S241231

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Petitioner, v. RIVERSIDE COUNTY SUPERIOR COURT, Respondent, PABLO ULLISSES LARA, JR., Real Party in Interest.	S241231 Ct. App. No. E067296 Super. Ct. No. RIF1601012

REAL PARTY'S SUPPLEMENTAL BRIEF

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TO: THE PRESIDING JUSTICE OF THE CALIFORNIA SUPREME COURT AND THE HONORABLE ASSOCIATE JUSTICES

Real Party, Pablo Ullisses Lara, Jr., respectfully submits the following supplemental brief in response to the Court's August 23, 2017 order requesting supplemental briefing.

QUESTION PRESENTED

Do the juvenile law amendments of Proposition 57 apply retroactively under the rationale of *In re Estrada* (1965) 63 Cal.2d 740?

ANSWER TO QUESTION PRESENTED

The answer to the Court's question is "yes."[1] Although the amendments at issue do not fall squarely within the rule articulated in *In re Estrada* (1965) 63 Cal.2d 740 (*Estrada*), particularly as construed by this court in *People v. Brown III* (2012) 54 Cal.4th 314 (*Brown*), under the *rationale* of *Estrada*, those amendments would apply retroactively. Due to the nature of the amendments and their practical application, the electorate's intention to apply the ameliorative provisions of the initiative broadly, to every case in which they constitutionally can be applied, must be assumed.

ARGUMENT

I.

BECAUSE THE JUVENILE LAW AMENDMENTS OF PROPOSITION 57, AT LEAST POTENTIALLY, AMELIORATE PUNISHMENT FOR ELIGIBLE JUVENILE OFFENDERS, THE RATIONALE OF *IN RE ESTRADA* APPLIES, AND AN INTENTION OF BROAD APPLICATION MUST BE ASSUMED

While Penal Code section 3 and Civil Code section 3 both set forth a presumption against retroactive application of laws, as this Court explained in *In re Estrada* (1965) 63 Cal.2d 740, this presumption "is not a straitjacket".

> Where the Legislature has not set forth in so many words what it intended, the rule of construction should not be followed blindly in

[1] Although Real Party maintains that application of Welfare and Institutions Code section 707, as amended, in the case at bar is prospective in nature and is in agreement with the Court of Appeal, should this Court adopt Petitioner's position, that the filing of a case against a child in criminal court is the last act necessary to trigger application of the amended law, application of the amendments to Real Party would be retroactive.

> complete disregard of factors that may give a clue to the legislative intent. It is to be applied only after, considering all pertinent factors, it is determined that it is impossible to ascertain the legislative intent.[2]

(*In re Estrada* (1965) 63 Cal.2d 740, 746.)

At issue in *Estrada* was a statutory reduction in the proscribed punishment for the defendant's crime, nonforcible escape, which became effective after the defendant's act of escape occurred and after the complaint was filed, but before he pled guilty and was sentenced. (*In re Estrada*, *supra*, at p. 743.) The new law was silent as to whether the Legislature intended for it to apply to crimes committed before its effective date. Estrada was sentenced based on the law as it existed on the date of the offense, rather than at the time of sentencing. This was likely due to this court's 1960 four-to-three decision in *People v. Harmon* (1960) 54 Cal.2d 9 (*Harmon*), which held that, due to the existence of Government Code section 9608[3], which the court construed as a "saving clause," an "[a]meliorative

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[2] A thorough discussion of the pertinent factors pertaining to the juvenile law amendments of Proposition 57 is set forth in Real Party's Answering Brief, pp. 6-17. As explained therein, this is *not* a situation where, after considering all pertinent factors, it is impossible to ascertain the electorate's intent.

[3] Government Code section 9608 has not changed since 1943. It provides: "The termination or suspension (by whatsoever means effected) of any law creating a criminal offense does not constitute a bar to the indictment or information and punishment of an act already committed in violation of the law so terminated or suspended, unless the intention to bar such indictment or information and punishment is expressly declared by an applicable provision of law." (Govt. Code, § 9608.) The *Estrada* court concluded section 9608 does not require deviation from the settled rule, because, in that statute, the Legislature neither directly nor indirectly indicated whether it intended that the defendant be punished under the old law or the new one. (*Estrada*, *supra*, at pp. 747-748.)

amendment of a statute prescribing punishment should not be presumed to have been intended to effect retrospective repeal of the punishment prescribed at the time of the offense." (*People v. Harmon, supra,* at p. 29.)

Harmon marked a deviation from the weight of authority and previous rule in California that, where, after the offense but while the case is pending appeal, a statute is amended so as to mitigate the punishment, absent a saving clause, the lesser punishment must be imposed. (*People v. Harmon, supra*, at pp. 28-29, opinion of J. Peters, dissenting; *Sekt v. Justice's Court of San Rafael TP* (1945) 26 Cal.2d 297, 305-306.) These cases were based on the rationale that "it must have been the intention of the Legislature that the offender should be punished, and, since he can be constitutionally punished under the new statute, that should be done." (*Sekt v. Justice's Court, supra*, at p. 305.)

> The reasoning is that, without a saving clause, the offender cannot be punished under the old statute, and if he is to be punished at all, as the Legislature has clearly indicated, he must be punished under the new law. Therefore, the general rule that statutes should ordinarily be construed to operate prospectively, and should not be construed to operate retroactively ... is not applicable. That is so because the intent to operate retroactively can be spelled out of the amending statute, and its practical application.

(*Harmon, supra*, at p. 29, dissenting opinion of J. Peters.) *Harmon* was disapproved in *Estrada*. (*In re Estrada, supra*, at p. 748.)

At the core of the inquiry in *Estrada* was the question of legislative intent. "Had the Legislature expressly stated which statute should apply, its determination, either way, would have been legal and constitutional. It has not

done so. We must, therefore, attempt to determine the legislative intent from other factors." (*Id.*, at p. 744.) The *Estrada* court identified what, in its view, was a consideration of "paramount importance" in the case before it, compelling the conclusion that the Legislature must have intended for the amended statute to prevail over its harsher predecessor.

> When the Legislature amends a statute so as to lessen the punishment it has obviously expressly determined that its former penalty was too severe and that a lighter punishment is proper as punishment for the commission of the prohibited act. It is an inevitable inference that the Legislature must have intended that the new statute imposing the new lighter penalty now deemed to be sufficient should apply to every case to which it constitutionally could apply. The amendatory act imposing the lighter punishment can be applied constitutionally to acts committed before its passage provided the judgment convicting the defendant of the act is not final.

(*In re Estrada*, *supra*, at p. 745.) To hold otherwise, the court reasoned, would be to conclude that the enacting body was "motivated by a desire for vengeance, a conclusion not permitted in view of modern theories of penology." (*In re Estrada*, *supra*, 62 Cal.2d at p. 745.)

Five years ago, in *People v. Brown III* (2012) 65 Cal.4th 314 (*Brown*), this court declined to apply *Estrada* to a change in Penal Code section 4019, the law governing presentence conduct credits, which increased the rate at which county jail inmates earned conduct credits for good behavior during time spent in local custody. The analysis began, as with all of these cases, with discerning legislative intent. (*Brown*, *supra*, at p. 319.) Noting that the statute contained no express declaration that increased conduct credits are to be awarded retroactively and

finding no clear implication from relevant extrinsic sources that the Legislature intended to apply it retroactively, the *Brown* court concluded that the statute applies prospectively only. (*Id.*, at p. 322.)

The analysis then turned to a discussion of *Estrada*. The *Brown* court clarified that "*Estrada* is today properly understood, not as weakening or modifying the default rule of prospective operation codified in section 3, but rather as informing the rule's application in a specific context by articulating the reasonable presumption that a legislative act mitigating the punishment for a particular criminal offense is intended to apply to all nonfinal judgments." (*Brown, supra,* at p. 324.) The Court reasoned that Penal Code section 4019, a statute "increasing the rate at which prisoners may earn credits for good behavior" does not represent "a judgment about the needs of the criminal law with respect to a particular criminal offense," and thus, "does not support an analogous inference of retroactive intent." (*Id*, at p. 325.) Rather than addressing past conduct, the amendment to section 4019, which provides increased incentives for good behavior during a period of incarceration, addresses future conduct. (*Ibid.*)

The juvenile law amendments of Proposition 57, which did not mitigate the punishment "for a particular criminal offense," do not fit neatly into the *Estrada* rule, as articulated by this court in *Brown.* Accordingly, as Petitioner has pointed out, lower courts are sharply divided as to whether the rule applies to those tried and convicted of crimes they committed while a minor, whose cases were not final

on appeal when the juvenile law amendments became effective.[4] However, there can be no question that the *rationale* of *Estrada* applies, and that *Brown*, while clarifying the *Estrada* rule, in no way eviscerated the consideration of "paramount importance" on which its assumption of broad application was based. (See *People v. Conley* (2016) 63 Cal.4th 646, 657 [recognizing that *Estrada* rests on the inference that, "in the absence of contrary indications, a legislative body ordinarily intends for ameliorative changes to the criminal law to extend as broadly as possible"].)

By changing the way juveniles can be treated (tried and punished) for crimes committed when they were children, the amendments to Welfare and Institutions Code sections 602 and 707 mitigated the penalty for a whole category of crimes, committed by a particular class of offenders, at least potentially[5]. The

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[4] Most recently, the Second District Court of Appeal, Division 5, in *People v. Pineda* (Aug. 14, 2017, B267886) __ Cal.App.4th __; 2017WL3474811, joined the Fourth District, Division 3, which decided *People v. Vela* (2017) 11 Cal.App.5th 68, revw. granted July 12, 2017, S242298, holding that the juvenile law amendments of Proposition 57 *do* apply retroactively to cases not yet final on appeal under the *Estrada* rule. But four other appellate courts have published opinions in which the opposite conclusion was reached. (See *People v. Superior Court (Walker)* (2017) 12 Cal.App.5th 687 (Fourth Dist., Div. One) [defendant tried and convicted prior to Proposition 57, but conviction reversed on appeal]; *People v. Marquez* (2017) 11 Cal.App.5th 816, review granted July 12, 2017, S241647 (Fifth Dist.); *People v. Mendoza* (2017) 10 Cal.App.5th 327, revw. granted July 12, 2017, S241647 (Sixth Dist.); *People v. Cervantes* (2017) 9 Cal.App.5th 569, review granted May 17, 2017, S241323 (First District, Division 4).)

[5] That there is no guarantee that a child made the subject to a 707 hearing will remain in juvenile court, rather than be transferred to a criminal court, is of no significance. As this Court held in *People v. Francis* (1969) 71 Cal.2d 66, 76,

principle of "paramount importance" underlying the *Estrada* decision, that when lawmakers decide to lessen punishment, they do so based on the determination that the former punishment scheme was too severe, and therefore must have intended that the appropriate punishment apply to all cases not yet final on appeal, *definitely* applies to the juvenile law amendments of Proposition 57.

Overall, the purpose of Proposition 57, including the juvenile law amendments, was to ameliorate punishment – to reduce lengthy prison sentences and require, instead, that resources be devoted towards evidence-based practices geared toward rehabilitation, particularly for children.[6] Although the initiative did not specifically change the punishment for any crime, its constitutional amendments certainly *affected* punishment for the vast majority of felons committed to prison, by authorizing enhanced conduct credits and creating early release provisions. Similarly, the initiative's juvenile law amendments, while not changing the punishment for a particular crime, affected *the philosophy of punishment* for a class of child offenders, by generally prohibiting lengthy prison sentences unless a judicial officer has determined that a child cannot be rehabilitated in Juvenile Court and *must*, therefore, be punished as an adult for his

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when a change in the law allows, even potentially, for a less severe sentence, the reasoning of *Estrada* applies.

[6] This change in philosophy is directly in line with the United States Supreme Court's recognition that "children are constitutionally different from adults for purposes of sentencing" based "not only on common sense—on what 'any parent knows'—but on science and social science as well." (*Miller v. Alabama* (2012) 567 U.S. 460, 471; see also *Roper v. Simmons* (2005) 543 U.S. 551, *Graham v. Florida* (2010) 560 U.S. 48.)

criminal conduct. Just as in *Estrada*, given the nature of these amendments, "it is an inevitable inference that the Legislature must have intended that the new statute imposing the new lighter penalty now deemed to be sufficient should apply to every case to which it constitutionally could apply." (*Estrada*, *supra*, at p. 745.) To hold otherwise, would be to conclude that the electorate, in adopting Proposition 57 without any express retroactivity provision, was "motivated by a desire for vengeance" with regard to children who, like Real Party, were brought under the criminal court's jurisdiction without a fitness hearing before the initiative was adopted but to whom its provisions can still be constitutionally applied. Such a conclusion is not permitted, "in view of modern theories of penology," particularly with respect to children. (*In re Estrada*, *supra*, 62 Cal.2d at p. 745.)

CONCLUSION

As explained in Real Party's Answering Brief, the electorate's intent, in amending sections 602 and 707 by adopting Proposition 57, *can* be determined from the text of the initiative and relevant extrinsic materials. But even if it could not, because these amendments mark an ameliorative change in the treatment and punishment of those believed to have committed certain crimes while children, the rationale of *Estrada* applies, and an intent to apply the amendments as broadly as possible must be drawn. Requiring that certain children, based solely on the date on which a case was filed against them, remain in adult court, without the confidentiality afforded juveniles, without the accelerated timeframes of juvenile

court proceedings, so critical for rehabilitating adolescents, and without the overarching protective philosophy of juvenile court law, would be irrational, motivated "by a desire for vengeance." Such a conclusion would be at odds with the intent of the electorate in its approval of Proposition 57.

Dated: August 29, 2017

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

I, WILLIAM A. MERONEK, do hereby certify that, according to the computer program used to prepare the instant brief, including headings and footnotes, the length of the brief is 2,990 words.

I declare the foregoing to be true under penalty of perjury. Executed this 29th of August, 2017, at Riverside, California.

WILLIAM A. MERONEK

Declaration of Service
(C.C.P. 1013a and 2015.5)

People v. Superior Court (*Lara*)
Docket Number: S241231

I am a citizen of the United States and a resident of the county of Riverside, State of California. I am over the age of 18 years and not a party to the within action.

On the date of execution of this document, I served the foregoing Real Party In Interest's Supplemental Brief electronically, to the following parties and/or their attorneys, as follows:

Donald Ostertag, Attorney for Petitioner, at Appellate-unit@rivcoda.org

Riverside County Superior Court at appealsteam@riverside.courts.ca.gov

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Pablo Lara, Jr., through trial counsel, Steven S. Mitchell, at mitchellaw4u@gmail.com

In addition, on the date of execution of this document, I served the foregoing Supplemental Brief on the Fourth District Court of Appeal, Division Two, through Truefiling, Case E067296.

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

Executed on August 29, 2017, at Riverside, California.

WILLIAM A. MERONEK