IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE 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 No. SWF1208202
The Honorable Edward D. Webster, Judge

REPLY BRIEF ON THE MERITS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

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INTRODUCTION

The relevant portions of Penal Code[1] sections 1170.18 and 1203.9 are neither ambiguous nor susceptible to varying interpretations. Rather, each of those statutes contain clear directives that—in situations where a defendant's probation has been transferred between counties—conflict with

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

one another. That conflict is not only apparent in the plain language of each statute, it is evidenced by the differing results reached by the lower courts. As set forth previously, and discussed in additional detail below, when such a conflict exists, it must be resolved in favor of the more recent and more specific statute. Section 1170.18 prevails on both fronts.

Respondent argues that complying with the directive of section 1170.18 would be unduly burdensome and costly. Respondent's argument in this regard rests upon the premise that satisfying the requirement of section 1170.18 would initiate a "prolonged and cumbersome process" resulting in a repeated back-and-forth transfer of the case. (E.g., RBOM at pp. 10-11.) But that premise is faulty. As discussed below, no such reverse transfer of the case is necessary when requesting relief under section 1170.18. Respondent's argument to the contrary is not only a red herring, it is an effort to circumvent the plain language of section 1170.18 and the well-established principles regarding resolution of statutory conflicts.

As discussed previously, and in more detail below, a request for relief under section 1170.18 must be initiated in the court that entered the judgment of conviction. Such a resolution not only complies with the statute's requirements, it properly provides the court and prosecutors who handled the underlying case an opportunity to review the request, and avoids placing undue burden on victims and witnesses of crime.

Accordingly, appellant respectfully requests this Court reverse the judgment of the Court of Appeal and hold that a request for relief under Proposition 47 must be initiated in the court that entered the judgment of conviction.

ARGUMENT

STATUTORY CONFLICTS MUST BE RESOLVED IN FAVOR OF THE MORE RECENT AND MORE SPECIFIC STATUTE

As discussed previously, the rules that must be applied when faced with two irreconcilable statutes are well established. (*State Dept. of Public Health v. Superior Court* (2015) 60 Cal.4th 940, 960.) "If conflicting statutes cannot be reconciled, later enactments supersede earlier ones [citation], and more specific provisions take precedence over more general ones [citation]." (*Collection Bureau of San Jose v. Rumsey* (2000) 24 Cal.4th 301, 310.) And if those two rules are ever in conflict, the rule that specific provisions take precedence over more general ones trumps the rule that later-enacted statutes have precedence. (See *People v. Gilbert* (1969) 1 Cal.3d 475, 479 ["'It is the general rule that where the general statute standing alone would include the same matter as the special act, and thus conflict with it, the special act will be considered as an exception to the general statute whether it was passed before or after such general enactment.'"]; see *Nunes Turfgrass, Inc. v. Vaughan–Jacklin Seed Co.* (1988) 200 Cal.App.3d 1518, 1539 [same].)

Respondent does not dispute that section 1170.18 is both more recent and more specific than section 1203.9. Rather, respondent raises a number of claims in an effort to argue that the well-established principles regarding resolving statutory conflicts either do not apply or should not be followed. Each of those claims are without merit.

First, respondent follows the Court of Appeal's erroneous belief that sections 1170.18 and 1203.9 are harmonious and do not conflict with one another. (RBOM at pp. 19, 23-27.) While that belief is true in many instances, it fails anytime probation is transferred under section 1203.9

before a request for relief is filed under section 1170.18. That is because the procedural mandate contained within section 1170.18—requiring the request for relief be filed in the "court that entered the judgment of conviction"—is necessarily at odds with section 1203.9's directive that the transferee court be in receipt of "entire jurisdiction over the case." (§ 1170.18, subds. (a), (f); § 1203.9, subd. (b).) Indeed, as the Court of Appeal noted, in order to harmonize the two statutes, they must be capable of "concurrent operation." (Slip opn. at p. 9, citing *People v. Chenze* (2002) 97 Cal.App.4th 521, 526.) Such "concurrent operation" is not possible, however, anytime a defendant seeks relief under section 1170.18 after probation has been transferred under section 1203.9. Rather, in such a situation, one of the statutes must give way. Because section 1170.18 is more recent and more specific, it controls. (*Collection Bureau of San Jose v. Rumsey, supra,* 24 Cal.4th at p. 310.)

Second, respondent appears to argue that to the extent the two statutes are in conflict, any such conflict would be infrequent because the "vast majority of requests for Proposition 47 relief" would not follow a transfer of probation and therefore section 1203.9 would be inapplicable. (RBOM at pp. 27-28.) What respondent ignores, however, is that in every situation where, as here, probation *has* been transferred, sections 1170.18 and 1203.9 are in direct conflict. It is the existence of that conflict—not respondent's predicted frequency of that conflict—that triggers the well-established tenets of statutory construction giving precedence to the more specific and more recent statute.

In fact, under respondent's proposed rule, the filing requirements contained in section 1170.18 would be rendered meaningless anytime probation has been transferred under section 1203.9. As this Court has stated, reviewing courts "should give meaning to every word of a statute,"

"should avoid constructions that would render any word or provision surplusage," and "[a]n interpretation that renders statutory language a nullity is obviously to be avoided." (*Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029, 1038-1039, citing *California Teachers Assn. v. Governing Bd. Of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 634, and *Williams v. Superior Court* (1993) 5 Cal.4th 337, 357.)

Third, respondent predicts that petitions to recall under section 1170.18, subdivision (a)—which may involve dangerousness determinations—will be less frequent than applications to designate under section 1170.18, subdivision (f)—which do not involve dangerousness determinations. (RBOM at pp. 8-9; see also RBOM at p. 45 ["[T]he vast majority of these requests going forward is going be [*sic*] an application under section 1170.18, subdivision (f), to reclassify a prior felony conviction as a misdemeanor."].) Following from this prediction, respondent claims that any potential burden on victims and witnesses of crime will be minimized because "[a]pplications 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 . . ." (RBOM at p. 36.) Respondent similarly claims: "The courts adjudicating [applications to designate] 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 . . . and it would surely not involve victims or witnesses." (RBOM at p. 39.) Respondent is incorrect.

While it remains that victims and witnesses of crime will often times be called upon to testify at dangerousness hearings following petitions to recall, they will also be called upon to testify at evidentiary hearings to

resolve factual questions necessary in determining whether a defendant is eligible for relief requested by *both* petitions to recall *and* applications to designate. One such common example would be a store owner whose testimony is necessary to determine the value of property previously stolen by a criminal defendant. Another such example would be witness testimony necessary to establish the unique value of stolen items that are illegally resold to unscrupulous purchasers. (See *People v. Romanowski* (Mar. 27, 2017, S231405) ____ Cal.5th ____ [p. 16] [2017 Cal. LEXIS 2326] ["When a defendant steals properly that is not sold legally, evidence related to the possibility of illegal sales can help establish 'reasonable and fair market value.'"].) Similar examples abound. As this Court recently explained:

> [E]ligibility for resentencing may turn on facts that are not established by either the uncontested petition or the record of conviction. In these cases, an evidentiary hearing may be 'required if, after considering the verified petition, the return, any denial, any affidavits or declarations under penalty of perjury, and matters of which judicial notice may be taken, the court finds there is a reasonable likelihood that the petitioner may be entitled to relief and the petitioner's entitlement to relief depends on the resolution of an issue of fact.'

(*People v. Romanowski, supra,* at p. 17, quoting Cal. Rules of Court, rule 4.551(f), and citing *People v. Sherow* (2015) 239 Cal.App.4th 875, 880.) Such factual resolutions are equally necessary to determine eligibility for petitions to recall and applications to designate.

Fourth, respondent claims criminal defendants have a "right" to file either in the court that entered the judgment of conviction (under section 1170.18), or in the court that is in receipt of probation (under section

1203.9). (See RBOM at pp. 29-30 [a defendant's "right" to file in the court that entered the judgment of conviction can be waived by simply filing the request in the court in receipt of probation].) But that position is inconsistent with respondent's argument that any defendant who has had his or her probation transferred is *required* to file a request for relief under section 1170.18 in the court that is in receipt of probation. (RBOM at pp. 26-27 ["[I]n 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 . . . because . . . California law vests complete and exclusive jurisdiction over the case with the receiving court."].) Not only are respondent's positions in this regard inconsistent, they create yet additional uncertainty when the primary goal of the present case is providing the lower courts and the parties with a clear, bright-line rule regarding where a request for relief under section 1170.18 must be filed.

Fifth, respondent argues that complying with the directive of section 1170.18 would be overly burdensome for defendants because it would initiate a "prolonged and cumbersome process" resulting in a repeated back-and-forth transfer of the case. (E.g., RBOM at pp. 10-11.) Initially, to the extent the requirements of section 1170.18 are burdensome for criminal defendants, any such burden is properly borne by those defendants, not by the witnesses and victims of their criminal activity. Indeed, a defendant who elects to seek the benefits of section 1170.18 not only bears the burden of establishing his or her eligibility (*People v. Romanowski, supra,* at p. 17, citing Evid. Code, § 500), but also of complying with the procedural requirements set forth in the statute.

Furthermore, respondent is incorrect in his claim that complying with section 1170.18 will necessitate a repeated back-and-forth transfer of the case. That is because section 1170.18 simply requires a person seeking

relief under that section to initiate the proceedings in the court that entered the judgment of conviction. (§ 1170.18, subds. (a), (f).) There is no condition precedent requiring such a court be in receipt of a previously-transferred probationary case at the time the request for relief is filed. Rather, in employing the principles of resolving statutory conflicts, the effect of section 1170.18's filing requirement is to create a limited exception to section 1203.9's transfer of entire jurisdiction that allows the defendant to file his or her request in the court that entered the judgment of conviction. Such a resolution not only advances the considerations behind the filing requirement—such as preventing the placement of undue burden on crime victims and witnesses—but also recognizes that, as is well established, the electorate is presumed aware of the laws in effect at the time it enacts new laws. (See, e.g., *People v. Weidert* (1985) 39 Cal.3d 836, 844.)

In addition, while respondent argues on one hand that a back-and-forth transfer of the case would be "prolonged and cumbersome," on the other hand he argues that such a back-and-forth transfer under section 1203.9, subdivision (c), "completely addresses all of the People's concerns . . ." (RBOM at p. 10.) Notwithstanding the faulty premise of this argument—as stated, no such back-and-forth transfer of the case is necessary—it remains that section 1170.18, subdivisions (a) and (f), both categorically require the person seeking relief to *file* his or her request in the court that entered the judgment of conviction. Nothing in section 1203.9, subdivision (c), cures a defendant's failure to comply with the filing requirements of section 1170.18. Contrary to respondent's claim, a defendant's failure to properly file a request for relief is not saved by the court's ability to subsequently transfer a probationary case under section 1203.9, subdivision (c).

Finally, respondent claims the filing requirement contained in section 1170.18, subdivisions (a) and (f), is ambiguous and therefore it is necessary to look to the electorate's intent in passing Proposition 47. (RBOM at pp. 32-35.) Respondent cites the ballot pamphlet materials to point out that one of the considerations underlying Proposition 47 was to save money by reducing the prison population. (RBOM at p. 34, citing Ballot Pamp, Gen. Elec. (Nov. 4, 2014), argument in favor of Prop. 47, p. 38, text of Prop. 47, p. 70.) Following from this, respondent argues it is "implausible" the electorate intended to achieve that goal by requiring persons seeking relief under section 1170.18 to file their requests in the court that entered the judgment of conviction. (RBOM at p. 34.) This argument is unpersuasive.

Initially, the filing-requirement language contained within section 1170.18, subdivisions (a) and (f), is neither vague nor ambiguous. Any ambiguity in section 1170.18 is not apparent within the plain language of that statute, but rather appears when it is read in conjunction with section 1203.9. It is that discrepancy that creates a conflict between the two statutes; it does not inject ambiguity into the otherwise clear directive contained in section 1170.18. While that conflict does trigger application of the principles regarding resolution of statutory conflicts, it does not necessitate or permit reference to extrinsic sources. (E.g., *People v. Albillar* (2010) 51 Cal.4th 47, 55, citing *People v. Traylor* (2009) 46 Cal.4th 1205, 1212 ["If the language of the statute is not ambiguous, the plain meaning controls and resort to extrinsic sources to determine the Legislature's intent is unnecessary."].)

In any event, reference to the ballot pamphlet materials does not support respondent's position. While one of the intents underlying Proposition 47 was undoubtedly to reduce prison population and thereby

generate money savings, nothing inherent in meeting the filing requirement of section 1170.18 diminishes that goal. Indeed, respondent's contrary argument is again premised upon the faulty premise that complying with section 1170.18 will necessitate multiple back-and-forth transfers of a case. (RBOM at p. 34.) In fact, an eligible defendant who complies with the requirements of 1170.18 will be able to obtain relief in the most expeditious manner by filing his or her request in the court that entered the judgment of conviction. That is because, as stated, filing such a request in a faraway county will require the time, effort, and expense of securing the presence of any faraway victims and witnesses whose testimony may be required to establish eligibility.

Ultimately, the most important goal of the present case is providing the lower courts and the parties with a clear, bright-line rule regarding where a defendant must file a request for relief under section 1170.18. Fortunately, that clear rule is contained within the plain language of section 1170.18: A request seeking relief under that section must be made before the trial court that entered the judgment of conviction. (§ 1170.18, subds. (a), (f).) To the extent that language conflicts with section 1203.9, subdivision (b), section 1170.18 nonetheless controls because it is more recent and more specific. (*Collection Bureau of San Jose v. Rumsey, supra,* 24 Cal.4th at p. 310.)

CONCLUSION

For the reasons stated above, the People respectfully request that this Court reverse the judgment of the Court of Appeal.

Dated: April 4, 2017

Respectfully submitted,

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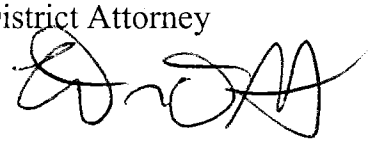

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CERTIFICATE OF WORD COUNT
Case No. S237602

The text of the **REPLY BRIEF ON THE MERITS** in the instant case consists of 2,664 words as counted by the Microsoft Word program used to generate the said **REPLY BRIEF ON THE MERITS.**

Executed on April 4, 2017.

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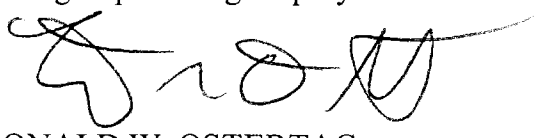

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DECLARATION OF SERVICE

Case Name: People v. Steven Andrew Adelmann
Case No.: S237602

I, the undersigned, declare:

I am employed in the County of Riverside, over the age of 18 years and not a party to the within action. My business address is 3960 Orange Street, Riverside, California.

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That on April 4, 2017, I served a copy of the within, **REPLY BRIEF ON THE MERITS**, by electronically serving a copy of this document in the Court of Appeal via the True Filing website (www.truefiling.com) and electronically serving the following parties:

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FOURTH DISTRICT
COURT OF APPEAL
Case No. E064099
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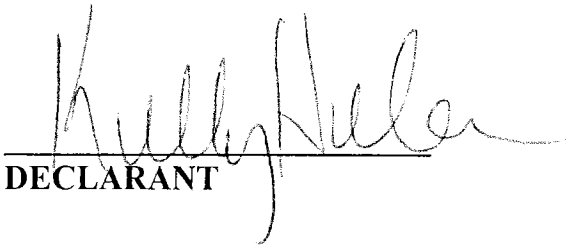
(served via TrueFiling)

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Dated: April 4, 2017



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