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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

CARY ACORD,

Petitioner,

v.

THE SUPERIOR COURT OF ALAMEDA
COUNTY,

Respondent;

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Real Party in Interest.

A141544

(Alameda County Superior
Court No. 104936)

BY THE COURT:¹

Petitioner pled guilty in 1990 to one count of oral copulation by a person over 21 years old with a person under 16 years old, a violation of Penal Code section 288a, subdivision (b)(2). In 2013, petitioner filed a petition for writ of mandate in the trial court arguing that under *People v. Hofsheier* (2006) 37 Cal.4th 1185 (*Hofsheier*), the mandatory lifetime sex offender registration for a violation of Penal Code section 288a, subdivision (b)(2), was an equal protection violation. The trial court acknowledged that there was a split of authority on whether *Hofsheier* applied to petitioner's crime, but

¹ Before Kline, P.J., Richman, J., and Brick, J.*

*Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

sided with the one case that found *Hofsheier* did not apply and concluded that petitioner's registration requirement was mandatory, not discretionary. Petitioner challenged that decision here by a petition for writ of mandate. We asked for and have received informal opposition from the Attorney General and a reply from petitioner.

In the informal opposition, the Attorney General concedes, stating "we agree that the mandatory registration requirement violates petitioner's equal protection rights and respectfully request that this Court remand petitioner's case to the superior court so that it may determine whether to impose discretionary sex offender registration." The concession is legally warranted.

Let a peremptory writ of mandate issue commanding respondent superior court to vacate its order finding mandatory sex offender registration for petitioner and, consistent with *Hofsheier, supra*, 37 Cal.4th 1185, to exercise its discretion in determining whether petitioner should be required to register as a sex offender.