IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Appellant, v. STEVEN ANDREW ADELMANN, Defendant and Respondent.	S237602 Court of Appeal Case No. E064099 (Riverside County Superior Court Case No. SWF1208202)

RESPONDENT'S ANSWERING BRIEF ON THE MERITS

After Decision by the Court of Appeal
Fourth Appellate District, Division Two
Filed August 31, 2016

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If a case is transferred from one county to another for purposes of probation (Pen. Code, § 1203.9), must a Proposition 47 petition to recall sentence be filed in the court that entered the judgment of conviction or in the superior court of the receiving county?

Introduction

The issue before the Court is whether a statutory requirement that any request for Proposition 47 relief must be filed in the court that entered the judgment of conviction can be reasonably harmonized with Penal Code section 1203.9's command that any transfer under this statute deposits the entire jurisdiction of the case to the receiving court.[1]

The Court of Appeal correctly held that sections 1170.18 and 1203.9 can be reasonably read together to give the receiving court authority to rule on a request for relief under Proposition 47 if the defendant files in that county (thereby waiving his right to have the original sentencing judge rule on the request. (*People v. Adelmann* (2016) 2 Cal.App.5th 1188, review granted November 9, 2016, S237602.)

Because the plan language of section 1170.18 does not resolve the issue, it was proper for the appellate court to rely on extrinsic aids to interpret the statute. The Court of Appeal's harmonized reading of sections 1170.18 and 1203.9 gives effect to both statutes

[1] All further unassigned statutory references are to the Penal Code.

and is consistent with the voters' intent in enacting Proposition 47 to generate money savings and to direct those savings into victim services and rehabilitation programs.

The Court of Appeal's construction of the two statutes is also the most practical. The People argue that section 1170.80 must be inflexibly interpreted to require the filing of any request for Proposition 47 relief in the original court of conviction even in cases where the entire jurisdiction has been transferred under section 1203.9.

However, the People's proposed reading of the statutes would require *in each case* and *regardless of circumstances*, the following three-step process: (1) filing of a petition to transfer the case from the receiving court back to the original court conviction; (2) filing of a request for Proposition 47 relief in the original court of conviction and litigating it away from the probationer's county of residence; (3) once Proposition 47 issues are resolved, a separate petition to transfer the case back to the receiving court (i.e., to the county where the probationer continues to live). This process would impose

unnecessary and burdensome requirements on the courts, public agencies, and defendants alike. The Court of Appeal was right in holding that in light of the voters' intent in enacting Proposition 47, the People's proposed reading of the statutes "seems wholly unfeasible and not an economical or practical use of judicial resources." (*Adelmann, supra,* 2 Cal.App.5th at pp. 1195-1196.)

Summary of Argument

The People argue that plain language of section 1170.80 mandates filing of any request for Proposition 47 relief in the original court of conviction even when the entire jurisdiction over the case had been transferred pursuant to section 1203.9. However, as two Courts of Appeal and a leading practice guide on Proposition 47 have concluded, the People's reading of the statutory language is erroneous. (*Adelmann, supra,* 2 Cal.App.5th at pp. 1195-1196; *accord In re I.S.* (2016) 6 Cal.App.5th 517, 523; see also Richard Couzens, Tricia A. Bigelow, and Gregg L. Prickett, Sentencing California Crimes, Cases Transferred to a Different County, p. 86 <http://www.courts.ca.gov/documents/Prop-47-Information.pdf> (as

of March 6, 2017); but see *People v. Curry* (2016) 1 Cal.App.5th 1073, review granted Nov. 9, 2016, S237037.) There is nothing in section 1170.18 that explicitly addresses whether section 1203.9's transfer of entire jurisdiction over the case does or does not allow the receiving court to rule on a Proposition 47 request for relief. If anything, there are significant arguments in favor of the Court of Appeal's reading. But at minimum, the People's reliance on the plain language of section 1170.18 to support their reading of the statutes in question is misplaced.

The People fare no better with their argument that their reading of the statutes is required under the canons of statutory interpretation of repeal by implication or a more specific statute prevailing over a more general one. For either of these interpretive aides to apply, sections 1170.18 and 1203.9 must be in irreconcilable conflict. California law contains a strong presumption against finding such statutory conflict.

There is no irreconcilability. In a typical scenario (i.e., where a probationer continues to reside in the county that originally

imposed his or her conviction), any request for Proposition 47 relief must be filed in the original county of conviction. (§ 1170.18, subds. (a) and (f).) Similarly, if a person is on informal probation (or on formal probation with permission to live in another county), but the court had not ordered a section 1203.9 transfer, that person is still required to initiate any request for Proposition 47 relief in the original county of conviction. There is no opportunity to forum shop by filing the request in any other county.

But when a section 1203.9 transfer has been ordered, the entire jurisdiction now resides in the receiving county; the receiving county is the *only* proper place in which to at least initiate the request for Proposition 47 relief. In other words, the defendant in this situation is filing in another county *not* to "circumvent the procedural mandate of section 1170.18" (as the People repeatedly label it). Rather, the receiving court becomes the only proper place to file the request because due to a properly ordered section 1203.9 transfer, the receiving court has complete jurisdiction over the case; the receiving court stands in the shoes of the original court of

conviction.[2] Thus, the Court of Appeal correctly held that both statutes are capable of operating together.

Finally, there is no merit in the People's argument that the Court of Appeal's harmonized reading of sections 1170.18 and 1203.9 will create havoc in the determination of dangerousness. First, as the Judicial Council report regarding the number for requests for Proposition 47 relief filed statewide since the enactment of Proposition 47 shows, in the last year and a half, most requests for Proposition 47 relief have been applications to designate a prior felony conviction a misdemeanor.[3] (§ 1170.18, subd. (f).) In light of these numbers, and the fact that sentencing in new cases occurs with

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[2] In 1980, section 1203.9 was amended to provide the receiving county with an option: "it may, in its discretion, either accept the entire jurisdiction over the case, or assume supervision of the probationer on a courtesy basis." (Stats.1980, c. 343, § 1.) But an amendment in 2009, effective 2010, eliminated the option to accept less than the entire jurisdiction over the case (Stats. 2009, c. 588 (S.B.431), § 1), provided, of course, the probationer met the qualifications for transfer.

[3] This report was prepared by the Judicial Council of California on December 8, 2016. Respondent will discuss the contents of this report on page 39 of the brief, *post*. Respondent will also file a separate request to take judicial notice of existence and contents of said report.

Proposition 47 in effect, the Court can expect the same trend to continue.

As for section 1170.18, subdivision (f), applications, the court does not make a determination of dangerousness in order to grant relief. (§§ 1170.18, subd. (f).) Since the receiving court has the court file (Cal. Rules of Court, rule 4.530 (g)(5)), the court will likely have all the documents necessary to rule on the application (such as charging instruments, probation reports, or section 969b packets) to determine eligibility.[4] In the unlikely event that a hearing is necessary to address those eligibility issues, only the defendant can request it. (§ 1170.18, subd. (h).)

Also, for those individuals petitioning for resentencing pursuant to section 1170.18, subdivision (a), very few of them would be truly "currently dangerous" within the meaning of section 1170.18, subdivision (b) (i.e., would create an unreasonable risk of committing a "super strike" within the meaning of section 667,

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[4] Pursuant to section 969b, records of the defendant's prior incarceration may be admitted to establish that he had suffered a prior conviction and / or served a prior term in state prison.

subdivision (e)(2)(C)(iv)). The fact that these individuals were found to be suitable probation candidates greatly reduces such a risk.

More to the point, in the few cases where there is truly a need for a contested dangerousness hearing, section 1203.9, subdivision (c), gives the receiving court authority to request another transfer when it seems proper. The district attorney's ability to request such a transfer on a case-by-case basis upon showing of good cause completely addresses all of the People's concerns outlined on pages 27 through 31 of their opening brief on the merits.

In light of the receiving court's ability to transfer the case back to the original county, it would be *completely impractical* to force *every* section 1203.9 transferee seeking Proposition 47 relief (including those individuals who are applying to designate a prior conviction under § 1170.18, subd. (f)) to engage in a prolonged and cumbersome process of first transferring the case back under section 1203.9, then litigating Proposition 47 issues in a county far away from their current residence, and then transferring the case back again to the county of residence. The voters enacting this

proposition to generate money savings could not have rationally intended such cumbersome and wasteful procedure to accomplish their goal.

Accordingly, this Court should affirm the Court of Appeal's holding that under sections 1170.18 and 1203.9, a receiving court under section 1203.9 has the authority to rule on a request for relief under Proposition 47 if the defendant elects to file the request in that court.

Statement of the Case

A. Trial Court Proceedings

In 2012, in the San Diego County Superior Court, defendant and respondent Steven Andrew Adelmann pled guilty to one count of felony possession of cocaine (Health & Saf. Code, § 11350, subd. (a)), and one count of misdemeanor driving under the influence of a controlled substance (Veh. Code, § 23540, subd. (a)). The trial court placed respondent on probation for three years. (RT 2; CT 28.)

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Later that same year, pursuant to section 1203.9 and California Rules of Court, rule 4.530, respondent's probation was transferred to Riverside County.[5] (CT 31, 35, 37.)

After the passage of Proposition 47, respondent attempted to file his resentencing application in the San Diego County Superior Court. However, that court refused to entertain the application, stating that it no longer had his court file after the section 1203.9 transfer. Respondent then re-filed his application in Riverside County Superior Court. That court granted it over the prosecution's jurisdictional objection.[6] (*Adelmann, supra,* 2 Cal.App.5th at p. 1192.)

B. Proceedings in the Court of Appeal

The People appealed, arguing that the plain language of Proposition 47 mandates that any resentencing petition or application must be filed only in the original county of conviction, notwithstanding the section 1203.9, subdivision (b), transfer of the entire jurisdiction over the case to Riverside County Superior Court. The People further claimed that this reading of the two statutes was

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[5] Respondent has successfully completed probation in 2015.

[6] There is no dispute that respondent is entitled to Proposition 47 relief. (RT 5.)

required by statutory canons of repeal by implication, and the rule of a more specific statute controlling over a more general one.

In a published opinion, the Court of Appeal affirmed the trial court's order granting Proposition 47 relief. (*Adelmann, supra,* 2 Cal.App.4th 1188.) First, the appellate court held that the right to have the original sentencing court rule on the petition is something the petitioner can waive by filing the petition in the receiving court. (*Id.* at p. 1194, citing *People v. Superior Court (Kaulick)* (2013) 255 Cal.App.4th 1279, 1301 [defendant in Proposition 36 case can waive his right to have his petition considered by the original sentencing judge].) In this case, respondent waived his right to have the San Diego Superior Court decide the petition by re-filing his request in Riverside County Superior Court (the receiving court that had the entire jurisdiction over his case). (*Adelmann, supra,* 2 Cal.App.5th at p. 1194.)

Second, regarding the statutory construction issue, the Court of Appeal held that the plain language of section 1170.18 does not resolve the issue in question because the statute did not address

whether Proposition 47 resentencing petition must be filed in the original county of conviction even when the *entire jurisdiction* over the case had been transferred to another court. (*Adelmann, supra,* 2 Cal.App.5th. at p. 1195.)

Instead, opined the appellate court, section 1170.18 is subject to more than one reasonable interpretation. As a result, the court is required to read this statute in a way that best harmonizes it internally, and with related statutes. (*Adelmann, supra,* 2 Cal.App.5th at p. 1195.) The court must also interpret section 1170.18 consistently with the intent of the voters, and in a practical (rather than technical) manner that achieves wise policy and does not lead to absurd results. (*Ibid.*)

Applying those rules, the Court of Appeal held that the People's proposed interpretation of the two statutes – which would require the defendant to somehow force the county of original conviction to accept his Proposition 47 petition even though the entire jurisdiction was transferred to another county – is contrary to voters' intent behind Proposition 47. (*Adelmann, supra,* 2

Cal.App.5th at pp. 1195-1196.) Instead, allowing the court that currently has exclusive jurisdiction over the case to rule on any request for Proposition 47 relief is consistent with the voters' intent. (*Id.* at p. 1196.) It is also the reading of the relevant statutes that achieves the most practical result. (*Ibid.*)

The appellate court also held that its resolution of the statutory construction issue is fully consistent with well-settled California law regarding a more specific statute prevailing over a more general one and repeal by implication. (*Adelmann, supra,* 2 Cal.App.5th at p. 1196.) For these rules of statutory construction to apply, the statutes in question must be truly irreconcilable and completely incapable of concurrent operation. (*Ibid.*)

However, in the Court of Appeal's view, no such irreconcilable conflict exists between sections 1170.18 and 1203.9. These statutes can be reasonably read together by allowing the receiving court to consider the request for relief under Proposition 47 where the petitioner waives his right to have the court of original conviction to hear it by filing the request for relief in the receiving

county. (*Adelmann, supra,* 2 Cal.App.5th at pp. 1194, 1196, citing *People v. Superior Court* (*Kaulick*), *supra,* 255 Cal.App.4th at p. 1301.)

ARGUMENT

When a Case Is Transferred to Another County Pursuant to Penal Code Section 1203.9, the Receiving Court Has Jurisdiction to Hear Proposition 47 Request for Relief

A. Sections 1170.18 and 1203.9

Section 1170.18, subdivisions (a) and (f), require a petition for resentencing (for someone currently serving a felony sentence) or an application to designate a prior felony offense as a misdemeanor (for individuals who have already completed their sentence) to be filed "before the trial court that entered the judgment of conviction in his or her case." Subdivision (h) of the statute provides that "[u]nless requested by the applicant, no hearing is necessary to grant or deny an application filed under subsection (f)." Also, subdivision (l) states that if the original sentencing judge is not available, the presiding judge shall designate another judge to rule on the petition or application.

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Section 1203.9 creates a process for a jurisdictional transfer of a case, where, following the grant of probation, a probationer moves to another county. This statute delineates a "detailed process for the transfer of jurisdiction" and "jurisdiction rests exclusively in the county in which probation is granted until it is transferred."[7] (*People v. Klockman* (1997) 59 Cal.App.4th 621, 627.) Section 1203.9, subdivision (b), provides that, when a probationer's case is transferred to another county, "[t]he court of the receiving county shall accept the entire jurisdiction over the case effective the date that the transferring court orders the transfer."

As previously noted, following a 2009 amendment, the receiving court under section 1203.9 has no option, but to accept transfer of the entire jurisdiction over the case if the probationer qualifies for transfer. (Stats. 2009, c. 588 (S.B. 431), § 1; §§ 1203.9, subds. (b) and (c).)

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[7] The procedures and criteria for the transfer request are set forth in the California Rule of Court, rule 4.530.

Conversely, once a case is transferred, the original court no longer has jurisdiction. (*Klockman, supra*, 59 Cal.App.4th at p. 627 [jurisdiction over probation rests exclusively in the county in which probation is granted until the case is transferred under section 1203.9].) Consistently with that command, California Rules of Court, rule 4.530 (g)(5), requires the transferring court to transmit the entire court file to the receiving court.

But a transfer under section 1203.9 is not a one-way street. Pursuant to section 1203.9, subdivision (c), when the receiving court accepts jurisdiction over the entire case, it also has "the like power to again request transfer of the case whenever it seems proper."

B. The Plain Language of Penal Code Section 1170.18 Does Not Resolve the Issue Presented for Review

1. General legal principles

In the opening brief, the People mistakenly describe the Court of Appeal's decision harmonizing sections 1170.18 and 1203.9 as being based on the "plain language of section 1203.9." (Opening Brief on the Merits ("OBM") at p. 10.) But as previously explained, the appellate court's opinion explicitly states that the plain language

of section 1170.18 does not resolve this issue, and that the statutory language in question is subject to different reasonable interpretations. (*Adelmann, supra,* 2 Cal.App.5th at p. 1195.) For that reason, the Court of Appeal's decision was based on harmonization of both statutes, in light of the voter's intent and concerns of judicial economy. (*Id.* at p. 1196.)

The Court of Appeal was right. Under California law, penal statutes are not strictly construed and the major consideration in interpreting a statute is its legislative purpose.[8] (*Bailon v. Appellate Div.* (2002) 98 Cal.App.4th 1331, 1344; 1 Cal. Crim. Law (3d 1997), *Introduction to Crimes*, § 118, pp. 41-42.) Of course, in determining the voters' intent in passing Proposition 47, this Court must first examine the language of the initiative, giving the words their usual and ordinary meaning. (*In re Derrick B.* (2006) 39 Cal.4th 535, 539, citing *Trope v. Katz* (1995) 11 Cal.4th 274, 280.) "When the statutory

[8] In interpreting a voter initiative, the Court applies the same principles that govern statutory construction. (*People v. Rizo* (2000) 22 Cal.4th 681, 685.)

language is clear, [this Court] need[s to] go no further." (*Derrick B., supra*, 39 Cal.4th at p. 539.)

However, if the statutory language in question supports more than one reasonable interpretation, this Court would look to a variety of extrinsic aids, "including the objects to be achieved, the evils to be remedied, the legislative history, the statutory scheme of which the statute is a part, and contemporaneous administrative construction, as well as questions of public policy. [Citations.]" (*Derrick B., supra*, 39 Cal.4th at pp. 539-540.)

In addition, the Court examines the relevant statutory language not in isolation, "but in the context of the statutory framework as a whole in order to determine [the statute's] scope and purpose and to harmonize the various parts of the enactment." (*Ailanto Properties v. City of Half Moon Bay* (2006) 142 Cal.App.4th 572, 582.)

2. Plain language of section 1170.18 does not resolve the issue before this Court

Here, the plain language of section 1170.18 does not address the statutory interpretation question before this Court. Nothing in

the plain language of section 1170.18 addresses the issue of whether the defendant must file a request for Proposition 47 relief in the county of conviction even when the entire jurisdiction over the defendant's case has been transferred to another county pursuant to section 1203.9. Two Courts of Appeal agreed that plain language of section 1170.18 does not resolve this issue. (*Adelmann, supra,* 2 Cal.App.5th at pp. 1195-1196; *see also In re I.S.* (2016) 6 Cal.App.5th 517, 523 [interplay between Proposition 47 and jurisdictional transfer of a juvenile delinquency matter under Welf. & Inst. Code, § 750].)[9]

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[9] Welfare and Institution section 750 provides in pertinent part, with emphasis added:

> Whenever . . . subsequent to the filing of a petition in the juvenile court of the county where such minor resides, the residence of the person who would be legally entitled to the custody of such minor were it not for the existence of a court order issued pursuant to this chapter is changed to another county, the entire case may be transferred to the juvenile court of the county wherein such person then resides at any time after the court has made a finding of the facts upon which it has exercised its jurisdiction over such minor, and *the juvenile court of the county wherein such person then resides shall take jurisdiction of the case upon the receipt and filing with it of such finding of the facts and an order transferring the case.*

To be sure, there are significant arguments that the plain language of the statute, when viewed in the context of the entire statute and in light of the voters' intent in enacting Proposition 47, supports the Court of Appeal's harmonized reading of sections 1170.18 and 1203.9. First, the People err in arguing that the section 1170.18's failure to expressly address section 1203.9's transfers means the voters intended to read the former to the exclusion of the latter. Voters are generally presumed to be aware of existing laws. (*Santos v. Brown* (2015) 238 Cal.App.4th 398, 410.) The fact that section 1170.18 does not contain any language, such as "notwithstanding any other provision of law," creates a reasonable inference that voters enacted Proposition 47 with knowledge of the jurisdictional transfer under section 1203.9 and intended both statutes to be read together. This fact alone puts a significant dent in the People's "plain language" argument.

Second, the People's reliance on plain language of section 1170.18 is contrary to the well-established rule that statutory provisions are interpreted as a whole, rather than in isolation.

(*Ailanto Properties, supra,* 142 Cal.App.4th at p. 582.) When the original sentencing judge is unavailable, the presiding judge shall reassign the request to another judge. (§ 1170.18, subd. (l).) Couzens and Bigelow, the leading publication on the implementation of Proposition 47, analogizes section 1203.9 transfer to a situation where the original sentencing judge becomes unavailable under subdivision (l):

> When a case is transferred, "[t]he court of the receiving county shall accept the entire jurisdiction over the case." (§ 1203.9(b).) Because the receiving county has exclusive jurisdiction over the case, the original sentencing judge is no longer available as a matter of law. The request for relief may be handled by any judge appointed by the presiding judge. (§ 1170.18(l)).

(Couzens and Bigelow, Cases Transferred to a Different County, p. 86.)

While this Court could reasonably rely on these grounds to uphold the Court of Appeal's harmonized reading of the statutes in question, at minimum, the People are mistaken in claiming the issue before the Court is resolved by plain language of Proposition 1170.18.

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Therefore, since the plain language of section 1170.18 does not resolve the issue before the Court, it is proper and necessary to rely on extrinsic aids to determine whether allowing the section 1203.9 receiving court to hear a request for Proposition 47 relief is consistent with the voters' intent.

C. Rules of Statutory Construction Regarding Repeal by Implication and More Specific Statute Prevailing Over More General One Do Not Apply Because There Is No Irreconcilable Conflict Between Sections 1170.18 and 1203.9

1. The Court of Appeal correctly held that sections 1170.18 and 1203.9 can be reasonably read together as permitting the receiving court to decide a request for Proposition 47 relief

The People's alternative contention is that if the plain language of section 1170.18 does not resolve the issue, and there is a conflict between this statute and section 1203.9, the former controls because it is a more recent and more specific statute. (OBM at pp. 17-18.) The People are incorrect. Neither the rule of repeal-by-implication nor the canon regarding the more specific statute prevailing over a more general one apply in a situation like the one

at bench, i.e., in the *absence* of an *irreconcilable conflict* between the statutes.

This Court has long held that "[t]he principle that a specific statute prevails over a general one applies *only* when the two sections *cannot* be reconciled. [Citations.]" (*People v. Wheeler* (1992) 4 Cal.4th 284, 293 (emphasis added); see also 1 Witkin and Epstein, California Criminal Law (4th ed. 2012) § 75.)

The rationale for this rule was aptly described in *People v. Chenze* (2002) 97 Cal.App.4th 521, at page 526. The rule grounded in the constitutional doctrine of separation of powers. (*Chenze, supra,* 97 Cal.App.4th at p. 526.) Since the courts' constitutional role is to interpret, rather than rewrite, statutes, all presumptions are *against* a finding of repeal by implication. (*Ibid.*) The court's duty is "harmonize statutes on the same subject, giving effect to all parts of all statutes if possible." (*Ibid.*) Canons of repeal by implication or more specific statute prevailing over a more general one apply only when the statutes at issue "are irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operations."

(*Ibid.*) The People's opening brief fails to acknowledge the strong presumption against invocation of these rules, or the separation of powers rationale for this rule.

Here, the Court of Appeal correctly found that both statutes can be reasonably construed together. (*Adelmann, supra*, 2 Cal.App.5th at p. 1196.) Section 1170.18, subdivisions (a) and (f), state the general rule that all requests for Proposition 47 relief must start in the original court of conviction. Thus, in a typical case, where the probationer continues to live in a county of conviction, he is required to seek Proposition 47 relief only in that county. Also, if a probationer lives in another county with permission of the probation officer, but there is no transfer under section 1203.9, he or she must still file the request in the county of conviction.

Furthermore, in those cases where there is a transfer under section 1203.9, the defendant would have to file the request for Proposition 47 relief in the receiving court not because he or she is forum-shopping or ignoring the requirements of Proposition 47, but because in that scenario, California law vests complete and exclusive

jurisdiction over the case with the receiving court. (§§ 1203.9, subds. (b) and (c); *Klockman, supra*, 59 Cal.App.4th at p. 627.) In this situation, due to a complete jurisdictional transfer, the receiving court has jurisdiction only because it stands in the shoes of the original court of conviction. Thus, the Court of Appeal was correct in holding that the two statutes are not in conflict and can be reasonably read together.

2. The People's arguments challenging the correctness of the Court of Appeal's harmonization of section 1170.18 and 1203.9 are meritless

The People make a number of arguments in support of the position that the two statutes are completely irreconcilable. None have merit.

First, the People claim that if the Court of Appeal's harmonized reading of sections 1170.18 and 1203.9 were upheld, it would render the relevant language in section 1170.18, subdivisions (a) and (f), meaningless. (OBM at p. 21.) But as previously addressed, the appellate court's interpretation gives effect to both statutes. For the vast majority of requests for Proposition 47 relief,

section 1170.18, subdivisions (a) and (f), require filing in the original court of conviction. And in cases where there had been a transfer under section 1203.9, the receiving court has jurisdiction only because the transfer is of the entire and exclusive jurisdiction over the case. (§§ 1203.9, subds. (b) and (c); *Klockman, supra,* 59 Cal.App.4th at p. 627.) In other words, the receiving court acquires jurisdiction only because of the jurisdictional nature of the transfer from the original court of conviction.

Second, the People claim that sections 1170.18 and 1203.9 cannot be harmonized because there may have been transfers under section 1203.9 predating Proposition 47 enactment, which were granted before the People had a chance to voice any concerns about the impact of such transfer on Proposition 47 relief. (OBM at 22). But in those older cases, the defendants have likely already served their sentences and would only be applying to designate their prior felony offense as a misdemeanor under section 1170.18, subdivision (f). The courts grant those applications without determining current dangerousness. (§ 1170.18, subd. (f).) To the extent there is a

hearing on such an application, the hearing would be limited to questions of threshold eligibility for relief and only the defendant can request it. (§§ 1170.18, subds. (f) and (h).)

And if there is a more unusual case, where (1) a section 1203.9 transferee in a case pre-dating Proposition 47 enactment is still on active probation, *and* (2) there is some case-specific need to hear a resentencing petition under section 1170.18, subdivision (a), in the original county of conviction, section 1203.9, subdivision (c), gives the receiving court authority to transfer the case back to the original county of conviction. This certainly does not make the statutes in irreconcilable conflict.

Third, the People are mistaken in challenging the Court of Appeal's harmonization of section 1170.18 and 1203.9 on the ground that the right to have the original sentencing judge decide the petition is not a right that a defendant could waive. (OBM at pp. 23-24.) The People identify no legal authority to support this claim. Respondent's research shows that the few published appellate decisions to consider the issue hold that it is, in fact, a right

belonging to the defendant and that, as any statutory right, it is subject to voluntary and intelligent waiver. (*Adelmann, supra,* 2 Cal.App.5th at p. 1195; *Kaulick, supra,* 215 Cal.App.4th at p. 1301.) This makes sense. Resolution of the request by a judge with presumed knowledge of the underlying circumstances would be a tangible benefit to a defendant, particularly when the sentencing occurred fairly recently and the judge is more likely to remember the case.

More to the point, the appellate court's harmonized reading of sections 1170.18 and 1203.9 does not violate any interests belonging to the People. As to section 1170.18, subdivision (f), applications to designate, there would not be any hearings on the issue of current dangerousness because the court makes no such determination to decide the application. Only a defendant could request a hearing on such an application. (§ 1170.18, subd. (h).) The only need for such a hearing would arise if there is a dispute as to whether the defendant has a disqualifying prior conviction. (§ 1170.18, subd. (f).)

As a result, the People's concerns about inconvenience of victims or witnesses are wholly inapplicable in this situation. Nor is there any evidence to support the idea that a district attorney's office in the receiving county could not competently address any issues concerning eligibility for Proposition 47 relief.

Also, in regard to section 1170.18, subdivision (a), resentencing petition in a case where jurisdiction was transferred pursuant to section 1203.9, the receiving court retains authority to request to transfer the case back to the original county of conviction. (§ 1170.18, subd. (c).) Should a case-specific need arise after the filing of the request to hear the case in the original county of conviction, the People are free to move under section 1203.9, subdivision (c), to have the case transferred to the original court of conviction.

D. The Court of Appeal's Harmonized Reading of Sections 1170.18 and 1203.9 as Permitting the Receiving Court to Consider a Request for Proposition 47 Relief Is the Only Construction Consistent with Voter Intent and Practical

Finally, the People argue that "policy and practical considerations require a request for relief under Proposition 47 to be

initiated in the court that entered the judgment of conviction." (OBM at p. 26.) But as explained next, the Court of Appeal correctly held that reading section 1170.18 and 1203.9 together as permitting the receiving court to hear a request for relief under Proposition 47 is the only construction consistent with the voters' intent and practical. (*Adelmann, supra,* 2 Cal.App.5th at p. 1196.)

1. Voters' intent in enacting Proposition 47

Since as explained in subpart B, (*ante*), plain language of section 1170.18 does not resolve the issue before the Court, it is proper to utilize extrinsic aids to determine whether the voters intended to require a request for relief under Proposition 47 to start in the original court of conviction, even when the entire jurisdiction over the case has been transferred pursuant to section 1203.9. (*Ailanto Properties, Inc., supra,* 142 Cal.App.4th at p. 582.)

One such extrinsic aid is ballot pamphlet materials. (*Ailanto Properties, Inc., supra,* 142 Cal.App.4th at p. 583; see also *Amador Valley Joint Union High Sch. Dist. v. State Bd. Of Equalization* (1978) 22 Cal.3d 208, 245-246 [ballot summary and arguments and analysis

presented to the electorate in connection with a particular measure may be helpful in determining the probable meaning of uncertain language].)

Here, the lower courts' findings that the receiving court has jurisdiction to consider a request for Proposition 47 relief is consistent with the voters' intent in approving the proposition. (*Adelmann, supra*, 2 Cal.App.5th at p. 1195.) The voters' goal, as reflected in the ballot materials, was to focus prison spending on violent and serious offenders, to maximize non-prison alternatives for non-violent and non-serious crimes, and to channel those savings into crime prevention, victim services, and mental health and drug treatment.[10] (*Proposition 47: Text of Proposed Law*, California Ballot Pamphlet: General Election Nov. 4, 2014 (hereafter "Voter Guide"), at pp. 38, 70.)

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[10] A copy of the text of Proposition 47 and the ballot materials can be found at < http://vigarchive.sos.ca.gov/2014/general/en/propositions/47/> (as of March 6, 2017). This Court can take judicial notice of the ballot materials in construing the voters' intent in enacting it. (*People v. Superior Court (Turner)* (2002) 97 Cal.App.4th 1222, 1230 & fn. 4.) Respondent will file a judicial notice request, Cal. Rules of Court, rule 8.252, subd. (a).

Similarly, the declaratory sections of Proposition 47 reflect the voters' intent to generate money savings by reducing prison population and to channel the resulting monetary savings to specific rehabilitation, treatment, and children's programs. (Voter Guide at p. 70.) The ballot arguments in favor of Proposition 47, which are considered evidence of voters' intent in passing an initiative, emphasized the exact same goals. (Voter Guide at p. 38.)

In light of the apparent voter intent to generate monetary savings, it is implausible that the voters intended to accomplish that goal by requiring every section 1203.9 transferee seeking Proposition 47 relief to first, petition for a transfer of his or her case back to the original county of conviction, second, file a resentencing petition in the original county of conviction, and third, transfer the case back to his or her county of residence. This process would require additional judicial, prosecutorial, and public defender time in both counties, which, in turn would deplete money savings created by reduction in prison population. These means are antithetical to the stated goal of Proposition 47.

And there should be no reasonable dispute that adoption of the People's proposed reading of the statute would assure that such a process is required. A transfer under section 1203.9 vests the entire and exclusive jurisdiction to the receiving county. (§ 1203.9; *Klockman, supra,* 59 Cal.App.4th at p. 627.) Absent such a transfer back, the original court of conviction would have no jurisdiction to consider the request for Proposition 47 relief.

The People's opening brief on the merits has not addressed the issue of how the statutory reading the People advocates could be reasonably reconciled with the stated goals of Proposition 47. The appellate court here was right in holding that it is not feasible that the voters intended such wasteful and impractical use of scarce judicial resources to implement a referendum designed to save taxpayers money. (*Adelmann, supra,* 2 Cal.App.5th at p. 1195.)

The Court of Appeal's conclusion is especially apt because (a explained in the next subsection) most of requests for Proposition 47 relief going forward are likely to be section 1170.18, subdivision (f), applications to designate. There would be absolutely nothing

practical achieved by forcing all such applicants to engage in this time-consuming process of transferring the case back and forth. Applications to designate do not involve a current dangerousness determination, would not require any hearings with victim or witness testimony, and would be adjudicated based on documents contained in the court file in possession of the receiving court. The voters did not likely intend the same language in section 1170.18, subdivisions (a) and (f), regarding where to file a request to have different meaning. (*In re Do Kyung K.* (2001) 88 Cal.App.4th 583, 589 ["similar words or phrases in statutes in pari materia (that is, dealing with the same subject matter) ordinarily will be given the same interpretation"]; see also *United States v. Nosal* (9th Cir. 2012) 676 F.3d 854, 859 [identical words in the same statute should ordinarily be given the same meaning].)[11]

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[11] Rules for interpreting federal statutes are similar to the rules for interpreting California statutes. (*Black v. Department of Mental Health* (2000) 83 Cal.App.4th 739, 747–748.)

2. Practical Interpretation That Results in Wise Policy

The Court of Appeal also correctly held that the harmonized reading of sections 1170.18 and 1203.9 to vest the receiving court with authority to consider a Proposition 47 request is the interpretation that is the most practical and results in wise public policy. (*Adelmann, supra,* 2 Cal.App.5th at pp. 1195-1196.)

In construing a statute, this Court may "reject a construction that, while arguably consistent with the section's language, is almost certainly not what the Legislature intended." (*In re Reeves* (2005) 35 Cal.4th 765, 771; see also *United States v. Granderson* (1994) 511 U.S. 39, 55 [the court may construe an ambiguous statute in a particular way when no other solution yields a more sensible reading].)

Here, the only pragmatic construction is the one the lower courts adopted – receiving court under section 1203.9 has the authority to consider a request for relief under Proposition 47 if the defendant elects to file in that court. It is worth emphasizing, again, that once a section 1203.9 request is granted, the receiving court must accept the entire jurisdiction over the case and the court file

must be transferred to the receiving court. (§§ 1203.9, subds (b) and (c); Cal. Rules of Court, rule 4.530 (g)(5).) Since the receiving court has sole jurisdiction over the case & possession of the court file, and the defendant lives in the receiving county, for the overwhelming majority of cases, the receiving court is the most efficient and practical place to resolve any request for Proposition 47 relief.

In contrast, the reading of the statutes advocated by the People imposes a cumbersome and time-consuming three-step process on every section 1203.9 transferee seeking Proposition 47 relief. And to what end?

Most of the Proposition 47 requests for relief the courts will likely see are applications to designate under section 1170.18, subdivision (f). The statewide report on Proposition 47 filings shows that the number of section 1170.18, subdivision (a), petitions have been steadily dwindling since at least July – September 2015 while the number of section 1170.18, subdivision (f), applications has been steadily increasing. This is not surprising because when Proposition 47 was first enacted, public defense agencies focused

their attention on filing section 1170.18, subdivision (a), petitions for those individuals still in custody serving their sentence. Once those petitions were filed and resolved, most of what is left would be the applications to designate filed by those individuals who have completed their sentences. This is a trend that will likely continue going forward because new sentencing hearings are being conducted in the Proposition 47 regime.

As already explained, for applications to designate, the People's concerns are wholly misplaced. The courts adjudicating them do not make a current dangerousness finding. The only hearing possible in this context would be concerning whether the defendant has any disqualifying prior convictions. Only the defendant can request such a hearing and it would surely not involve victims or witnesses. (§ 1170.18, subds. (f) and (h).)

Moreover, for the fewer remaining section 1170.18, subdivision (a), petitions, the concerns voiced by the People are addressed in section 1203.9, subdivision (c). Pursuant to that statute, the receiving court retains "the like power to again request transfer

of the case whenever it seems proper." (§ 1203.9, subd. (c).) Hence, should a case-specific need arise for a section 1203.9 transfer case to be heard in the original county of conviction, the People can ask the receiving court to transfer the case back to the original county of conviction. In light of existence of the transfer back power under section 1203.9, subdivision (c), which the voters are presumed to be aware of, it would have made little sense for the voters to insist on a costly and time-consuming process of moving the case back and forth in *every* case *regardless* of facts. The voters would not likely have been concerned about forum-shopping because the statutes do not permit it and there is a mechanism to return the case to the original court of conviction, should a case-specific need arise.

E. *People v. Curry* was incorrectly decided

The People's dubious reading of section 1170.18 as requiring filing of any request for Proposition 47 relief in the original county of conviction even when jurisdiction of the case was transferred under section 1203.9 rests significantly on the Court of Appeal's

decision in *Curry, supra,* 1 Cal.App.5th 1073. However, for many of the reasons stated earlier in this brief, *Curry* was incorrectly decided.

In *Curry,* the defendant pled guilty to a second-degree burglary in Napa County and was placed on probation. Sometime after he was placed on probation, the defendant moved to Alameda County and his probation was transferred to that county under section 1203.9; he was already on Post-Release Community Supervision ("PCRS") in Alameda County on another matter.[12] After the passage of Proposition 47, the defendant moved for resentencing in Alameda County. That court denied the petition on the ground the petition should have been filed in Napa, the original court of conviction. (*Curry, supra,* 1 Cal.App.5th at pp. 1076-1077.)

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[12] The People's brief makes much of the fact that the Court of Appeal here mistakenly distinguished *Curry* on the ground that the transfer in that case was pursuant to section 3460, rather than 1203.9. (OBM at p. 16.) However, the People fail to recognize that the *Curry* court made the very same mistake when it purported to distinguish its analysis from the one adopted in Couzens and Bigelow. (*Curry, supra,* 1 Cal.App.5th at pp. 1082-1083].) In any event, this factual mistake made by both courts has absolutely no impact on the core of the Court of Appeal's analysis in this matter. It is a red herring.

Curry affirmed the denial of the petition. *Curry* held that even when the entire jurisdiction over the defendant's case had been transferred to a different county pursuant to section 1203.9, the request for Proposition 47 relief must still be filed in the original county of conviction. (*Curry, supra,* 1 Cal.App.5th at pp. 1080-1081.) *Curry* reasoned that there is nothing in the legislative history of Proposition 47 to suggest that the voters did not intend the plain language of section 1170.18, subdivisions (a) and (f) to apply in cases involving jurisdictional transfers under section 1203.9. (*Id.* at p. 1081.)

Curry reasoned further that if the statutes were to be read to allow the receiving court to rule on a Proposition 47 request, such interpretation "would have petitions ruled on by judges who have no connection to, or memory of, the details of the underlying conviction." (*Curry, supra,* 1 Cal.App.5th at p. 1081.) In the *Curry* court's view, while this might not lead to an absurd result, it would be "clearly inconsistent with the voters' plain language and obvious intent." (*Id.* at p. 1081.)

The *Curry* court was wrong, for many reasons. In terms of statutory construction, while the language of section 1170.18, subdivisions (a) and (f) may not be ambiguous or technical, it is utterly silent regarding what effect the transfer of the entire jurisdiction under section 1203.9 has on the obligation to file any request for relief under Proposition 47 in the original county of conviction. (*Adelmann, supra,* 2 Cal.App.5th at pp. 1195-1196; *I.S., supra,* 6 Cal.App.5th at p. 523.)

Curry is also mistaken in reasoning that since there is nothing in the language of the initiative, or in the ballot materials, regarding the effect of the section 1203.9 jurisdictional transfer on section 1170.18, this shows voter intent to repeal or disregard section 1203.9. Voters are presumed to be aware of existing laws. If the drafters of the initiative wanted any relief under Proposition 47 to be requested in the original court of conviction notwithstanding section 1203.9, they knew how to say so. (Cf. *Ni v. Slocum* (2011) 196 Cal.App.4th 1636, 1647 [use of phrase "notwithstanding any other provision of

law expresses a legislative intent to have the specific statute control despite the existence of other law which might otherwise govern"].)

In addition, and much like the People's argument in this case, *Curry* erroneously views filing of a request for relief under Proposition 47 in a receiving court as an attempt to forum-shop or unwillingness to comply with section 1170.18's requirements. Not so. The only reason a defendant would file in the receiving court is because a court of law ordered the case transferred pursuant to section 1203.9. This transferred the entire and exclusive jurisdiction over the case to the receiving court, along with the court file. (§§ 1203.9, subds. (b) and (c); Cal. Rules of Court, rule 4.530 (g)(5); *Klockman*, 59 Cal.App.4th at p. 627.)

Yet another flaw in *Curry*'s treatment of relevant issue is the failure to consider its interpretation of section 1170.18 in light of the voters' intent in enacting Proposition 47 to generate money savings and to channel those savings to specific programs. As previously discussed, the reading of sections 1170.18 and 1203 adopted by

Curry and advocated by the People, is contrary to the voters' intent, impractical, and economically wasteful.

Finally, *Curry's* concerns about requests for Proposition 47 relief being decided by judges without memory of, or connection to, the case are misplaced. As already discussed, the vast majority of these requests going forward is going be an application under section 1170.18, subdivision (f), to reclassify a prior felony conviction as a misdemeanor. For those requests, *Curry's* concerns are completely unjustified because the cases of eligible applicants can go back decades and it is unlikely that a sentencing judge (if they are still active to begin with) would still remember any individual case.

Also, in deciding these applications, the court does not make a dangerousness finding and can resolve the eligibility issue by relying on documents contained in the court file. In this context, the judge's memory of the case (or lack thereof) makes little practical difference.

Finally, for those few cases involving section 1170.18, subdivision (a), resentencing petitions, where the court does make a

dangerousness determination, the ability to transfer the case again under section 1203.9, subdivision(c), resolves any concerns. If a genuine case-specific need for a hearing in the original county of conviction develops after the filing of the petition, the People can request and the receiving court has the authority to transfer the case back. Much like the People's brief, *Curry* fails to acknowledge existence of this subsection or explain why it is not sufficient to address these concerns.

Conclusion

Based on the foregoing, this Court should hold that when a case has been transferred from the original court of conviction to another county pursuant to section 1203.9, the receiving court has the authority to consider a request for relief under Proposition 47. The judgment of the Court of Appeal should be affirmed.

DATE: March 7, 2017 By: _____

Gene D. Vorobyov
Attorney for Respondent
STEVEN ADELMANN

Certificate of Word Count

I certify that this brief consists of 8,051 words (including footnotes, but excluding this certificate, proof of service, and tables), as indicated by the Microsoft Word program in which the brief is prepared.

DATE: March 7, 2017

By: _____
Gene D. Vorobyov
Attorney for Appellant
STEVEN ADELMANN

Proof of Service

I declare that I am an active member of the California Bar, not a party to this action, and my business address is 450 Taraval Street, # 112, San Francisco, CA 94116. On the date shown below, I served the within RESPONDENT'S ANSWERING BRIEF ON THE MERITS, to the following parties hereinafter named by:

X E-serving the following parties, pursuant to Rule of Court 8.71(a)(2), as follows:

Fourth District Court of Appeal, Division Two (via Truefiling);

Howard C. Cohen, Staff Attorney, Appellate Defenders, Inc. (Via Truefiling);

Donald W. Ostertag, Deputy District Attorney (Via Truefiling);

Riverside County Superior Court (via Truefiling)

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X Placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California, addressed as follows:

Steven Andrew Adelmann
33545 Nandina Lane
Murrieta, CA 92563

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

Executed on March 7, 2017, at San Francisco, California.

/s/ Gene D. Vorobyov