

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff and Respondent,

v.

STEVEN LLOYD MOSLEY,

Defendant and Appellant.

S187965

Court of Appeal No. G038379

(Orange County
Superior Court
No. 05NF4105)

SUPREME COURT
FILED

ANSWER TO PETITION FOR REVIEW NOV 17 2010

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under Appellate Defender's Inc.,
independent case system

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TO THE HONORABLE RONALD M. GEORGE, CHIEF JUSTICE, AND
TO THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA
SUPREME COURT:

Pursuant to rule 8.500, subdivision (a)(2) of the California Rules of
Court, appellant makes this Answer to the Petition for Review filed
November 5, 2010.

ANSWER TO QUESTION PRESENTED

Jessica's Law residency restriction renders discretionarily imposed
sex-offender registration pursuant to Penal Code section 290.006
unconstitutional under *Apprendi v. New Jersey* (2000) 530 U.S. 466, in the
absence of a jury trial, or waiver thereof, on the facts required to support
the registration order.

**THE OPINION DOES NOT CONFLICT WITH ANY OF THE CITED
DECISIONS OF THIS COURT ON ANY IMPORTANT QUESTION
OF LAW**

The Petition for Review states the Court of Appeal decision “conflicts with decisions of this Court on an important question of law involving enforcement of constitutionally valid sex-offender registration.” (Pet’n., p. 3.) Appellant disagrees.

Respondent’s Petition cites *People v. Hofsheier* (2006) 37 Cal.4th 1185, 1197, *In re Alva* (2004) 33 Cal.4th 254, 268, and *People v. Castellanos* (1999) 21 Cal.4th 785, 796, for the proposition that “sex-offender registration does not constitute punishment.” (Pet’n., p. 4.)

But, as the Opinion notes, “*the effect of sex offender registration changed when the voters approved Jessica’s Law in 2006.*”¹ (Pet’n. Attachment, p. 17, italics added.) *Hofsheier*, *Castellanos*, and *Alva* addressed issues in cases pre-dating passage of Jessica’s Law. Thus, they had no occasion to consider whether sex-offender registration now involves a new and onerous burden. It is well established that cases are not authority for propositions not considered therein. (*People v. Barragan* (2004) 32 Cal.4th 236, 243.)

¹ “Jessica’s Law,” codified at Penal Code section 3003.5, subdivision (b), was approved by the passage of Proposition 83, the “Sexual Predator Punishment and Control Act: Jessica’s Law.”

Because sex-offender registration now triggers Jessica's Law residency restriction, which is punitive in effect, the underlying facts must be submitted to a jury and proved beyond a reasonable doubt (*Apprendi v. New Jersey, supra*, 530 U.S. 466), or the facts may be admitted (see generally *Boykin v. Alabama* (1969) 395 U.S. 238, 242-244). Thus, there is no conflict between the decision below and any of the three cases above.

Respondent's Petition also cites *People v. Picklesimer* (2010) 48 Cal.4th 330, 344, for the proposition that "whether the residency restriction is valid does not affect whether the registration requirement is valid." (Pet'n., p. 4.) "In other words, even if the residency restriction is invalid, a trial court may still order sex-offender registration pursuant to section 290.006." (Pet'n., p. 5.)

But the Opinion below does not address the question whether Jessica's Law is "valid" or "invalid." It never says Jessica's Law on its face is unconstitutional, or invalid. It simply says Jessica's Law is punitive, and is a new consequence of sex-offender registration, which makes sex-offender registration punitive. But punitive measures are not unconstitutional, so long as the triggering facts are proved to a jury beyond a reasonable doubt, or admitted.

The triggering facts for imposition of Jessica's Law on a person not subject to mandatory registration are found in Penal Code section 290.006: ". . . that the person committed the offense *as a result of sexual compulsion*

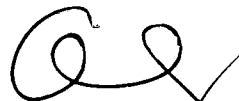
or for purposes of sexual gratification.” (Italics added.) Submission of these factual questions to a jury is what the Opinion requires. Nothing about this holding conflicts with *Picklesimer*.

CONCLUSION

Accordingly, for the above stated reasons, appellant asks this court to deny review of this matter.

Dated: **November 15, 2010**

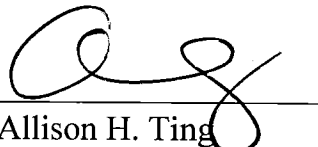
Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Allison H. Ting', with a stylized flourish at the end.

Allison H. Ting
Attorney for Appellant

WORD-COUNT CERTIFICATE

I, Allison H. Ting, counsel for respondent, certify pursuant to the California Rules of Court, that the word count for this document is **986** words, excluding the tables, this certificate, and any attachment permitted under rule 8.204(c)(1). This document was prepared with Word, and this is the word count generated by the program for this document. I certify that the foregoing is true and correct. Executed at Los Angeles, California, on **November 15, 2010**.



Allison H. Ting
Attorney for Appellant

DECLARATION OF SERVICE BY MAIL

**RE: People v. STEVEN LLOYD MOSLEY, S187965;
Case No. G038379; Orange County Superior Court No. 05NF4105**

I, Allison H. Ting, declare that I am over 18 years of age, and not a party to the within cause; my business address is 1158 26th Street, # 609, Santa Monica, CA 90403; I served a copy of the attached:

ANSWER TO PETITION FOR REVIEW

on each of the following, by placing same in an envelope(s) addressed as follows:

**Attorney General
P.O. Box 85266
San Diego, CA 92186-5266**

**STEVEN LLOYD MOSLEY
(address on file)**

**Appellate Defenders, Inc.
555 Beech Street, # 300
San Diego, CA 92101-2939**

**Court of Appeal, 4th Dist./Div.3
P.O. Box 22055
Santa Ana, CA 92702**

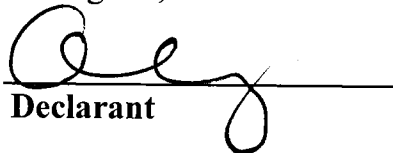
**Kal Kaliban, Deputy DA
Office of District Attorney
401 Civic Center Drive West
Santa Ana, CA 92701**

**Clerk for Delivery to:
Honorable David Hoffer, Judge
Orange County Superior Court
700 Civic Center Drive West
Santa Ana, CA 92702**

Each said envelope was then, on **November 15, 2010**, sealed and deposited in the United States Mail at Los Angeles, California, with the postage thereon fully prepaid.

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

Executed on **November 15, 2010**, at Los Angeles, California.


Declarant