriate as the court should not simply ignore the prior competency proceedings or the fact that petitioner has been previously committed for the statutory maximum period. Had the appointed experts determined petitioner was both incompetent to stand trial and that he was not likely to be restored, real party would be unable to proceed further. Unless conservatorship proceedings were underway, the defendant would have to be released, and the charging document would be potentially subject to dismissal *without the possibility of being re-filed* due to the strictures of Penal Code section 1387.

Typically, the People's decision to dismiss a complaint in lieu of an indictment with no other factors is considered a continuous prosecution, not a termination under Penal Code section 1387. (See e.g., Pen. Code, § 1387, subd. (c).) However, in this instance, the People's election to file an indictment was coupled with new competency proceedings – not simply a continuation of the court's prior competency determination. For this

reason, the filing of the indictment and dismissal of the original complaint must be considered a termination under Penal Code section 1387. To appropriately balance the People's right to refile with petitioner's rights under Penal Code sections 1382 and 1387, the dismissal must be considered a termination.

Had more time separated the finding that petitioner would not regain competence and the re-filing of the indictment, the public policy concerns served by this interpretation of Penal Code sections 1370 and 1387 become more clear. For example, assume hypothetically that a defendant had been committed for three years on a murder charge and at the end of the three years, he was still found incompetent to stand trial. The prosecution elects to dismiss the complaint and release the defendant. If the defendant was found later functioning as a competent adult, or in fact, after having been successfully prosecuted in another jurisdiction as a competent defendant, the prosecution would be well within its statutory authority under Penal Code section 1387 to refile a new criminal complaint and potentially relitigate competency issues raised again by the defendant.

Under these hypothetical facts, no one would dispute that the earlier dismissal was a termination and that the prosecution was well within its rights to refile charges under Penal Code section 1387. Under petitioner's interpretation, the prosecution would be forever precluded from prosecuting this defendant despite later evidence of later competence. A murder defendant could go free despite becoming competent to stand trial because the prosecution would be effectively denied its right to refile felony charges because a defendant's competency could not be relitigated. This result would not only be contrary to the interests of justice, but it would be an absurd interpretation of Penal Code section 1370 in violation of the rules of statutory construction. (*People v. Catelli* (1991) 227 Cal.App.3d 1434,

1448 [statutory construction rules demand presumption that Legislature did not intend absurd results].)

By contrast, if the prosecution elects to refile quickly after a defendant is returned to court with a finding that he or she is no longer competent to stand trial, the People run the risk that the defendant will receive the same finding of incompetence and further prosecution will be eventually barred under Penal Code section 1387. Indeed, the People would also lose the ability to recommit the defendant to a state hospital under Penal Code section 1370 (see *In re Polk*, *supra*, 71 Cal.App.4th 1230), and as a result, the defendant would have to be released, provided he or she was not the subject of a pending conservatorship proceeding. In sum, the prosecution must strategically and carefully weigh its options. It would need to evaluate if it desired to seek review of the prior incompetency determination so soon after it was made, with the very real possibility that it could lead to the defendant's release and potentially prevent *any* future prosecution should the defendant regain competence later.

As the foregoing demonstrates, real party's interpretation is not only supported by statutory construction, but it also balances the public policy concerns behind the statutory schemes of Penal Code sections 1370 and 1387 and the competing interests contained therein. Accordingly, real party submits that Penal Code section 1370 allows for the prosecution to refile charges and potentially relitigate competency issues after dismissing a felony charging document because the dismissal must be treated as a termination within the meaning of Penal Code section 1387.

II.
REGARDLESS, THE TRIAL COURT'S ORDER FOR PETITIONER'S CONTINUED CONFINEMENT WAS A PROPER EXERCISE OF ITS JURISDICTION BECAUSE THE PLAIN LANGUAGE OF PENAL CODE SECTION 1370 AND PROVISIONS OF THE LANTERMAN-PETRIS-SHORT ACT PERMIT THE TEMPORARY CONFINEMENT OF A CRIMINAL DEFENDANT WHO IS ALSO A PROPOSED CONSERVATEE[8]

Petitioner claims Penal Code section 1370 "provides that at the end of the three-year period, unless the defendant *has been committed* under alternative commitment procedures, he or she must be released." (OBM at p. 7, italics added.) Petitioner appears to contend that his continued confinement of any kind, regardless of the purpose of the confinement, is unlawful and unconstitutional simply because he reached the statutory maximum of the commitment period under Penal Code section 1370. Petitioner does not cite any statutory or judicial authority that directly stands for this conclusion, and in reality, the rules of statutory construction demand a different interpretation of the legislative intent behind Penal Code section 1370 due to petitioner's status as a proposed conservatee at the time the petition was filed.

The rules of statutory construction are well established. When construing a statute, a court seeks to determine and give effect to the intent of the enacting legislative body. (*People v. King* (2006) 38 Cal.4th 617, 622.) Thus, courts must "examine the words themselves because the statutory language is generally the most reliable indicator of legislative intent. The words of the statute should be given their ordinary and usual meaning and should be construed in their statutory context." (*People v. King*, *supra*, 38 Cal.4th at p. 622; internal citations and quotations

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[8] Although this Court did not include this issue in its order granting review, petitioner addressed it in his Opening Brief on the Merits, and thus, real party addresses it here.

omitted.) Indeed, "[a] construction rendering some words in the statute useless or redundant is to be avoided." (*People v. Contreras* (1997) 55 Cal.App.4th 760, 764.) If the plain, commonsense meaning of a statute's words is unambiguous, the plain meaning controls." (*People v. King, supra*, 38 Cal.4th 617, 622; internal citations and quotations omitted.)

Nothing in the plain language of Penal Code section 1370 or the relevant provisions of the Lanterman-Petris-Short Act support petitioner's claim that he cannot be confined for the duration of conservatorship proceedings. Rather, the plain language of Penal Code section 1370 supports the lower court's conclusion that the term "commitment" in Penal Code section 1370 is limited to an actual commitment to a state hospital for purposes of restoring a defendant to competency. In Penal Code section 1370, the Legislature repeatedly employed the term "commitment," not "custody" or "confinement." Accordingly, it can reasonably be concluded the Legislature intended the term "commitment" in the context of Penal Code section 1370 to have specific meaning: the time period during which an incompetent defendant is actually held in a state hospital in effort to restore his or her competence to stand trial. And conversely, it did not intend for the term "commitment" to be interchangeable with general "confinement" or "custody" while a defendant, incompetent or otherwise, was the subject of a criminal prosecution, and petitioner does not cite any authority that holds otherwise.

Nor does the language in Penal Code section 1370 require that the conservatorship investigation or proceedings be completed by the expiration of the three-year period. Instead, the specific timelines to initiate a conservatorship delineated in Welfare and Institutions Code section 5350 should control. In this context, the language of Penal Code section 1370 cannot be interpreted to prohibit *any* continuing confinement of a defendant while criminal charges and civil commitment proceedings are pending.

Despite petitioner's argument to the contrary, this interpretation is consistent with the legislative intent behind Penal Code section 1370 to prevent indefinite commitments. Nothing in the *Jackson* or *Davis* opinions require the release of a criminal defendant during the pendency of the civil commitment proceedings. Specifically, the *Jackson* court opined that a "person charged by a State with a criminal offense who is committed solely on account of his incapacity to proceed to trial cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future. If it is determined that this is not the case, then the State must either institute the customary civil commitment proceeding that would be required to commit indefinitely any other citizen, *or* release the defendant." (*Jackson v. Indiana*, *supra*, 406 U.S. at p. 738, italics added; see also *In re Davis*, *supra*, 8 Cal.3d at p. 801.)

The *Jackson* and *Davis* courts' disjunctive use of the word "or" in the phrase "be released *or* subject to civil commitment proceedings" means an incompetent defendant's constitutional right to due process is satisfied if the defendant is confined to receive treatment for restoration to competency *or* is the subject of a civil commitment proceeding. Thus, when the California Legislature responded to these decisions by substantially amending the statutes governing incompetency commitments, it did not require the release of a criminal defendant who was also a proposed conservatee. Rather, the amended statutes state in relevant part that once a defendant is found incompetent, criminal proceedings on a criminal action must remain suspended until the defendant becomes competent to stand trial for a maximum period of three years, at which time, a defendant must *either* be released or be subjected to alternative civil commitment proceedings. (*In re Williams* (2014) 228 Cal.App.4th, 989, 1012-1013,

citing *Davis*, *supra*, 8 Cal.3d at pp. 806-807; Penal Code, § 1370, subds. (c)(1)-(2).)

Therefore, once a defendant becomes a proposed conservatee, he or she is no longer "committed" within the meaning of Penal Code section 1370, but he or she can still be "confined" for the duration of civil commitment proceedings. To conclude otherwise, as petitioner seems to urge, renders subdivision (c)(2) of Penal Code section 1370 superfluous and notably, ignores the express holdings in *Davis* and *Jackson*.

Consequently, whether petitioner had been previously *committed* for the maximum period of three years in case number INF061963 is irrelevant to the constitutional or statutory validity of his continued *confinement* for the purposes of a conservatorship. A defendant in petitioner's position as a proposed conservatee would be subject only to the timeline restrictions set forth in the Lanterman-Petris-Short Act.[9] These deadlines preserve a conservatee's constitutional right to due process and as a result, there is no reason, constitutional or otherwise, to prohibit the continued confinement of a criminal defendant who is a proposed conservatee simply because he or she had been previously committed for the maximum allowable term pursuant to Penal Code section 1370. This is particularly true when the defendant poses a serious threat to public safety, like petitioner.

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[9] In actuality, petitioner has since been civilly committed under Welfare and Institutions Code section 6500 after the trial court declared a doubt as to petitioner's competence under Penal Code section 1370.1 instead of Penal Code section 1370. The Court may take judicial notice of the minute order of May 25, 2016, in Riverside County Superior Court case number MCW1600037. This commitment is not presently the subject of any challenges, since it was in fact, agreed upon by stipulation. Petitioner's commitment arguably moots his claim regarding his continued confinement, but real party addresses this issue nonetheless in response to petitioner's Opening Brief on the Merits.

For these reasons, Penal Code section 1370 does not demand that a court release a defendant who cannot be restored to competency and whose commitment period under Penal Code section 1370 has expired if he or she is the subject of pending conservatorship proceedings. Accordingly, the trial court and the District Court of Appeal properly denied petitioner's writ petition seeking immediate release.

CONCLUSION

Based on the foregoing, real party submits that after an incompetent defendant has reached the maximum three-year commitment provided for by law, the prosecution can dismiss and re-file the criminal charges, resulting in the potential re-litigation of the defendant's competency status. This Court should affirm the Court of Appeal's denial of the petition.

Dated: January 16, 2017

Respectfully submitted,

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District Attorney

NATALIE M. LOUGH
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CERTIFICATE OF WORD COUNT
Case No. S235549

The text of the **ANSWER BRIEF ON THE MERITS** consists of 7,049 words as counted by the Microsoft Word program used to generate the **ANSWER BRIEF ON THE MERITS**.

Executed on January 12, 2017

Respectfully submitted,

MICHAEL A. HESTRIN
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County of Riverside

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DECLARATION OF SERVICE
Case No. S235549

I, the undersigned, say: I am a resident of or employed in the County of Riverside, over the age of 18 years and not a party to the within action or proceeding; that my residence or business address is 3960 Orange Street, Riverside, California. My electronic service address is appellate-unit@rivcoda.org.

That on January 12, 2017, I served a copy the within, **ANSWER BRIEF ON THE MERITS,** by electronically serving the following entities:

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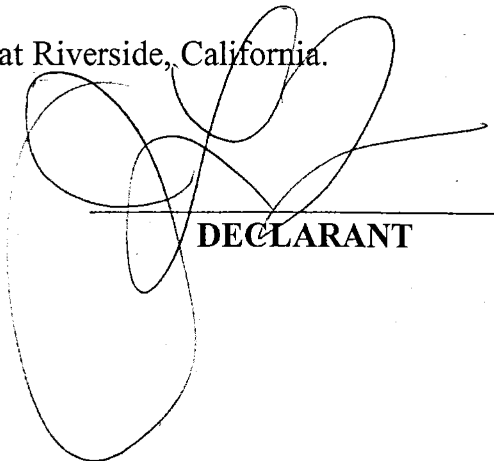
I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Executed on January 12, 2017, at Riverside, California.



DECLARANT