IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. STEVEN ANDREW ADELMANN, Defendant and Appellant.	)	No. S237602

Fourth Appellate District, Division Two, Case No. E064099
Riverside County Superior Court, Case No. SWF1208202

APPLICATION OF THE CALIFORNIA PUBLIC DEFENDERS ASSOCIATION AND LAW OFFICES OF THE PUBLIC DEFENDER FOR THE COUNTY OF RIVERSIDE TO APPEAR AS *AMICI CURIAE* (RULE 8.520(f)) AND BRIEF OF *AMICI CURIAE*

LAURA BETH ARNOLD
State Bar No. 177978
4200 Orange St.
Riverside, CA 92501
Phone: (951) 304-5651
Fax: (951) 304-5605
lbarnold@co.riverside.ca.gov
Attorney for *Amici Curiae*

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	)	
Plaintiff and Respondent,	)	
	)	
v.	)	
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STEVEN ANDREW ADELMANN,	)	
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Defendant and Appellant.	)	
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TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

The California Public Defenders Association (hereinafter "the CPDA") and the Law Offices of the Public Defender for the County of Riverside (hereinafter "the LOPD") apply under California Rules of Court, Rule 8.520, subdivision (f) for permission to appear as *amici curiae* in the case of *People v. Steven Andrew Adelmann.* This application summarizes the nature and history of your amici and our interest in the issues presented in this case and demonstrates that our proposed brief will assist the court in the analysis and consideration of the issues presented.

I.

APPLICATION OF CPDA TO APPEAR AS *AMICUS CURIAE*

The California Public Defenders Association is the largest and most influential association of criminal defense attorneys and public defenders in the State of California. With a membership of approximately 3,500 criminal defense attorneys and investigators, CPDA is an important voice of the criminal defense bar. Our collective experience in representing criminal defendants in proceedings under Penal Code section 1170.18, both in the superior courts and in the Courts of Appeal, places us in a unique position to assist the court in this case.

CPDA has been a leader in continuing legal education for defense attorneys for almost 40 years and is recognized by the California State Bar as an approved provider of Mandatory Continuing Legal Education, Criminal Law Specialization Education, and Appellate Law Specialization Education. The CPDA is one of only two organizations deemed by the Legislature to be an "automatically" approved legal education provider. (Bus. & Prof. Code, §6070, subd. (b).)

The courts have granted CPDA leave to appear as amicus curiae in nearly 50 California cases which culminated in published opinions, including several cases interpreting Proposition 47. We believe that our participation

has been helpful in many important cases. (See, e.g., *People v. Albillar* (2010) 51 Cal.4th 47 [sufficiency of the evidence in a gang-related prosecution]; *Barnett v. Superior Court* (2010) 50 Cal.4th 890 [post-trial discovery]; *Galindo v. Superior Court* (2010) 50 Cal.4th 1 [pre-prelim discovery]; *People v. Lenix* (2008) 44 Cal.4th 602 [comparative juror analysis for first time on appeal], *People v. Nelson* (2008) 43 Cal.4th 1242 [DNA evidence in a cold-hit case]; *Chambers v. Superior Court* (2007) 42 Cal.4th 673 [*Pitchess* procedures]; *People v. Sanders* (2003) 31 Cal.4th 318 [search could not be a reasonable "parole search" without knowledge of the suspect's parole status]; *Manduley v. Superior Court* (2002) 27 Cal.4th 537 [no separation of powers violation by the direct filing of juvenile cases in the criminal court]; *Morse v. Municipal Court* (1974) 13 Cal.3d 149 [mandate issued to compel consideration of diversion].) CPDA has also served as amicus curiae in the United State Supreme Court in numerous cases. (See, e.g., *California v. Trombetta* (1984) 467 U.S. 479 [the duty to preserve evidence is limited to evidence that might be expected to play a significant role in the suspect's defense]; *Monge v. California* (1998) 524 U.S. 721 [double jeopardy clause does not bar retrial of a prior conviction allegation after an appellate finding of evidentiary insufficiency].)

The CPDA is also involved in legislative solutions. Members of the CPDA Legislative Committee and our paid lobbyist attend key state Senate and Assembly committee meetings on a weekly basis, and the CPDA takes positions on hundreds of bills relating to criminal justice each year.

CPDA has both a general and specific interest in the subject matter of this litigation. The vast majority of indigent individuals who are eligible for resentencing or redesignation of a felony offense were, are, and/or will be represented by CPDA members. A substantial number of those individuals are defendants whose cases were transferred under Penal Code section 1203.9. CPDA is in a unique position to offer, as amicus, a comprehensive and unique perspective of the issues presented.

II.

APPLICATION OF LOPD TO APPEAR AS *AMICUS CURIAE*

The Law Offices of the Public Defender for the County of Riverside is one of the largest Public Defender offices in the state. The LOPD has both a general and specific interest in the subject matter of this litigation. Generally, our office represented the vast majority of indigent individuals who, prior the effective date of Proposition 47, were convicted in Riverside Superior Court of an affected felony offense. Moreover, over the past two

and a half years, the LOPD has filed tens of thousands of Penal Code section 1170.18 petitions.

The LOPD also has a specific interest in this case, which is by no means procedurally unique. The instant case is one of many cases in which LOPD clients have had to jump through hoops, having petitions rejected in multiple courts due to the conflicting interpretations of the issue presented herein. As this court is aware, in the instant case, a resentencing petition under Penal Code section 1170.18 was initially filed, consistent with the statute's language, in San Diego County, the superior court in which the defendant was sentenced, notwithstanding that a subsequent transfer under Penal Code section 1203.9 had occurred subsequent to the sentencing hearing. Then, after that proved futile, a petition was filed in Riverside County, in the superior court which has "entire jurisdiction" over the defendant under section 1203.9, notwithstanding the language of section 1170.18. But the District Attorney objected to that court hearing the petition, based on the language of section 1170.18.

The LOPD offers a response to the issue presented that is different, analytically, from that of either party. As explained in the brief, there is no conflict between Penal Code section 1203.9 and Penal Code section 1170.18. Based on the plain language of section 1170.18 and taking into account

fundamental notions of subject matter and personal jurisdiction, regardless of whether a section 1203.9 transfer has occurred at some point in the past, a defendant who wishes to avail himself of the relief afforded by section 1170.18 must file a petition in the superior court in which the defendant was most recently granted probation or sentenced to a term of imprisonment in the case at hand.[1]

ISSUE PRESENTED

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?

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[1] Where the defendant is still on probation for the offense, the petition to resentence must be filed in the court which entered the order granting probation. Where the defendant's probation was revoked and a term of imprisonment imposed, the petition will be filed in the court which entered the order imposing the term of imprisonment following the revocation. Where the defendant is no longer serving a sentence for the offense, either because probation has expired or because he has completed the term of imprisonment imposed after revocation and any subsequent period of community supervision, the petition will be filed in the court which imposed the last-in-time sentence order, whether that order was a grant of probation or a sentence of imprisonment.

INTRODUCTION

Practically speaking, when a criminal case is adjudicated in the superior court for the county where venue lies and the case is thereafter transferred to the superior court for the county where the defendant-probationer resides, this is what happens: (1) the prosecutor's case file remains with the prosecutor's office in the county of conviction; (2) the defense case file remains in the defense attorney's office in the county of conviction; and (3) the court's physical file is sent to the superior court for the county to which the case is transferred. Some superior courts have done away with physical "paper" files altogether, and now maintain pleadings and case-related documents only in electronic format. Additionally, all California superior courts have some type of computerized case management system, which generally includes the following case information: the defendant's name, date of birth, and other identifying information, the case number, the name of the arresting agency and date of the suspected law-violation and/or arrest, the date on which any accusatory pleadings are filed and the criminal charges alleged in those pleadings, the name of the defendant's attorney, disposition of the alleged charges, sentencing date and case disposition, and significant post-disposition events, such as data relevant to the defendant's performance on probation.

Whatever decision this court makes, there is a risk that someone will be inconvenienced. Should the court decide that, notwithstanding Penal Code[2] section 1203.9 transfers, section 1170.18 petitions must be filed in the superior court for the county of conviction, some petitioners will be forced to litigate the merits of their petitions in a county with which they no longer have any connection and a few may even be required to travel a substantial distance from where they currently reside. On the other hand, should the court decide that notwithstanding the language of section 1170.18, when a case has been transferred under section 1203.9, the receiving county must rule on the petition, some defendants still will be inconvenienced. While those still serving a sentence (on probation for the offense) will be able to litigate their claims in the county in which they reside, those who are no longer serving a sentence and relocated after the expiration of probation still may find themselves litigating their claims in a remote location.

Many things in the criminal justice system are inconvenient for one side or the other. Take, for instance, postconviction petitions filed by rehabilitated probationers or ex-convicts. Those who petition for a certificate of rehabilitation under section 4852.01 must file in the in which they reside, regardless of where the case file or Probation file may be

[2] Subsequent statutory references are to the Penal Code unless otherwise specified.

physically located and regardless of where they were convicted. On the other hand, those who petition for dismissal under Penal Code section 1203.4, must petition in the superior court which last exercised authority over the defendant in that particular case, regardless of where the crime occurred, where the defendant was convicted, and where he may be living. Inconvenient or not, where, as here, the governing statute is plain, clear and specific about governing procedure, it must be followed.

ARGUMENT

I.

"JURISDICTION" WITHIN THE MEANIING OF PENAL CODE SECTION 1203.9 MEANS JURISDICTION OVER THE PERSON NOT OVER THE SUBJECT MATTER

The issue presented cannot be answered without first ascertaining the meaning of the word "jurisdiction" as used in section 1203.9. Subdivision (b) of section 1203.9 states that, upon accepting transfer of a case from the superior court of another county, the court of the receiving county "shall accept the entire jurisdiction over the case effective the date that the transferring court orders the transfer." (§ 1203.9, subd. (b).) And subdivision (c) similarly uses the phrase "entire jurisdiction": "the receiving court shall have entire jurisdiction over the case, except as provided in subdivisions (d) and (e), with the like power to again request transfer of the case whenever it

seems proper." (§ 1203.9, subd. (c).)

As this Court noted in *Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 291, the term "jurisdiction" is notoriously subject to confusion and is used continuously in a variety of situations, bearing so many different meanings that no single statement can be entirely satisfactory as a definition.

> The concept of jurisdiction embraces a large number of ideas of similar character, some fundamental to any judicial system, some derived from the requirements of due process, some determined by the constitutional or statutory structure of a particular court, and some based upon mere procedural rules originally devised for convenience and efficiency, and by precedent made mandatory and jurisdictional.... [A]s a practical matter, accuracy in definition is neither common nor necessary. Though confusion and uncertainty in statement are frequent, there is surprising uniformity in the application of the doctrine by the courts, so that sound principles may be deduced from the established law by marshalling the cases and their holding in this field.

(*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 291.) What does the phrase "entire jurisdiction" actually mean, then, as it is used in section 1203.9

"To constitute jurisdiction in a criminal case there must be two elements, namely, jurisdiction of the person, and jurisdiction of the subject matter...." (*Burns v. Municipal Court* (1961) 195 Cal.App.2d 596, 599.)

Article VI, section 10 of the California Constitution confers upon superior courts subject matter jurisdiction over public offenses enumerated in state laws or local ordinances. Every California superior court has subject matter jurisdiction with regard to every such offense committed within the state, no matter where the offense was committed. (See, e.g., *People v. Sering* (1991) 232 Cal.App.3d 677, 685; *People v. Remington* (1990) 217 Cal.App.3d 423, 428–429.) Generally speaking, jurisdiction over the person is determined by "the defendant's actions, not his expectations". (*J. McIntyre Machinery, Ltd. v. Nicastro* (2011) 564 U.S. 873, 883.)

> [P]ersonal jurisdiction requires a forum-by-forum, or sovereign-by-sovereign, analysis. The question is whether a defendant has followed a course of conduct directed at the society ... existing within the jurisdiction of a given sovereign, so that the sovereign has the power to subject the defendant to [court proceedings] concerning that conduct.

(*J. McIntyre Machinery, Ltd. v. Nicastro*, *supra*, at p. 884.) "'Personal jurisdiction ... restricts "judicial power not as a matter of sovereignty, but as a matter of individual liberty,' for due process protects the individual's right to be subject only to lawful power. (Citation.) But whether a judicial judgment is lawful depends on whether the sovereign has authority to render it." (*Ibid*, citation omitted.)

The phrase "entire jurisdiction," as used in section 1203.9 cannot relate to subject matter jurisdiction, because the Legislature cannot, by

enacting a statutory provision, alter the subject matter jurisdiction conferred by the constitution to all superior courts. Accordingly, it must mean "jurisdiction over the person."

II.

BY FILING A PETITION UNDER SECTION 1170.18 IN THE SUPERIOR COURT FOR THE COUNTY WHERE HE WAS LAST SENTENCED, A DEFENDANT CONSENTS TO THAT COURT EXERCISING JURISDICTION OVER HIM FOR THE PURPOSES OF ADJUDICATION THE PETITION AND RESENTENCING HIM OR REDESIGNATING HIS PRIOR OFFENSE

As Appellant points out, by its plain terms, Penal Code section 1170.18, subdivision (a) permits the filing of a petition for resentencing "before the trial court that entered the judgment of conviction". Subdivision (f) of section 1170.18, which permits re-designation of a felony offense when the petitioner has completed his or her sentence contains precisely the same language. The language of these statutory provisions is plain and unambiguous, and there is no need to look to intrinsic sources to discern the electorate's intent.

Recognizing, then, that "jurisdiction," within the meaning of section 1203.9 necessarily means "jurisdiction over the person," there is no conflict between section 1203.9 and section 1170.18. Whereas subject matter jurisdiction is fundamental and un-waivable, personal jurisdiction can be conferred by consent of the parties (*People v. Tabucchi* (1976) 64

Cal.App.3d 133, 141), or by a party's actions (*J. McIntyre Machinery, Ltd. v. Nicastro*, *supra*, at p. 883).

By requesting or consenting to transfer of probation from the county where he was convicted to the county where he resides, a defendant consents to the receiving court assuming jurisdiction over his person. That same defendant, by availing himself of the relief afforded by section 1170.18 and filing a petition, as required, "before the trial court that entered the judgment of conviction," consents to the sentencing court's resuming jurisdiction over his person, "regardless of the procedural defects incident to how he got there." (*People v. Domagalski* (1989) 214 Cal.App.3d 1380, 1389, quoting *Ker v. Illinois* (1886) 119 U.S. 436; *People v. Garner* (1961) 57 Cal.2d 135.) In other words, whether or not jurisdiction was previously transferred pursuant to section 1203.9, under the plain language of section 1170.18, if a defendant wishes to avail himself of the relief afforded by section 1170.18, he must consent to the jurisdiction of the superior court of the county of conviction.

CONCLUSION

If the language of section 1203.9 is to be interpreted in accordance with well-settled principles governing jurisdiction of superior courts, and if the language of section 1170.18 is to be given its full meaning and effect, the appellate court's decision to affirm must be reversed.

DATED: 5/10/17

Respectfully submitted,

By: _____
LAURA ARNOLD
On Behalf of CPDA and LOPD

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,	)	No. S31405
	)	
Plaintiff and Respondent,	)	
	)	
v.	)	
	)	
STEVEN ANDREW ADELMANN,	)	
	)	
Defendant and Appellant.	)	
	)	

CERTIFICATE OF WORD COUNT

I, Laura Arnold, hereby certify that based on the software in the word processor program, the word count for this document is 3,541 words.

Dated: 5/10/17

Respectfully submitted,

By: _____
LAURA ARNOLD
On Behalf of *Amici Curiae*
CPDA and LOPD

Case Name: People v. Adelmann
Docket No.: S237602

PROOF OF SERVICE BY U.S. MAIL

I, Laura Arnold, hereby declare that I am a citizen of the United States. I am over 18 years old and not a party to the within action. My business address is 30755-D Auld Rd., Ste. 2233, Murrieta, CA 92563.

On the 10th day of May, 2017, I served the within document,

APPLICATION OF CALIFORNIA PUBLIC DEFENDERS ASSOCIATION AND LAW OFFICES OF THE PUBLIC DEFENDER FOR THE COUNTY OF RIVERSIDE TO APPEAR AS *AMICI CURIAE* (RULE 8.200(c)) AND BRIEF

on each of the following by placing a true copy thereof in a sealed envelope, with postage thereon fully prepaid, and depositing said envelope in the U.S. mail in Murrieta, CA:

Michael A. Hestrin District Attorney 3960 Orange St. Riverside, CA 92501	Gene Vorobyov 450 Taraval St., Ste. 112 San Francisco, CA	Steven Adelmann 33545 Nandina Ln. Murrieta, CA 92563

I declare under penalty of perjury that the foregoing is true and correct. Executed on this, 10th day of May, 2017 at Murrieta, CA.

LAURA ARNOLD