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No. _____

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re **JOHN MANUEL GUIOMAR,** On Habeas Corpus.	H043114 (Monterey County Superior Court No. SS131590A, SS131650A)

From the Superior Court of Monterey County,
The Honorable Pamela L. Butler,
and Lydia M. Villarreal, Judges

PETITION FOR REVIEW

After the Decision of the Court of Appeal, Sixth Appellate District,
Filed November 7, 2016, Modifying the Judgment of the Superior Court

SIXTH DISTRICT APPELLATE PROGRAM
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TABLE OF CONTENTS

TABLE OF CONTENTS (CONTINUED)

TABLE OF AUTHORITIES

CASES

TABLE OF AUTHORITIES (CONTINUED)

TABLE OF AUTHORITIES (CONTINUED)

CONSTITUTIONS

STATUTES

TABLE OF AUTHORITIES (CONTINUED)

MISCELLANEOUS

No. _____

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PETITION FOR REVIEW

TO: The Honorable Tani Cantil-Sakauye, Chief Justice, and the Associate Justices of the California Supreme Court:

John Manuel Guiomar, petitioner in the Court of Appeal, respectfully petitions this Court for review of the published decision, attached as exhibit 1 to this petition, by the Court of Appeal, Sixth Appellate District, filed on November 7, 2016 after the issuance of an order to show cause. The court of appeal corrected its decision on November 17, 2016 to address a clerical error. (Exh. 2.)

ISSUES PRESENTED

This is another case concerning Proposition 47, the Safe Neighborhood and Schools Act (Gen. Elec. (Nov. 4, 2014)). Petitioner had received a six year prison sentence on four different cases. He filed a petition under Penal Code section 1170.18 on two of the cases to reduce them to misdemeanors. The court did so, but it also increased the sentence on a robbery conviction in

a third case to be six years long. In the fourth case, petitioner had been convicted of a felony failure to appear on a felony matter, but the underlying felony matter that he failed to appear on has been reduced to a misdemeanor under Proposition 47.

1. Was petitioner prejudicially deprived of his right to be present at the sentencing hearing (U.S. Const., 14th Amend. [due process clause]; Cal. Const., art. I, §§ 7, 15 [due process clauses]; Pen. Code, §§ 977, 1193) where petitioner could have argued that the court should not impose a "stipulated" term of six years?

2. Was the court required to vacate petitioner's felony conviction for a failure to appear on a felony under Penal Code section 1320.5 when the offense for which he failed to appear had been reduced to a misdemeanor under Penal Code section 1170.18?

3. After granting the petition in two cases to reduce the convictions to misdemeanors under Penal Code section 1170.18, did the court have jurisdiction to resentence petitioner on the two other cases not before the court?

4. Was trial counsel ineffective for not objecting to the six year term or "stipulat[ing]" to it, for not moving to vacate the felony conviction for failing to appear, or for failing to object to petitioner being sentenced *in absentia*?

REASON TO GRANT REVIEW

First, a defendant has a due process and statutory right to be present at a sentencing hearing. The court of appeal agreed that a sentencing hearing after finding a defendant eligible under Proposition 47 qualifies as one in which petitioner had the right to be present. (Opn. at pp. 14-15.) The court concluded deprivation of the right was harmless. (Opn. at pp. 15-16.) This conclusion cannot be supported by the record. The court restructured the sentence to be six years because of a stipulation. While the record was not clear, the stipulation either concerned the stipulated six year sentence at the plea bargain or trial counsel entered a new stipulation at the new sentencing hearing. (Pet. exh. F.)[1] With petitioner absent, no one argued the court had the authority to impose a shorter sentence than six years or that it should under the facts of the case. Had petitioner been present, he would have presented the arguments made in his pro per habeas petition that the court had the power to impose a sentence of less than six years and should do so under the facts of the case. He would have refused to enter any new stipulation for a six year sentence, especially since there was nothing gained from such a concession. It cannot be concluded the court necessarily would have imposed the same sentence had petitioner been present.

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[1] References to a "pet. exh." are to the exhibits to the habeas corpus petition filed in the court of appeal.

Review is appropriate because no case to date has defined a defendant's right to be present at a new sentencing hearing held under Proposition 47 and when such an error is prejudicial. As is clear from the large number of Proposition 47 cases decided by the court of appeal and on review in this court, this area of the law is not well defined and the problem is likely to recur. With the passage of the Adult Use of Marijuana Act, permitting petitions to reduce certain marijuana convictions (Prop. 64, § 8.7 (Gen. Elec. (Nov. 8, 2016)), enacting Health & Saf. Code, § 11361.8), this is an issue that is likely to recur in other contexts as well.

Second, the court of appeal decided petitioner's felony conviction for a failure to appear on a felony under Penal Code section 1320.5[2] was not affected, though the offense for which he failed to appear has been reduced to a misdemeanor under section 1170.18. (Opn. at pp. 11-13.) As the court of appeal acknowledged (opn. at p. 11, fn. 3), this issue is related to two cases already on review. In *People v. Valenzuela* (2016) 244 Cal.App.4th 692 (review granted Mar. 30, 2016, S232900), this court is considering whether a defendant is eligible for resentencing on the penalty enhancement for serving a prior prison term on a felony conviction after the superior court had reclassified the underlying felony as a misdemeanor under the provisions of

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[2] Unless otherwise specified, all further statutory references are to the Penal Code.

Proposition 47. In *People v. Buycks* (2015) 241 Cal.App.4th 519 (review granted Jan. 13, 2016, S231765), this court is considering whether a defendant is eligible for resentencing on the penalty enhancement for committing a new felony while released on bail on a drug offense even though the superior court had reclassified the conviction for the drug offense as a misdemeanor under the provisions of Proposition 47. This case presents whether a defendant is eligible for resentencing on the felony conviction of failing to appear on a felony when the underlying felony has been reclassified as a misdemeanor under Proposition 47.

Third, several courts have held that the court may nonetheless restructure the sentence from charges or cases not within the scope of the petition. (*People v. Mendoza* (Nov. 15, 2016. B272222) __ Cal.App.5th __ [2016 Cal.App. lexis 975]; *People v. Cortez* (2016) 3 Cal.App.5th 308, 311-317; *People v. McDowell* (2016) 2 Cal.App.5th 978, 983; *People v. Rouse* (2016) 245 Cal.App.4th 292, 300; *People v. Roach* (2016) 247 Cal.App.4th 178, 183-187; *People v. Sellner* (2015) 240 Cal.App.4th 699, 701-702.) The court of appeal followed the cases. (Opn. at pp. 5-9.) However, "[u]nder the general common law rule, a trial court is deprived of jurisdiction to resentence a criminal defendant once execution of the sentence has commenced. [Citations.]" (*People v. Karaman* (1992) 4 Cal.4th 335, 344.) Petitioner filing a petition under Penal Code section 1170.18 provided the court jurisdiction

in two cases, but the other two cases were never properly before the court. Carving out an exception to the general rule for Proposition 47 cases runs counter of the express intent of the electorate to save costs and decrease punishment for qualified individuals. (Prop. 47, § 3.)

Finally, this case concerns the role of trial counsel at the resentencing hearing. It is understandable that trial courts try to handle the resentencing petitions as efficiently as possible. From the perspective of the defendants and the public, however, important decisions are being made. A defendant has the right counsel at the sentencing hearing, especially if he is not brought to court. (*Rouse, supra,* 245 Cal.App.4th at p. 301.) And he is entitled to the effective assistance of counsel. (*Glover v. United States* (2001) 531 U.S. 198, 204; see *Lafler v. Cooper* (2012) 566 U.S. __ [132 S.Ct. 1376, 1385-1386].) Trial counsel was given the file just before the sentencing hearing and asked to stand in for the attorney who normally handled the calendar. The file had a note with instructions. Trial counsel did what he was told, without petitioner present or consulting with him. (Trav. pet. G.) This included not opposing a six year sentence. Petitioner's representation was ineffective. Trial counsel never sought to have petitioner present, failed to argue that the felony conviction for the failure to appear was no longer valid, and failed to argue that the court should impose a sentence of less than the original six years, though re-imposing the six year sentence required restructuring the sentence

of cases that petitioner did not bring to court.

Accordingly, review is appropriate in order "to secure uniformity of decision" and "to settle an important question of law." (Cal. Rules of Court, rule 8.500(b)(1).)

STATEMENT OF THE CASE

Petitioner's convictions arose from four cases in the Monterey County Superior Court. Pursuant to a plea bargain, it was agreed he would serve a total of six years, which was imposed on March 24, 2014. (Pet. exh. F.)

In case no. SS131590A, petitioner was convicted of robbery (§ 211) with a prior "strike" conviction (§§ 667, subds. (b)-(i), 1170.12), and he was sentenced to serve 4 years in prison (the lower term doubled).

Petitioner was arrested for felony possession of narcotics (Health & Saf. Code, § 11350, subd, (a)) in case no. SS130616A. He was released on bail and failed to appear. He was charged in case no. SS131650A with a felony failure to appear on a felony (§ 1320.5) with a prior strike conviction. He pled no contest in both cases, but he did not admit the prior strike conviction, which was dismissed as part of the bargain. The court imposed a consecutive term of 8 months for the failure to appear and a concurrent term of two years for drug possession.

In case no. SS131649A, petitioner was convicted of commercial burglary (§§ 459, 460, subd. (b)) with a prior strike conviction, and he was

sentenced to serve a consecutive term of 1 year 4 months.

After the passage of Proposition 47, enacting section 1170.18, Mr. Guiomar filed petitions for resentencing in cases nos. SS130616A and SS131649A. In case no. SS130616A, the petition was filed on December 15, 2014, and the court reduced the conviction for drug possession to a misdemeanor on February 25, 2015. (Pet. exh. B.)

Mr. Guiomar petitioned on March 31, 2015 to reduce the commercial burglary conviction to a misdemeanor in case no. SS131649A. (Pet. exh. C.) The court appointed counsel but did not transport petitioner from prison, and he did not appear at his sentencing hearing. On May 6, 2015, the court granted the petition to reduce the conviction for commercial burglary to a misdemeanor. However, it also resentenced petitioner in cases nos. SS131590A and SS13650A. It imposed six years for robbery (the middle term doubled) and a concurrent term of four years for the failure to appear (the middle term doubled). (Pet. exhs. A at pp. 2-3 [abstract of judgment], D, E, F [minute orders of the resentencing hearing].)

Mr. Guiomar filed a petition for writ of habeas corpus in the Monterey County Superior Court on October 21, 2015, and the court denied relief on December 16, 2015. (Exh. F.)

Mr. Guiomar filed a new habeas corpus petition on January 5, 2016 in the court of appeal to renew his claims; the court of appeal issued an order to

show cause and appointed counsel on April 26, 2016. A supplemental habeas corpus petition was filed on July 7, 2016, and an order to show cause was issued on August 4, 2016. In addition to the claims raised in this review petition, it was also claimed that the four year concurrent sentence for the failure to appear was unauthorized. On November 7, 2016, the court of appeal agreed the four year term was unauthorized (opn. at p. 16), but it otherwise rejected petitioner's claims. No rehearing petition was filed, but the court of appeal corrected its decision on November 17, 2016 to address a clerical error. (Exh. 2.)

STATEMENT OF FACTS

The facts of the underlying cases are irrelevant to the claims raised.

ARGUMENT

I. THE TRIAL COURT VIOLATED PETITIONER'S RIGHT TO BE PRESENT AT THE RESENTENCING HEARING, AND TRIAL COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING.

A. Petitioner had a Right to be Present at a New Sentencing Hearing.

"Pronouncement and judgment . . . is a critical stage in the criminal prosecution when the constitutional rights to appear and defend, in person and with counsel [citation] apply" (*In re Cortez* (1971) 6 Cal.3d 78, 88, internal quotation marks omitted; §§ 977, 1193.)

Under the due process clause of the Fourteenth Amendment to the United States Constitution, the defendant has the right to be present at any critical stage, including sentencing. (*United States v. Gagnon* (1985) 470 U.S. 522, 526.) Similarly, article I, section 15 of the California Constitution states: "The defendant in a criminal cause has the right . . . to have the assistance of counsel for the defendant's defense, to be personally present with counsel . . . . [¶] Persons may not . . . be deprived of life, liberty, or property without due process of law." At the hearing, the defendant has a right to "present evidence with respect to mitigation of sentence (Pen. Code, § 1204)." (*Cortez, supra,* 6 Cal.3d at p. 88.)

A defendant does not have the right to be present to correct a sentence. (*People v. Rodriguez* (1998) 18 Cal.4th 253, 258.) But resentencing here was more than a mere correction of a sentence. The court had discretion at the hearing to simply reduce the conviction for commercial burglary to a misdemeanor and leave the remaining sentences of 4 years 8 months untouched. If it had done so, petitioner would not now be before this court. Instead, the court exercised its discretion to restructure the sentence to be six years (this assumes the court had the discretion to restructure the sentence at all, which petitioner disputes in the original habeas corpus petition).

The court of appeal agreed petitioner was deprived of his right to be present. (Opn. at pp. 14-15.)

B. Sentencing Petitioner *in Absentia* Requires Reversal.

The unconstitutional *in absentia* sentencing is a structural error and a new hearing must be ordered. (*People v. Mora* (2002) 99 Cal.App.4th 397, 399; *People v. Arbee* (1983) 143 Cal.App.3d 351, 355-356.) The court of appeal disagreed, stating that neither case addressed whether the error was structural. (Opn. at p. 15.) But in both cases, the court ordered a new sentencing hearing without consideration of prejudice. (*Mora,* at p. 399; *Arbee,* at pp. 355-356.)

The court of appeal relied on *People v. Davis* (2005) 36 Cal.4th 510, 532 to conclude reversal is not required if the error was harmless beyond a reasonable doubt under *Chapman v. California* (1967) 386 U.S. 18, 24. (Opn. at p. 15.) But the case concerned a defendant's absence from a pretrial hearing. This case concerns the absence from the entire sentencing hearing, and this is equivalent of being absent from the entire trial in the sense that there was a structural error in the sentencing hearing. Under these circumstances, the entire sentence must be reversed.

In any event, reversal is required under any standard. "The United States Supreme Court has recognized that a criminal defendant's need for counsel may be greatest at the time of sentencing because the judge then frequently 'moves within a large area of discretion' and may want to bring to his aid every consideration that defendant's counsel can appropriately urge."

(*People v. Cropper* (1979) 89 Cal.App.3d 716, 719-720, quoting *Carter v. Illinois* (1946) 329 U.S. 173, 178.)

The court operated under the view that the six year sentence was stipulated. (Pet. exh. F.) It was not clear if the stipulation referred to the plea bargain or a new stipulation by trial counsel at the resentencing hearing, and the court of appeal faulted petitioner for not obtaining the transcript of the resentencing hearing. (Opn. at pp. 15-16.) But under either scenario, prejudice exists.

It is most likely the court was under the mistaken view that it was required to impose the six years that was originally agreed to as part of the plea bargain. (Trav. exh. G.) First, there was no reason to stipulate to a six year sentence at the resentencing hearing because petitioner was entitled to have the two qualifying convictions reduced to misdemeanors. Second, in *People v. Dunn* (2016) 248 Cal.App.4th 518, the court reversed Judge Pamela L. Butler, the same superior court judge in this case, when she refused to resentence a defendant under Proposition 47 because it would purportedly deprive the prosecution of the benefit of the plea bargain. (*Id.* at pp. 525-527.) The court also ruled that the prosecution could not attempt to withdraw the plea. (*Id.* at pp. 527-532; see also *Harris v. Superior Court* (Nov. 10, 2016, S231489) __ Cal.5th __ [2016 Cal. Lexis 9040].) *Harris* was on review at the time of the resentencing hearing, but this only demonstrates that if the court

acted with a misapprehension that is was bound to impose the six year sentence that was "stipulated" at the time of the plea bargain, then the court would have benefitted with more information from petitioner.

Alternatively, trial counsel stipulated at the resentencing hearing to a six year sentence without consulting with petitioner. There was no tactical reason for this. The court was required to reduce the qualifying convictions to misdemeanors. Nothing was gained from such a stipulation. Had petitioner been present, he would have objected to such a stipulation.

In exercising its sentencing discretion, the court needed to have all relevant information. (*People v. Tran* (2015) 242 Cal.App.4th 877, 887 ["[t]o exercise the power of judicial discretion all the material facts in evidence must be both known and considered, together also with the legal principles essential to an informed, intelligent and just decision" (internal quotation marks omitted)].) In making this decision, the court necessarily needed information concerning petitioner's rehabilitation in prison. (See *Van Velzer v. Superior Court* (1984) 152 Cal.App.3d 742, 744 [the court may consider mitigating information after the last sentencing hearing].) Both the court and trial counsel would have benefitted from petitioner's input before resentencing. Because he was deprived of his right to be present, his arguments that the court lacked the authority to resentence him on the robbery case or to keep the failure to appear a felony had to be made by way of a habeas corpus petition.

If he were present, he would have been able to argue this at the sentencing hearing in the first place. He also would have been able to provide information concerning his rehabilitation in prison, which was directly relevant to the court's sentencing discretion.

Review is appropriate for this court to make clear when the failure to bring the defendant for sentencing is prejudicial.

II. THE TRIAL COURT FAILED TO PROPERLY VACATE PETITIONER'S CONVICTION FOR FAILURE TO APPEAR ON A FELONY COUNT UNDER SECTION 1320.5 WHERE THE PREREQUISITE OFFENSE WAS REDUCED TO A MISDEMEANOR BY THE COURT, AND THEREFORE THAT CONVICTION SHALL BE CONSIDERED A MISDEMEANOR FOR ALL PURPOSES, INCLUDING THE RESULTING OFFENSE FOR FAILURE TO APPEAR, AND THEREFORE SECTION 1320.5 CONVICTION MUST BE VACATED.

Petitioner's felony conviction for failing to appear on a felony is based on his failure to appear in 2014 for possession of narcotics. Subsequently, the court reduced the narcotics conviction to a misdemeanor under Proposition 47. It did not change the felony designation of the failure to appear. Because a felony violation of section 1320.5 requires the underlying crime to be a felony, the conviction for failure to appear must be reduced to a misdemeanor.

Enacted as part of Proposition 47, section 1170.18, subdivision (k) provides that once a defendant is resentenced to a misdemeanor, that offense "shall be considered a misdemeanor for all purposes" with an exception not

applicable here. Because the court resentenced petitioner on all four cases, the question was whether it should impose a felony term for failing to appear at resentencing.

Section 1320.5 states: "Every person who is charged with or convicted of the commission of a felony, who is released from custody on bail, and who in order to evade the process of the court willfully fails to appear as required, is guilty of a felony."

In *People v. Park* (2013) 56 Cal.4th 782, the defendant was convicted of felony assault with a deadly weapon. The conviction was subsequently reduced to a misdemeanor pursuant to section 17, subdivision (b). Section 17, subdivision (b) states that when a crime is so reduced, "it is a misdemeanor for all purposes." He was then charged with a new serious felony. The court held he could not receive an enhancement for committing a serious felony with a prior serious felony conviction (§ 667, subd. (a)) because he no longer had a prior serious felony conviction. (*Park,* at p. 793.)

Like section 17, a conviction reduced to a misdemeanor under Proposition 47 shall be treated as "a misdemeanor for all purposes," but for an exception that does not apply here. (§ 1170.18, subd. (k).) Petitioner failed to appear on a charge of felony possession of drugs. But it is now a misdemeanor. When the court resentenced petitioner on all his cases, it should not have imposed a felony sentence for the failure to appear.

The court of appeal relied on *People v. Walker* (2002) 29 Cal.4th 577. (Opn. at p. 13.) In that case, this court decided that a bail enhancement (Pen. Code, § 12022.1) can attach to a felony charge of failing to appear. But it did not address the issue of whether a conviction for a failure to appear on a felony can survive when the underlying crime is no longer a felony.

Because guidance is needed, review is appropriate.

III. THE TRIAL COURT LACKED JURISDICTION TO RESENTENCE PETITIONER ON THE ROBBERY AND FAILURE TO APPEAR CONVICTIONS BECAUSE SECTION 1170.18 DOES NOT AUTHORIZE REDUCTION TO MISDEMEANOR EITHER COUNT AND THEREFORE THE COURT HAS NO AUTHORITY TO RESENTENCE PETITIONER ON THOSE COUNTS.

"Under the general common law rule, a trial court is deprived of jurisdiction to resentence a criminal defendant once execution of the sentence has commenced. [Citations.]" (*Karaman, supra,* 4 Cal.4th at p. 344.) Section 1170.18, enacted by the passage of Proposition 47, permits resentencing in cases where the defendant petitions for resentencing and is eligible for relief. Subdivision (a) states:

> A person currently serving a sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under the act that added this section ("this act") had this act been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing in accordance with Sections 11350, 11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended or added by this act.

The statute does not permit resentencing on other cases where there is not a qualifying conviction.

The court of appeal decided that when a defendant has been sentenced on several charges, the court can restructure the sentence on other cases upon resentencing under Proposition 47. (Opn. at p. 5, citing *Roach, supra,* 247 Cal.App.4th at pp. 183-187 and *Sellner, supra,* 240 Cal.App.4th at p. 701; see also *Cortez, supra,* 3 Cal.App.5th at pp. 311-317; *McDowell, supra,* 2 Cal.App.5th at p. 983; *Rouse, supra,* 245 Cal.App.4th at p. 300.) In those cases, the defendants argued that the court lacked the authority to resentence them on cases not covered by Proposition 47. They pointed to the intent of the voters to reduce sentences, not to restructure them and accomplish nothing meaningful. (*Roach,* at p. 184; *Sellner,* at p. 702.) Petitioner made the same argument. (Pet. at pp. 7-12.) The courts rejected the arguments, stating there was nothing in the statute that specifically prohibited restructuring the entire sentence. (*Roach,* at p. 185; *Sellner,* at p. 702.)

The rule, however, is that a court lacks jurisdiction to change a final judgment, unless statute provided otherwise. (*Karaman, supra,* 4 Cal.4th at p. 344.) There was nothing in Proposition 47 that vested the court with jurisdiction to restructure the sentence on other cases. On the contrary, Proposition 47 specifically states: "Nothing in this and related sections is intended to diminish or abrogate the finality of judgments in any case not

falling within the purview of this act" (§ 1170.18, subd. (n)), a provision the courts failed to consider in *Roach* and *Sellner*. The court lacked the jurisdiction to increase a sentence in cases not within the purview of the act.

The court of appeal disagreed. (Opn. at pp. 7-9.) It reasoned that the separate cases were part of petitioner's aggregate term. (§ 1170.1, subd. (a).) And the sentencing court "retained jurisdiction" over all components of the aggregate sentence, so long as the total sentence did not exceed the original sentence. (Opn. at p. 7, citing § 1170.18, subd. (n).) But as the court of appeal acknowledged, in *Sellner* and *Roach,* the defendants sought resentencing on the principal term. The remaining sentence of subordinate terms would be unauthorized because there must be at one principal term. (Opn. at p. 8.) Here, however, petitioner did not seek resentencing on the principal term. Simply reducing the convictions on the two convictions that qualify under Proposition 47 would not leave an unauthorized sentence.

The court of appeal analogized the situation to when a sentence is reversed on appeal or when it is recalled under section 1170, subdivision (d). (Opn. at pp. 8-9.) But the purpose of an appeal or to recall a sentence is not to reduce a sentence. The express purpose of Proposition 47 is to save money by reducing sentences for qualified defendants. (Prop. 47, § 3.)

The court of appeal disagreed that this result was inconsistent with the purpose of Proposition 47 since Proposition 47 does not mandate reducing a

sentence in every case. (Opn. at pp. 7-8.) It is true the initiative does not require reducing a sentence in every case; some qualified convictions might have been imposed concurrently to a principal term and it would be impossible in that situation to reduce the sentence. Nonetheless, it frustrated the purpose of the initiative not to reduce the sentence by increasing unrelated sentences terms that do not need to be adjusted.

Proposition 47 specifically states: "Nothing in this and related sections is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of this act." (§ 1170.18, subd. (n).) Increasing lawful terms on unrelated cases abrogated the finality of the judgment in those cases. The court lacked the jurisdiction to increase an authorized sentence in a case not within the purview of the act.

IV. PETITIONER WAS DENIED HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AT HIS RESENTENCING HEARING.

The right to effective assistance of counsel is guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by article I, section 15 of the California Constitution, entitling a defendant to "the reasonably competent assistance of an attorney acting as his [or her] diligent, conscientious advocate." (*People v. Ledesma* (1987) 43 Cal.3d 171, 215; *Strickland v. Washington* (1984) 466 U.S. 668, 684.) This is measured by objective standards of reasonableness under prevailing professional norms.