

David D. Martin, Esq., #90494
622 Lagunaria Lane
Alameda, CA 94502
(510) 814-0399
Attorney for Defendant/Appellant

SUPREME COURT
FILED

DEC 5 - 2014

Frank A. McGuire Clerk

Deputy

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,	]	NO. S218197
]	
Plaintiff and Respondent,	]	COURT OF
	]	APPEAL
vs.	]	( H039603.)
]	
	]	(Santa Clara No.:
IGNACIO GARCIA,	]	C1243927.)
Defendant and Appellant.]	
<hr/>]	

SECOND REQUEST FOR JUDICIAL NOTICE

Pursuant to Rules of Court, Rule 8.252 and Evidence Code section 452, subdivision (h), petitioner respectfully amends his request this court take judicial notice of the RATE OF FELON PAROLEES RETURNED TO CALIFORNIA PRISONS, CALENDAR YEAR 1998, January 1999, from the Data Analysis Unit of the Estimates and Statistical Analysis Section of the Offender Information Services Branch of the California Department of Corrections, Date January 1999, Table 1.
(http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Bran ch/Annual/PVRET2/PVRET2d1998.pdf.)

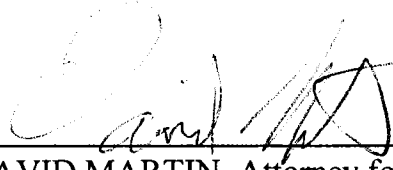
This document is attached hereto as designated as attachment "C."

Evidence Code section 452, subdivision (h) authorizes this court to take judicial notice of “h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

Appellant, in conjunction with the attachment “C” and the Declaration of Appellate Counsel, David D. Martin, respectfully requests that this Court take judicial notice of these related documents.

Dated: December 4, 2014

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David Martin", is written over a horizontal line.

DAVID MARTIN, Attorney for
Appellant IGNACIO GARCIA

THE PEOPLE OF THE STATE OF CALIFORNIA,	]	NO. S218197
]	
Plaintiff and Respondent,	]	COURT OF
	]	APPEAL
vs.	]	( H039603.)
]	
	]	(Santa Clara No.:
IGNACIO GARCIA,	]	C1243927.)
Defendant and Appellant.]	
]	

DECLARATION OF APPELLATE COUNSEL

I, David D. Martin, declare:

1) I am the attorney, in association with the Sixth District Appellate Program, who was appointed on June 3, 2013, to represent Ignacio Garcia in his appeal from the terms of probation.

2) Attachment "C," which comprises three pages, was printed verbatim on the evening of December 4, 2014, from the California Department of Corrections website.

(http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Annual/PVRET2/PVRET2d1998.pdf.)

The first page identifies the topic and source of the information as being the California Department of Corrections, RATE OF FELON PAROLEES RETURNED TO CALIFORNIA PRISONS, CALENDAR YEAR 1998, January 1999. The second page is the crucial one, Table 1,

which shows the overall revocation rate for parolees from 1972 to 1998 and the third page shows the the Department of Corrections's Formula and Definitions for these calculations.

3) While reviewing respondent's answer brief, I had to address its historical evidence contention, that it had been 17-months since the act took place and there were no known instances of the prosecution taking advantage of the constitutional waiver in this case. (AMB 15.) In the process of addressing that contention, that 17-months was far too short a time to make such an evaluation, it occurred to counsel, for the first time, that there might be accesible records regarding the history of the first parolee/probationer constitutional waiver, that of the Fourth Amendment back in the seventies. Appellant and respondent agree (AMB 21-22) that the history of this constitutional waiver is the closest analogy to the one here. No probationer revocation rates were found, but the revocation rates of parolees, tabulated by the Department of Corrections, was eventually discovered, as cited above.

4) Fourth Amendment search waivers for parolees were judicially sanctioned on July 1, 1977. (*People v. Burgener* (1986) 41 Cal. 3d 505, 529, citing *People v. Icenogle* (1977) 71 Cal.App.3d 576, 583-585.) The Department of Corrections began their tabulations of parole revocations in 1972, thus there were six years of such data prior to the parole search

waiver taking effect. The average parole revocation rate during these six years was 15.8%.

5) The parole recidivism rate promptly doubled in four years. In 1981, the average recidivism rate had reached 32.7%. A mere five years after that, in 1986, the parole recidivism rate had more than doubled again, to 70.9%. Three years later, in 1989, the recidivism rate had reached – a mere twelve years after the Fourth Amendment waiver had been established – 86.9 per cent. Thus, prior to the constitutional waiver, only 16 parolees out of a 100 had their parole revoked. Twelve years later, with the constitutional waiver, only 13 parolees out of a 100 *did not have* their parole revoked.

6) As respondent has argued, the history of constitutional waivers is relevant to the determination in this case. (AMB 15, 22.) These statistics show definitively how another required parole/probationer waiver of a constitutional right will likely be handled by law enforcement in California. This is important in that the original justification for the Fourth Amendment waiver back in the seventies was that the search condition was reasonably related to the “reformation and rehabilitation” of the probationer/parole. (*People v. Mason* (1971) 5 Cal.3d 759, 764 [affirming search waivers for probationers]; *People v. Icenogle* (1977) 71 Cal.App.3d 576, 583-585 [relied on *Mason* to uphold search waivers for parolees].)

Respondent makes the same argument here, that is, rehabilitation will be aided by forcing probationers convicted of sexual crimes to waive

their constitutional Fifth Amendment rights. (AMB 6-9.) The historical evidence of the previous constitutional waiver was that it effectively annihilated rehabilitation for parolees.

7) This constitutes: Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. (Evid. Code sec. 452, subd. (h). This data is generated by the State of California Department of Corrections.

8) This material was not provided to the trial court nor the appellate court. While this failure would normally be problematic, the upcoming decision here is different in kind. This case is not about a trial court nor an appellate court erring. This is a matter of enormous importance, where the constitutionality of a proposed waiver of a constitutional right is to be decided. Only this court can make this decision. This proposed evidence is obviously historical relevant. It is the only prior constitutional waiver of any magnitude in this state and law enforcement's treatment of it is the best indicator of its expected treatment of the proposed waiver of another constitutional, should this court uphold it.

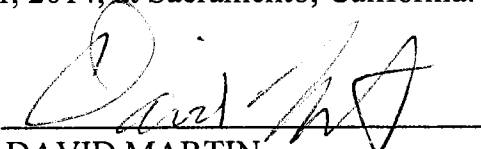
The failure to find and submit this highly relevant document sooner was occasioned solely by the ineffectiveness of appellate counsel, saved only by respondent's introduction of the relevance of the historicity of such

amendments in its briefing. (AMB 15, 22.) While appellant does not agree that 17-months is sufficient for this purpose, the underlying principle of the importance of the history of a past waiver is not merely sound, but of the utmost importance in making a determination here.

9) This material is essential to the determination of the constitutionality of the statute because it reveals how constitutional waivers of probationer/parolees are likely to be applied by law enforcement in the future.

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

Executed this 4th day of December, 2014, at Sacramento, California.



DAVID MARTIN

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,	]	NO. S218197
]	
Plaintiff and Respondent,	]	COURT OF
	]	APPEAL
vs.	]	( H039603.)
]	
	]	(Santa Clara No.:
IGNACIO GARCIA,	]	C1243927.)
Defendant and Appellant.]	
<hr/>		

ORDER

FOR GOOD CAUSE SHOWN, this Court takes Judicial Notice of the public documents appended to this motion, RATE OF FELON PAROLEES RETURNED TO CALIFORNIA PRISONS, CALENDAR YEAR 1998, from the Data Analysis Unit of the Estimates and Statistical Analysis Section of the Offender Information Services Branch of the California Department of Corrections, Date January 1999, Table 1, found at: http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Annual/PVRET2/PVRET2d1998.pdf.

DATED: _____

PRESIDING JUSTICE OF THE SUPREME COURT

**RATE OF FELON PAROLEES RETURNED TO
CALIFORNIA PRISONS**

CALENDAR YEAR 1998

**Department of Corrections
Administrative Services Division
Offender Information Services Branch
Estimates and Statistical Analysis Section
Data Analysis Unit**

**Sacramento, California
January 1999**

Reference Number: PVRET-2

Exhibit C-1

TABLE 1
TOTAL FELON PAROLEES RETURNED TO CALIFORNIA PRISONS
NUMBER AND RATE PER 100 AVERAGE DAILY POPULATION (ADP)*
CALENDAR YEAR 1972 THROUGH 1998

CALENDAR YEAR	AVERAGE DAILY FELON PAROLEE/PAL POPULATION*	TOTAL FELON PAROLEES RETURNED (PV-RETs)		TOTAL FELON PAROLEES RETURNED WITH A NEW TERM (PV-WNTs)		TOTAL FELON PAROLEES RETURNED TO CUSTODY WITHOUT A NEW TERM ** (PV-RTCs)	
		NUMBER	RATE	NUMBER	RATE	NUMBER	RATE
1972	17,488	3,245	18.6	1,033	5.9	2,212	12.6
1973	16,333	3,345	20.5	955	5.8	2,390	14.6
1974	14,824	2,383	16.1	757	5.1	1,626	11.0
1975	15,132	1,649	10.9	766	5.1	883	5.8
1976	15,302	2,233	14.6	1,255	8.2	978	6.4
1977	14,428	2,031	14.1	1,243	8.6	788	5.5
1978	12,401	2,585	20.8	1,574	12.7	1,011	8.2
1979	10,455	2,558	24.5	1,362	13.0	1,196	11.4
1980	11,061	2,995	27.1	1,393	12.6	1,602	14.5
1981	11,883	3,885	32.7	1,772	14.9	2,113	17.8
1982	13,609	6,009	44.2	2,231	16.4	3,778	27.8
1983	18,223	8,435	46.3	3,160	17.3	5,275	28.9
1984	24,390	11,409	46.8	3,988	16.4	7,421	30.4
1985	28,888	16,311	56.5	5,042	17.5	11,269	39.0
1986	33,615	23,849	70.9	5,790	17.2	18,059	53.7
1987	39,878	31,597	79.2	6,390	16.0	25,207	63.2
1988	50,054	42,424	84.8	8,410	16.8	34,014	68.0
1989	58,731	51,016	86.9	11,040	18.8	39,976	68.1
1990	69,164	54,379	78.6	14,070	20.3	40,309	58.3
1991	80,905	57,344	70.9	16,010	19.8	41,334	51.1
1992	87,940	52,871	60.1	17,939	20.4	34,932	39.7
1993	90,628	54,681	60.3	19,150	21.1	35,531	39.2
1994	93,536	62,480	66.8	17,009	18.2	45,471	48.6
1995	102,181	69,884	68.4	17,454	17.1	52,430	51.3
1996	109,659	75,419	68.8	17,435	15.9	57,984	52.9
1997	115,299	85,497	74.2	17,593	15.3	67,904	58.9
1998	122,981	87,645	71.3	17,385	14.1	70,260	57.1

Note: Components may not add to totals due to independent rounding.

*The Average Daily Felon Parolee/PAL Population (ADP) includes the average daily population of felon parolees supervised in California, plus the average daily felon parolee-at-large (PAL) population. California releases to parole who were under supervision in other states and absconded from supervision were included in the PAL population prior to 1988.

**Beginning in 1986, the Total Felon Parolees Returned to Custody Without a New Term includes parolees who were returned to CDC custody pending a revocation hearing.

Exh. 1C-2

DEFINITIONS AND FORMULAS USED TO PRODUCE THE ANNUAL RATE OF FELON PAROLEES RETURNED TO CALIFORNIA PRISONS

The annual rate of total felon parolees returned to prison is calculated by dividing the number of California felon parolees returned to prison within the calendar year by the average daily felon parolee/ parolee-at-large (PAL) population. The result is multiplied by 100 to calculate a rate per 100 average daily population. Similar formulas are used to calculate return rates for specific types of returns. Offenders in or returned from Interstate parole units (ISPU) or California Youth Authority parole are not included.

$$\begin{array}{l} \text{Rate of Total} \\ \text{Felon Parolees} \\ \text{Returned to Prison} \end{array} = \frac{(\text{PV-WNTs} + \text{PV-RTC}) \times 100}{(\text{ADP})}$$

PV-WNTs: Number of Parole Violators Returned to Prison With a New Term, i.e., parolees who have received a court sentence for a new crime and have been returned to prison.

PV-RTCs: Number of Parole Violators Returned To Custody, i.e., parolees who have violated the conditions of parole and have been returned to prison pending a revocation hearing or to serve parole revocation time.

ADP: Average Daily Parole/PAL Population is the calculated average parolee population per day for the year specified. This figure includes felon parolees supervised in California, plus the average daily felon parolee-at-large (PAL) population. California releases to parole who were under supervision in other states and absconded from supervision were included in the PAL ADP population prior to 1988.

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within above entitled action. My business address is 10 Sanderling Court, Sacramento, CA 95833. On December 4, 2014, I served the **SECOND REQUEST FOR JUDICIAL NOTICE** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid and placed in the United States mail addressed as follows:

Superior Court, Appeals Clerk
191 First Street
San Jose, CA 95110

Office of the Attorney General
Kamala Harris
455 Golden Gate Ave., Ste. 11000
San Francisco, CA 94102-3664

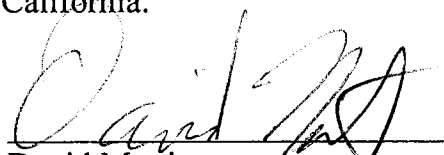
District Attorney's Office
Jeffrey F. Rosen
West Wing, Fifth Floor
70 W. Hedding Street
San Jose, CA 95110

Paul Couenhoven, Esq.
Sixth District Appellate Program
100 N. Winchester Blvd., Ste. 310
Santa Clara, CA 95050

Court of Appeal, Sixth Appellate District
Michael J. Yerly
Suite 1060, 10th Floor
333 W. Santa Clara Street
San Jose, CA 95113

Ignacio Garcia
3925 Trimar Court
San Jose, CA 95111

I declare under penalty of perjury under the laws of the United States of California that the forgoing is true and correct and that this was executed on December 4, 2014, Sacramento, California.



David Martin