

**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

**THE PEOPLE OF THE STATE OF  
CALIFORNIA,**

**Plaintiff and Respondent,**

**v.**

**J.F.,**

**Defendant and Petitioner.**

Case No. S248046

SUPREME COURT  
**FILED**

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Jorge Navarrete Clerk

Deputy

Court of Appeal, Fourth Appellate District, Division One, Case No. D071733  
San Diego County Superior Court, Case No. SCD204096  
The Honorable David J. Danielsen, Judge

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**OPENING BRIEF ON THE MERITS**

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The Honorable David J. Daniels, Judge

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OPENING BRIEF ON THE MERITS

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ISSUE PRESENTED

Per the order of this Court dated July 9, 2018, the issue to be briefed is:

Must a commitment or recommitment as an mentally  
disordered offender be vacated if the underlying offense  
supporting the initial commitment is redesignated as a  
misdemeanor under Proposition 47?

## INTRODUCTION

Appellant and Petitioner, J.F., (hereinafter “Petitioner”) addresses the combined effect of two statutory schemes: the Mentally Disordered Offender (“MDO”) Act and the felony resentencing portion of The Safe Neighborhoods and Schools Act (“Proposition 47”). (Penal Code<sup>1</sup>, §§ 1170.18, 2960, et seq.; Voter Information Guide, Gen. Elec. (Nov. 4, 2014) text of Prop. 47, pp. 70-74 (“Guide”); Cal. Const., art. II, § 10.)

Petitioner’s commitment was continued under the MDO Act despite the fact the court redesignated his foundational felony to a misdemeanor at an uncontested Proposition 47 hearing. (*People v. Foster* (Feb. 27, 2018, D071733) [nonpub. opn.] pp. 5, 9 2018 LEXIS 1261 (“J.F.”) review granted Jun. 13, 2018, briefing ordered Jul. 9, 2018, S248046.) When challenged on appeal, the Court of Appeal followed its previous holding in *People v. Goodrich* (2017) 7 Cal.App.5th 699, in which it found the foundational felony was “irrelevant” at the recommitment stage. (*People v. Goodrich* (2017) 7 Cal.App.5th 699, 710 [review den. Apr. 12, 2017, S240242].) This decision allowed recommitment based on a mental disorder and dangerousness alone. (*Id.* at p. 711.) It also abrogated the purposes of both the MDO Act and Proposition 47. The Court of Appeal’s

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<sup>1</sup> All subsequent statutory references are to the Penal Code unless otherwise specified.

reason for extending Petitioner's commitment sounds more like the basis for commitment under a statutory scheme like the Lanterman-Petris-Short ("LPS") Act, which does not require a felony conviction for commitment. (Welf. & Inst. Code, § 5000, et seq.)

The MDO Act only supports commitment to treat a mental disorder as it relates to a felony conviction. (§ 2960, et seq.) And Proposition 47 was intended to reduce felonies to misdemeanors "for all purposes," which this Court concluded includes all penalties unless specifically excluded. (Cal. Const., art. II, § 10; § 1170.18, subd. (k); *People v. Buycks* (2018) 5 Cal.5th 857, 888 ("*Buycks*").) Commitments are not specifically excluded. (See § 1170.18, subd. (k).) What's more, the Legislature expanded the benefits of Proposition 47 to include people found Not Guilty by Reason of Insanity ("NGI's") who are only subject to commitments. (§§ 1026.5, 1170.18, subds. (k) & (p), 1170.127.)

The reasoning in *Goodrich* is unsound. It is predicated on a static-dynamic dichotomy that is no longer valid in Petitioner's case in light of Proposition 47. Proposition 47 demonstrated that "conviction of a felony" is not a "static" event or criterion. The static-dynamic dichotomy analysis underlying *Goodrich* is no longer valid in cases like Petitioner's in which the felony conviction has been redesignated a misdemeanor "for all purposes." Therefore, *Goodrich* should be disapproved.

Further, Petitioner's right to equal protection was violated. The commitment for a similarly situated person under the Sexually Violent Predator ("SVP") Act was set aside after that person's predicate offense was reversed. (Welf. & Inst Code, § 5000, et seq.; See *In re Bevill* (1968) 68 Cal.2d 854.) To deny Petitioner similar treatment is a violation of equal protection. Also, Petitioner's right to due process of law was violated because the court continued his commitment under a statutory scheme only promulgated to treat behavior related to a felony conviction, though there is no longer a felony conviction in Petitioner's case. (See § 2962.)

This Court should hold that a commitment or recommitment as an MDO must be vacated when the foundational offense supporting the initial commitment was redesignated as a misdemeanor under Proposition 47.



## STATEMENT OF FACTS

On or about January 17, 2007, Petitioner entered a 7-Eleven convenience store and grabbed cigarettes from behind the counter. (1CT pp. 6, 19; 2CT p. 6.) He told the clerk he was the police and could go anywhere he wanted. (1CT pp. 6, 19; 2CT p. 6.) The clerk grabbed his arm and Petitioner pushed the clerk away. (1CT pp. 6, 19; 2CT p. 6.) The clerk screamed and another clerk responded to help. (1CT p. 19.) Petitioner grabbed some cookies and left the store. (1CT p. 19.) The clerk was not injured. (1CT p. 19.)

Petitioner was arrested, all merchandize was recovered at the scene, and 7-Eleven did not suffer any loss. (1CT p. 13.) When asked about the incident, Petitioner stated: "I was homeless and hungry and not on meds." (2CT p. 6.)

## STATEMENT OF THE CASE

### **A. The Foundational 2007 Felony Offense**

On August 3, 2007, Petitioner pled guilty to grand theft of a person, in violation of section 487, subdivision (c), a felony offense at that time, and he was sentenced to state prison for 16 months. (1RT p. 6; 1CT pp. 8, 12; *J.F., supra*, D071733, p 2.)

### **B. Petitioner's Initial Commitment and Recommitments**

After completing his sentence, Petitioner was civilly committed to a state hospital as an MDO and his commitment was extended for several years. (1CT pp. 19, 20; *J.F., supra*, D071733, p. 2.)

In October 2014, Petitioner was released to an outpatient conditional release program ("CONREP") program as an MDO on outpatient status, pursuant to sections 2970 and 2972. (1CT p. 20.) His outpatient status was renewed annually. (*J.F., supra*, D071733, p. 3.)

### **C. Redesignation of Petitioner's Felony Offense To A Misdemeanor Under Proposition 47**

On October 21, 2016, Petitioner filed a Petition for Reduction to Misdemeanor under section 1170.18, subdivisions (f), and (g), to reduce his 2007 felony conviction to a misdemeanor. (2CT p. 25.) The People did not oppose and the court granted the petition on October 27, 2016. (1CT p. 16; 2CT p. 25; *J.F., supra*, D071733, p. 3.)

#### **D. Denial of Petitioner's Motion to Dismiss MDO Commitment**

On November 10, 2016, Petitioner filed a Notice of Motion to Dismiss his MDO Commitment and release him from CONREP. (2A<sup>2</sup> RT p. 104; 1CT p. 17.) Specifically, Petitioner requested the court “dismiss the request for continued involuntary treatment of a mentally disordered offender (MDO) as his conviction is a misdemeanor and is not a qualifying offense.” (1CT p. 17.) Petitioner asserted his conviction was designated a misdemeanor “for all purposes,” so the MDO Act did not apply to him. (1CT p. 21.)

On December 16, 2016, the trial court continued the hearing on the motion pending the decision in *Goodrich*, which would address whether reclassification of a felony to a misdemeanor precludes recommitment under the MDO Act. (3RT p. 67; 1CT p. 67; *Goodrich, supra*, 7 Cal.App.5th at p. 710.)

On January 17, 2017, Division One of the Fourth Appellate District Court of Appeal filed its decision in *Goodrich*, and held that reduction of the qualifying felony to a misdemeanor did not preclude recommitment under the MDO Act. (*Goodrich, supra*, 7 Cal.App.5th 699.) On February 3, 2017, the trial court denied Petitioner's motion citing *Goodrich*. (1CT p.

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<sup>2</sup> The two volumes of augmented Reporter's Transcripts are identified as “1ART” and “2ART.”

68; *Goodrich, supra*, 7 Cal.App.5th 699; *J.F., supra*, D071733, p. 3.)

Petitioner appealed this decision. (1CT pp. 59, 61; *J.F., supra*, D071733.)

Petitioner remained in commitment under the MDO Act during the appeal.

(4 RT p. 303; 1CT p. 68; 2CT p. 69; *J.F., supra*, D071733, p. 3.)

**E. The Court of Appeal's Affirmance Of The Denial of Petitioner's Motion, Citing *People v. Goodrich*.**

On February 27, 2018, the California Court of Appeal, Fourth District, Division One, filed an unpublished decision in which it declined to depart from its holding in *Goodrich* and affirmed the San Diego Superior Court's order denying Petitioner's motion. (*J.F., supra*, D071733, p. 2.)

## ARGUMENT

### I.

#### **PETITIONER'S CONTINUED COMMITMENT UNDER THE MDO ACT WAS INVALID BECAUSE THE COURT REDESIGNATED THE FOUNDATIONAL FELONY A MISDEMEANOR UNDER PROPOSITION 47.**

Petitioner contends a commitment under the MDO Act is a collateral effect of the redesignation of a felony offense to a misdemeanor under Proposition 47. Such commitment is invalidated where the foundational felony conviction is lost to Proposition 47 relief. The Court of Appeal and the *Goodrich* court held that Proposition 47 was irrelevant to MDO commitments. (*J.F.*, *supra*, D071733, p. 4; *Goodrich*, *supra*, 7 Cal.App.5th at p. 710.) An examination of the provisions of Proposition 47 and the MDO Act, and the intent and purpose behind each enactment, reveals the Court of Appeal and the *Goodrich* court were mistaken.

#### **A. Relevant Law**

##### **1. Standard of Review**

Issues regarding statutory construction are reviewed de novo. (*Smith v. Superior Court* (2006) 39 Cal.4th 77, 83.) The court looks first “to the language of the statute, giving the words their ordinary meaning.” (*People v. Rizo* (2000) 22 Cal.4th 681, 685.) The language is construed “in the context of the statute as a whole and the overall statutory scheme.” (*Ibid.*) When interpreting a voter initiative, the court applies the same principles that govern statutory construction. (*Ibid.*)

## 2. The MDO Act

The Legislature enacted the MDO Act in 1985 to require offenders who have been convicted of violent crimes related to their mental disorders, and who continue to pose a danger to society, to receive mental health treatment until their mental disorder can be kept in remission. (§ 2960 et. seq.; *In re Qawi* (2004) 32 Cal.4th 1, 9.) The original purpose of the MDO Act is best described by the Senate Committee on Public Safety in its analysis of the MDO Act when it amended the Act in 1999:

The MDO law was originally drafted in 1985 in SB 1296 (McCorquodale). The author, as quoted in the Assembly Public Safety Committee analysis, stated the reason for the bill:

“There is no useful procedure for assuring mental health treatment for prisoners when their mental disorder was a factor in their committing a violent crime.”

The author further explained, as reflected in the Senate Judiciary Committee analysis, that consideration of the crime of conviction was necessary because prediction of an inmate’s future dangerousness from his or her mental condition and prison conduct was inordinately difficult.

(Sen. Com. On Pub. Safety, Com. Analysis of Sen. Bill 279 (1999-2000 Reg. Sess.) Mar. 16, 1999, p. 5.)

“The MDO Act establishes a comprehensive scheme for treating prisoners who have severe mental disorders that were a cause or aggravating factor in the commission of the crime for which they were imprisoned.” (*People v. Jauregui Garcia* (2005) 127 Cal.App.4th 558, 563 (reh’g den. Apr. 5, 2005).) There are three stages of commitment in the

MDO Act: the first is when the California Department of Corrections and Rehabilitation (“CDCR”) and the Department of State Hospitals (“DSH”)<sup>3</sup> first determine that an offender must be treated by the DSH as a condition of parole; the second occurs when both the parole and treatment are extended; and the third phase occurs when parole is terminated. (§§ 2962, 2970, 2972; *Lopez v. Superior Court* (2010) 50 Cal.4th 1055, 1062-1063 [disapproved in part by *People v. Harrison* (2013) 57 Cal.4th 1211, 1230, fn. 2 on an unrelated issue].)

In the first phase, the court must find the defendant meets six criteria:

- 1) the offender's severe mental disorder was a cause or aggravating factor in the commission of the underlying crime;
- 2) the offender was treated for at least 90 days preceding his or her release;
- 3) *the underlying crime was a violent crime as enumerated in section 2962, subdivision (e)*;
- 4) the patient has a severe mental disorder,
- 5) the patient's severe mental disorder is not in remission or cannot be kept in remission without treatment, and
- 6) that by reason of his or her severe mental disorder, the patient represents a substantial danger of physical harm to others.

(§ 2962, subd. (d)(1); *Lopez, supra*, 50 Cal.4th at p. 1062, italics added.)

The first three criteria have been characterized as “static” and “foundational” because “they concern *past events* that, once established, are

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<sup>3</sup> DSH was previously named State Department of Mental Health.

*incapable of change.*” (*Lopez, supra*, 50 Cal.4th at p. 1056, italics added.)

The last three criteria are often described as “dynamic” because they are “capable of change over time and must be established at each annual review of the commitment.” (*Id.* at p. 1062.)

The second phase occurs if the defendant’s parole is continued beyond one year and is governed by section 2966, subdivision (c). (§§ 2962, 2966, subd. (c).) The third phase occurs after parole is terminated, and is governed by sections 2970 and 2972. (§§ 2970, 2972.) The third phase requires a petition under section 2972, subdivision (e), and new recommitment proceeding. (§ 2972, subd. (e).) In both the second and third phases, the court conducts a hearing for “continued treatment” to determine whether the person still meets the three “dynamic” criteria for the court to recommit the person for an additional year. (§§ 2970, 2972, subds. (a) & (c); *Lopez, supra*, 50 Cal.4th at p. 1056.) These criteria are the same as the final three “dynamic” criteria listed in section 2962 for the original commitment:

- 1) the patient has a severe mental disorder,
- 2) the patient's severe mental disorder is not in remission or cannot be kept in remission without treatment, and
- 3) that by reason of his or her severe mental disorder, the patient represents a substantial danger of physical harm to others.

(§§ 2962, 2972, subd. (c).) Commitment is not indefinite, rather, “an MDO has a right to be released unless the People prove beyond a reasonable



doubt that he or she should be recommitted for another year.” (*People v. McKee* (2010) 47 Cal.4th 1172, 1201 (“*McKee IP*”).)

### **3. Proposition 47**

In 2014, the voters approved initiative measure Proposition 47, titled The Safe Neighborhoods and Schools Act, adding section 1170.18 to the Penal Code and amending existing statutes to reduce penalties for certain theft and drug offenses. (Guide, *supra*, text of Prop. 47, § 2, at pp. 70-74; *People v. Gonzales* (2017) 2 Cal.5th 858, 862.) Section 1170.18 allows qualifying felony offenders to seek reclassification of their offenses to misdemeanors retroactively. (§ 1170.18, subd. (a); *Goodrich, supra*, 7 Cal.App.5th at p. 704.) A person who has already completed a felony sentence may petition to have his conviction designated a misdemeanor. (§ 1170.18, subds. (f) & (g).)

Proposition 47 expressly states it must be “broadly construed to accomplish its purposes” and “broadly construed to effectuate its purposes.” (Guide, *supra*, text of Prop. 47, §§ 15, 18, p. 74; *People v. Bear* (2018) 25 Cal.App.5th 490, 498.) And section 1170.18, subdivision (k) extends the retroactive ameliorative effects of Proposition 47 to mitigate future collateral consequences of a felony conviction that is reduced under the measure. (§ 1170.18, subd. (k); *Buycks, supra*, 5 Cal.5th at pp. 18, 31.) If a felony conviction is resentenced under Proposition 47 it becomes a misdemeanor “for all purposes.” (§ 1170.18, subd. (k).) Subsequently, “it

can no longer be said that the defendant ‘was previously convicted of a felony.’” (*Buycks*, 5 Cal.5th at p. 889, quoting *People v. Tenner* (1993) 6 Cal.4th 559, 563.)

#### **4. Principles of Statutory Construction**

The court must first look to the text of the statute and use the plain meaning of that text if it is unambiguous. (*People v. Harrison, supra*, 57 Cal.4th at p. 1221.) Such review is used to determine the intent of the Legislature to effectuate the purpose of the law. (*Curle v. Superior Court* (2001) 24 Cal.4th 1057, 1063.) Principles of statutory construction apply equally to voter initiatives and legislatively enacted statutes. (*People v. Park* (2013) 56 Cal.4th 782, 796.) Further, “[a]n enacting body is deemed to be aware of existing laws at the time legislation is enacted and to have enacted or amended a statute in light thereof; this principle applies as well to legislation enacted by voter initiative. (*People v. Superior Court (Cervantes)* (2014) 225 Cal.App.4th 1007, 1015).

#### **B. Petitioner’s Continued Commitment Under the MDO Act Without A Foundational Felony Is Invalid In Light Of The Full Statutory Scheme of The MDO Act.**

##### **1. The Purpose of the MDO Act**

The purpose of the MDO Act is to ensure people who have had violent felony convictions “related to their mental disorders, and who continue to pose a danger to society, receive mental health treatment during and after the termination of their parole until their mental disorder can be

kept in remission.” (§ 2960, et seq.; *In re Qawi, supra*, 32 Cal.4th at p. 9.)

Notably, the Legislature did not extend the MDO Act to authorize involuntary civil commitment or to continue such commitment without a related violent felony offense. And “a finding of mental illness alone cannot justify a State’s locking a person up against his will and keeping him indefinitely in simple custodial care.” (*O’Connor v. Donaldson* (1975) 422 U.S. 563, 575 [95 S.Ct. 2486, 45 L.Ed. 2d 396].)

## **2. The Court Relied On The Flawed Reasoning In *Goodrich* To Justify Petitioner’s Continued Commitment Under The MDO Act.**

The *Goodrich* court determined that a change to the foundational offense in an MDO commitment is “*irrelevant* after his or her initial commitment as an MDO.” (*Goodrich, supra*, 7 Cal.App.5th at p. 710, italics added.) It reasoned that a court is not required to consider whether the first three foundational criteria were still met at the recommitment hearing. (*Ibid.*) In so doing, the court only looked at section 2972, subdivision (c), which states in relevant part that:

[i]f the court or jury finds that the patient has a severe mental disorder, that the patient’s severe mental disorder is not in remission or cannot be kept in remission without treatment, and that by reason of his or her severe mental disorder, the patient represents a substantial danger of physical harm to others, the court shall order the patient recommitted...

(§ 2972, subd. (c).) Because the statute mentioned only these three criteria the *Goodrich* court reasoned the fact that the foundational felony had been

reduced to a misdemeanor under Proposition 47 had no effect on the commitment. (*Goodrich*, at p. 710.)

In Petitioner's case, the Court of Appeal derived its reasoning from *Goodrich*. (*J.F.*, *supra*, D071733, pp. 4, 5.) It explained: "[o]nce an individual has been determined to be an MDO and has been properly committed in an initial commitment proceeding the only things that must be established in a recommitment proceeding are [the three criteria listed in section 2972, subdivision (c)]." (*J.F.*, p. 5, citing *Goodrich* at pp. 710-711 and § 2972, subd. (c).) In other words, the Court of Appeal found that it did not need to verify that a recommitment under the MDO Act was related to a violent felony.

The court's reasoning is, however, flawed. It is reading section 2972, subdivision (c), in a vacuum, ignoring the context and other statutory provisions of the MDO Act. And it ignores the Act's purpose of treating those who have committed violent felonies. The language of a statute must be construed "in the context of the statute as a whole and the overall statutory scheme." (*Rizo*, *supra*, 22 Cal.4th at p. 685.) "Section 2970 does not exist in a statutory vacuum." (§ 2970 [criteria for commitment after parole]; *People v. Crivello* (2011) 200 Cal.App.4th 612, 617.) Similarly, section 2972 does not exist in a statutory vacuum, either. (§ 2972 [extended commitment criteria].) And the Legislative intent of the MDO Act applies throughout each stage of commitment. (Sen. Com. On Pub.