In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

JANE NUCKLES,

Defendant and Appellant.

Case No. S200612

Fifth Appellate District, Case No. F061562
Kings County Superior Court, Case No. 09CM3022
The Honorable Donna Tarter, Judge

RESPONDENT'S ANSWERING BRIEF ON THE MERITS

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Can a person be an accessory to a felony by aiding a convicted felon to abscond from his mandatory term of supervised parole following a prison sentence for that felony?

INTRODUCTION

The facts are undisputed. Appellant's friend and fellow parolee, Adam Gray, absconded from the custody of parole shortly after being released from prison. Appellant harbored and concealed Gray knowing that a fugitive arrest warrant had been issued for his arrest. Appellant argues that her conviction as an accessory to Gray's felony cannot stand because Gray had completed the punishment for his felony conviction when he completed his prison term. She argues that she merely aided Gray to avoid being punished for the parole violation of absconding. She contends, therefore, that the sanction she aided Gray to avoid is not "punishment" within the meaning of Penal Code[1] section 32. This case presents the opportunity for this Court to clarify whether a person may be an accessory to a felony by assisting a convicted felon to abscond from a mandatory term of parole following a prison sentence.

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[1] Further undesignated statutory references are to the Penal Code.

STATEMENT OF THE CASE

Appellant was convicted by a jury of being an accessory to a felony (§ 32), in that she harbored, concealed, and aided Adam Gray, with knowledge that he had been convicted of a felony, and with the intent of helping Gray to avoid or to escape from arrest, trial, conviction or punishment. (Appellant's Exhibit (App. Exh.) A at p. 2.) In a subsequent proceeding, appellant admitted that she had served a prior prison term (§ 667.5, subdivision (b)). (*Ibid.*) The trial court sentenced her to serve an aggregate term of four years in state prison.

The facts were summarized by the Court of Appeal as follows:

> Appellant Jane Nuckles, a parolee, was very fond of Adam Gray, who was also on parole.[2] Defendant allowed Gray and his girlfriend to stay at her house in Kings County, even though she knew that he had absconded from his parole in Kern County.[3] Defendant instructed Gray and his girlfriend that they could hide in the crawl space of her house if the police showed up to look for them. Nuckles's then-boyfriend, who also lived at the house, was afraid of Gray and informed law enforcement officers that Gray was staying at their house. Gray was arrested while he was hiding in the garage, and his girlfriend was found in the trap door leading to the crawl space.

(App. Exh. A at p. 2.)

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[2] Gray's last legal residence was Kings County; however, he was released to the custody of the Kern County Parole Department with a specific condition that he was not to enter Kings County without the permission of his parole agent. (5 RT 634-635; see also § 3003, subd. (b) [a parolee may be "returned to another county if that would be in the best interests of the public"].)

[3] At trial, appellant admitted that she had viewed Gray's photograph in the Crime Stoppers section of the local paper indicating that a fugitive felony warrant had issued for his arrest. (5 RT 656-657.)

Section 32 provides that an accessory is a person who knowingly "harbors, conceals or aids" a principal in a felony, "with the intent that [the felon] may avoid or escape from arrest, trial, conviction or punishment."

In upholding the conviction, the Court of Appeal noted that the trial court properly instructed the jury with the elements section 32 using CALCRIM No. 440. (App. Exh. A at 9; RT 958-959.) The Court of Appeal also noted that the prosecutor argued the following theory to the jury: (1) appellant knew that Gray had been convicted of a felony resulting in imprisonment and a term of supervised parole; (2) she knew that Gray had absconded from parole supervision and that a fugitive arrest warrant had issued; and (3) she encouraged Gray to "hideout [*sic*] at her house" to avoid arrest on the fugitive warrant. (App. Exh. A at 9; 6 RT 962-964.) The prosecutor argued that appellant's intent was clear when she told her then-boyfriend, Amaral, that he should not tell anyone about Gray's whereabouts or status as a fugitive because she wanted to provide a "safe place" for Gray. (6 RT 965.)

The Court of Appeal upheld appellant's conviction for violating section 32 because the evidence unequivocally established that appellant harbored Gray with the intent to help him avoid arrest on a parolee-at-large (PAL) warrant, having knowledge that Gray had been convicted and imprisoned for committing a felony, and that he had been released from prison to the custody of the parole department. (App. Exh. A at p. 11-12.)

Appellant sought rehearing. The Court of Appeal denied rehearing without modification of the opinion.

This Court granted review on April 18, 2012.

SUMMARY OF ARGUMENT

Appellant argues that this Court must overturn her conviction for being an accessory to a felony because knowingly aiding a parolee-at-large to evade arrest on a fugitive warrant does not have "the necessary logical, temporal and facilitative" nexus to the parolee's underlying felony conduct. (AOB 1.) She argues that her conviction flies in the face of the statute's "plain, common sense meaning" and to so construe the statute would lead to absurd results unintended by the Legislature. (AOB 11-12.) Appellant's premise is that she did not help Gray to avoid punishment for his felony conviction, but she merely helped Gray to avoid punishment for a parole violation, which is not "punishment" within the meaning of section 32. (AOB 16).

Appellant's argument fails to take into account that a mandatory term of supervised parole pursuant to section 3000 *is* an element of punishment imposed as a direct consequence of the principal's felony conviction. Consequently, appellant's act of intentionally aiding Gray to abscond from parole supervision violated the express terms of section 32, which prohibits harboring or aiding a convicted felon with the intent that he avoid punishment for his felony conduct.

ARGUMENT

I. KNOWINGLY ASSISTING A CONVICTED FELON TO ABSCOND FROM PAROLE CUSTODY IS A VIOLATION OF SECTION 32

Appellant claims that she could not have violated section 32 by knowingly harboring and aiding a parolee-at-large to avoid arrest on a fugitive warrant because her act did not have "the necessary logical, temporal and facilitative" nexus to the parolee's felony conduct. (AOB 1.) In fact, appellant violated the express terms of section 32 when she intentionally aided a convicted felon to abscond from parole custody.

A. Standard of Review

This case presents a mixed question of fact and law. Mixed questions are "those 'in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the [relevant legal] standard, or to put it another way, whether the rule of law as applied to the established facts is or is not violated.' [Citation.]" (*People v. Louis* (1986) 42 Cal.3d 969, 984, quoting *Pullman-Standard v. Swint* (1982) 456 U.S. 273, 289, fn. 19.)

There are three distinct steps in deciding mixed questions of law and fact. The first step is the establishment of the """basic, primary, or historical facts."""" (*People v. Louis*, *supra*, 42 Cal.3d at p. 985.) The second step is the selection of the applicable rule of law. The third step is the application of law to fact. (*Ibid.*) The trial court's resolution of questions of fact is reviewed under the deferential, clearly erroneous standard. However, questions of law are reviewed under the non-deferential, de novo standard. (*Ibid.*)

B. The History of Section 32 Indicates A Broad Intent To Punish Those Who Assist A Felon To Avoid The Lawful Consequences Of His Conduct

The principle of criminal culpability for knowingly assisting another who has been accused or convicted of committing a felony to escape from prosecution or punishment originated in the English common law. "At common law, the subject of principals and accessories was riddled with 'intricate' distinctions." (*Standefer v. United States* (1980) 447 U.S. 10, 15, quoting 2 J. Stephen (1883) A History of the Criminal Law of England 231.) In felony cases, parties to a crime were divided into four distinct categories: (1) principals in the first degree who actually perpetrated the offense; (2) principals in the second degree who were actually or constructively present at the scene of the crime and aided or abetted its commission; (3) accessories before the fact who aided or abetted the crime, but were not present at its commission; and (4) accessories after the fact who rendered assistance after the crime was complete. (*Ibid.*) At early common law all parties to a felony received the death penalty; therefore, judicially created procedural rules developed tending to shield accessories from punishment. (*Ibid.*)

The California Legislature abolished these categorical distinctions in 1850 as part of the Crimes and Punishment Act. The Legislature opted instead to punish as a principal all those who aided in the commission of the crime, regardless of whether they were present at the scene, and to punish those who knowingly harbored the criminal or assisted to conceal the crime as an accessory after the fact. The offense was punishable with no more than two years of imprisonment and a fine not to exceed $5,000. (Stats. 1850, Ch. 99, §§ 11 & 12, p. 230.)

In 1872, the Legislature enacted section 32, which provided: "All persons who, after full knowledge that a felony has been committed,

conceal it from the magistrate, or harbor and protect the person charged with or convicted thereof, are accessories." (Stats. 1872, § 32.) The concept of this crime, as codified, was to distinguish between those who aided in the commission of crime, and those who, after the crime had been committed, aided the principal to avoid the lawful consequences of criminal conduct. A violation of section 32 could be supported by two types of conduct.

> First, where with full knowledge that a felony has been committed, the crime or the fact of its commission is concealed from the magistrate; second, where with full knowledge that a felony has been committed, the person charged with or convicted thereof is harbored and protected. Without question, a defendant could be charged with committing either one or both of these offenses. Neither of these offenses necessarily involves the other and each of them naturally rests upon acts and circumstances at variance with those upon which the other is based.

(*People v. Kloss* (1933) 130 Cal.App. 194, 196.)

In 1935, the Legislature refined the definition of an accessory as follows:

> Every person who, after a felony has been committed, harbors, conceals or aids a principal in such felony, with the intent that said principal may avoid or escape from arrest, trial, conviction or punishment, having knowledge that said principal has committed such felony or has been charged with such felony or convicted thereof, is an accessory to such felony.

(Stats. 1935, ch. 436, § 1.)

The Legislature has not changed the wording of Section 32 since 1935. The legal elements of the offense are as follows:

> (1) someone other than the accused, that is, a principal, must have committed a specific, completed felony; (2) the accused must have harbored, concealed, or aided the principal; (3) with knowledge that the principal committed the felony or has been charged or convicted of the felony; and (4) with the intent that

the principal avoid or escape from arrest, trial, conviction, or punishment.

(*People v. Plengsangtip* (2007) 148 Cal.App.4th 825, 836.)

"The gist of the offense described by section 32 of the California Penal Code is that the accused 'harbors[,] conceals or aids' the principal with the requisite knowledge and intent. Any kind of overt or affirmative assistance to a known felon may fall within these terms.'" (*People v. Duty* (1969) 269 Cal.App.2d 97, 104.) "'The test of an accessory after the fact is that, he renders his principal some personal help to elude punishment,—the kind of help being unimportant.' [Citation]." (*Ibid.*, fns. omitted; accord *People v. Thompson* (1990) 50 Cal.3d 134, 168, fn. 13.)

C. A Term of Mandatory Parole Is Punishment Within The Meaning of Section 32

Appellant argues that her conduct was not proscribed under section 32 because the word "punishment" is limited to the imprisonment and fines described in section 18 of the Penal Code. (AOB 12-13.) She argues, therefore, that this Court may not uphold her conviction because the word "punishment" can only refer to the "prison sentence [Gray] had completed prior to his release on parole," and does not include the subsequent term of parole supervision. (AOB 8.) On the contrary, Gray's mandatory term of parole supervision was punishment within the meaning of section 32 because it was imposed as a direct result of his felony conviction.

1. A Term of Mandatory Parole Is A Direct Consequence of A Felony Conviction

As the Court of Appeal noted, a term of supervised parole is a punishment imposed as a direct consequence of a felony conviction. (App. Exh. Aat 10, citing *People v. Moore* (1998) 69 Cal.App.4th 626, 630.)

Appellant acknowledges that a term of parole is a direct consequence of a felony conviction. (AOB 14-16, 19-20.) However, she describes her

conduct as having aided Gray to avoid punishment for a parole violation. She maintains that her conviction cannot stand because a sanction for a parole violation is not a direct consequence of the felony conviction. Respondent agrees with the Court of Appeal that appellant violated section 32 by aiding Gray to remain a fugitive from parole custody. (Exh. A, at p. 12, fn. 2.)

Appellant maintains that a parole term is not part of the sentence imposed for a felony conviction. In support of her position, she points out that parole is no longer "part of a defendant's prison term" since the advent of determinate sentencing. (AOB at 14-15, citing *People v. Jefferson* (1999) 21 Cal.4th 86, 95.) Appellant overlooks the fact that the change in the law to which she refers was the mandatory imposition of parole terms on *all* convicted felons sentenced to serve a determinate term in prison, *in addition* to the prison term. (*In re Carabes* (1983) 144 Cal. App. 3d 927, 930-932.)

Under the Determinate Sentencing Act of 1976, a term of supervised parole is not optional; it is a statutorily-mandated punishment imposed upon every defendant convicted of a felony and sentenced to prison.[4] (§ 3000 et seq.) Previously, a term of supervised parole was an early release from incarceration, generally awarded in recognition of good behavior, allowing the prisoner to serve the remainder of his sentence in the community, but under parole supervision and with limited freedom. (*Id.* at p. 930.) In other words, a grant of parole was previously a discretionary

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[4] Technically, a prisoner can avoid some of the conditions of parole by choosing to serve his or her period of parole in physical custody. (§ 3060.5; *Samson v. California* (2006) 547 U.S. 843, 851 ["A California inmate may serve his parole period either in physical custody, or elect to complete his sentence out of physical custody and subject to certain conditions"].)

alternative to incarceration. Because Gray's term of parole supervision was mandated under section 3000, it actually formed a separate element of his sentence. (See § 1170, subd. (c)(3) ["The court shall also inform the defendant that *as part of the sentence* after expiration of the [prison] term he or she may be on parole for a period as provided in Section 3000" (italics added)].)

Accordingly, Gray was sentenced to serve not only a determinate term in prison, but he was also sentenced to serve a mandatory term of parole supervision upon release from prison.

2. A Term of Supervised Parole Is Punishment

Section 3000, subdivision (a)(1), explains the purpose of mandatory parole as follows:

> The Legislature finds and declares that the period immediately following incarceration is critical to successful reintegration of the offender into society and to positive citizenship. It is in the interest of public safety for the state to provide for the effective supervision of and surveillance of parolees, including the judicious use of revocation actions, and to provide educational, vocational, family and personal counseling necessary to assist parolees in the transition between imprisonment and discharge.

While section 32 does not define the word punishment, the United States Supreme Court set forth a multifactor test to ascertain whether a statute's intent is to impose "punishment" for the purposes of the ex post facto or cruel and unusual punishment clauses in *Kennedy v. Mendoza-Martinez* (1963) 372 U.S. 144 (*Mendoza-Martinez*). *Mendoza-Martinez* noted that a measure's punitive nature may be discerned by weighing such factors as "[w]hether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only on a finding of scienter, whether its operation will promote the traditional aims of punishment—retribution and deterrence,

whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned . . . ." (*Id.* at pp. 168-169, fns. omitted; see also *In re Alva* (2004) 33 Cal.4th 254, 260-262, 279.)

With these factors in mind, it is clear that the mandatory term of supervised parole imposed upon Gray was "a direct disability or restraint" upon his freedom that served a purpose similar to incarceration: namely, to facilitate his rehabilitation, to deter acts of future criminality, and to protect the public from the risk that a felony offender presents. (See *Morrissey v. Brewer* (1972) 408 U.S. 471, 477 ["parole is an established variation on imprisonment of convicted criminals"]; see also *People v. Villalobos* (2012) 54 Cal.4th 177; 184 ["parole 'is a statutorily mandated element of punishment'"], quoting *In re Moser* (1993) 6 Cal.4th 342, 347.)

Appellant argues that "punishment" as it is used in section 32 is limited to the penalties listed in section 18, specifically fines and imprisonment. (AOB 12-13.) However, section 18 does not define punishment. Sections 17, 18, and 19 are part of a statutory scheme addressing crimes that the Legislature has authorized to be punished as felonies or misdemeanors. (See §§ 17-19.) When a statute makes an offense punishable by imprisonment in the state prison but does not state a sentence range, then the determinate sentence range is 16 months, two, or three years; however, if the felony offense does not specify a sentencing range, but also indicates that the offense is punishable by a fine, then the offense may also be punished by imprisonment in the county jail for not more than one year. (§ 18.)

Thus, "section 18 authorizes a reduction to a misdemeanor for certain felonies even though the Legislature did not provide for misdemeanor treatment in the statutory provisions defining those particular crimes . . . .

section 18 creates, to coin a phrase, 'stealth wobblers.'" (*People v. Mauch* (2008) 163 Cal.App.4th 669, 675.) Section 18 does not define the contours of punishment or create any legislative inconsistency regarding the meaning of the word "punishment."

Accordingly, a mandatory term of parole is a separate element of a element of punishment imposed in addition to a prison term.

D. Appellant Acted With The Requisite Knowledge and Intent To Violate Section 32

Appellant argues her act of knowingly aiding a parolee-at-large to evade arrest on a fugitive warrant was too attenuated from the parolee's felony conduct to support an accessory conviction. (AOB 1.). Appellant grounds her argument in the assertion that she did not aid Gray to commit or to conceal a felony offense; rather, she helped him to abscond from parole, which is punishable as parole violation. In a related argument, appellant maintains that she did not act with the necessary *mens rea* to violate section 32 because she only acted with the intent to assist Gray to avoid an "administrative sanction"[5] for violating a condition of his parole. (AOB 11-16.) Not so.

Appellant characterizes her conduct as merely assisting Gray to avoid the administrative consequences of a hearing before the Board of Prison Terms. She conveniently overlooks the fact that she aided a convicted felon to abscond from parole supervision entirely. The evidence presented at trial established that the Board of Prison Terms declared Gray a fugitive from parole supervision, and thereafter issued a PAL warrant for his arrest,

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[5] While absconding from parole is punished by the Board of Prison Terms, which is an administrative body, it is an offense that is punishable with up to a year of incarceration in state prison. (§ 3057, subd. (a).) Respondent is unaware of any legal authority for the proposition that incarceration is an "administrative sanction" as appellant suggests. (AOB 6, 14.)

suspending his grant of parole. (5 RT 634-635; 15 CCR § 2515.) The time Gray spent as a fugitive from parole supervision was not credited toward his term of parole. (15 CCR § 2515.)

Appellant does not dispute that she intentionally aided Gray to remain a fugitive from parole supervision. (AOB 1, 11-12, 16.) As a parolee herself, appellant knew that Gray's term of parole was mandatory following a felony conviction resulting in a prison term. She also knew that a supervised term of parole entails multiple restrictions on a parolee's freedom and the forfeiture of certain basic constitutional rights, such as the right to be free from search and seizure without reasonable suspicion that a crime has been committed. Therefore, when appellant harbored Gray, she acted with the requisite intent and knowledge that she was aiding Gray to avoid a punishment imposed as a result of his felony conviction.

Appellant argues that she merely aided Gray to avoid being returned to prison for a parole violation. (AOB 11-12.) However, a PAL warrant is intended to bring about one result: namely, to return a parolee-at-large to the custody of Parole.[6] (See 15 CCR §§ 2000(b)(75), 2515, 2600; see also 5 RT 634-635.) Furthermore, the evidence presented at trial suggested that Gray violated at least three specific conditions of his grant of parole: he left Kern County, he entered Kings County without the permission of his parole officer, and he absconded from parole supervision. However, the prosecutor did not contend that appellant had *knowledge* of any specific term or and condition of Gray's parole. Rather, the prosecutor's theory was that appellant knew that Gray had been convicted of a felony resulting in imprisonment and a term of supervised parole; she knew that Gray had

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[6] As appellant notes in her opening brief, a parole violation hearing before the Board of Prison Terms may or may not result in a parolee's return to prison. (AOB 16.)

absconded from parole supervision and that a fugitive arrest warrant had issued; and she harbored and concealed Gray with the intent that he evade arrest on the fugitive warrant and return to parole supervision. (6 RT 962-965.)

The jury did not convict appellant of being an accessory because she merely aided Gray to violate a condition of his parole; rather, the conviction was based on her act of intentionally and directly aiding Gray to remain a fugitive. (15 CCR § 2000(b)(75).) Appellant conflates motive with intent. Her motive to commit the crime may well have been that she did not want Gray to be returned to prison for violating a term of his parole. However, she concealed and harbored Gray with the intent to aid him to evade parole supervision.

For these reasons, appellant acted with the requisite intent and knowledge to violate section 32 when she harbored and concealed Gray to protect him from arrest on a fugitive PAL warrant and return to parole supervision.

E. The Express Language of Section 32 Prohibits Knowingly Aiding a Felon To Avoid The Penal Consequences Of Felony Conduct

Appellant argues that punishing her conduct under section 32 flies in the face of the "plain, common sense meaning" of the statute and would lead to absurd results unintended by the Legislature. (AOB 11-12, 17.) Respondent disagrees. The plain language of section 32 indicates a broad intent to punish those who intentionally aid a principal in a felony to avoid the penal consequences of felony conduct.

Under settled canons of statutory construction, the reviewing court must ascertain the Legislature's intent in order to effectuate the law's purpose. (See *Imperial Merchant Services, Inc.* v. *Hunt* (2009) 47 Cal.4th 381, 389; *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43

Cal.3d 1379, 1386.) The reviewing court "must look to the statute's words and give them 'their usual and ordinary meaning.'" (*Imperial Merchant Services, Inc.*, at p. 389, quoting *DaFonte v. Up-Right, Inc.* (1992) 2 Cal.4th 593, 601.) "'The statute's plain meaning controls the court's interpretation unless its words are ambiguous.'" (*Imperial Merchant Services, Inc.*, at p. 389, quoting *Green v. State of California* (2007) 42 Cal.4th 254, 260.)

Here, section 32 expressly provides that an accessory after-the-fact is a person who knowingly "harbors, conceals or aids" a principal in a felony, "with the intent that [the felon] may avoid or escape from arrest, trial, conviction or punishment." Given the unambiguous language of the statute, this Court is not required to consider other aids, such as the statute's purpose, legislative history, and public policy. (See *Coalition of Concerned Communities, Inc. v. City of Los Angeles* (2004) 34 Cal.4th 733, 737.)

Appellant argues that to construe the words of section 32 in this manner would lead to absurd results. Specifically, she argues that absconding from parole is punishable by the Board of Prison Terms with a fine or revocation resulting in no more than a one year term in prison. (AOB 14.) Therefore, an accessory who aids a convicted felon to abscond from parole supervision could receive a longer prison term than the felon could receive from the Board of Prison Terms for his act of absconding from parole supervision. She contends that the Legislature surely would not have intended to punish an accessory to a felony more harshly than the principal to that felony.

Again, appellant's argument rests on her characterization of her conduct as merely assisting Gray to avoid the administrative consequences of a hearing before the Board of Prison Terms. However, she knowingly aided a convicted felon to abscond from parole supervision entirely. While

it is true that the Gray could not be prosecuted separately as an accessory for his act of absconding from parole, that does not preclude prosecution of appellant for aiding Gray to remain a fugitive from parole. Moreoever, Gray himself could have been prosecuted as an accessory if the evidence showed that he solicited appellant's aid to avoid punishment.

The situation here is similar to that in *People v. Wallin* (1948) 32 Cal.2d 803, 806-807. In *Wallin,* the People contended that a murderer "could not be an accessory after the fact to her crime . . . ." This Court responded that, "It may be that a murderer who acts alone in concealing her crime cannot be separately charged as an accessory, but it does not follow that she cannot become liable as such if she encourages another to aid her in avoiding arrest and punishment. There are many instances in the law where a person is held to be criminally responsible for cooperating in an offense which he is incapable of committing alone."

In other words, the murderer who falsely provides an alibi to law enforcement cannot be prosecuted separately for the lie, but he could be prosecuted as an accessory if the evidence showed that he succesfully solicited an alibi witness to corroborate his lie. However, the alibi witness could be prosecuted as an accessory to the felony if he knowingly lied with the intent of assisting the principal to conceal his felony offense, even in the absence of evidence that the principal encouraged the alibi witness to lie on his behalf. The prosecution of the alibi witness as an accessory to the felony would require proof beyond a reasonable doubt that the principle committed the underlying felony, but it would not require that the principal could be prosecuted separately for providing a false alibi. The same principle applies here.

Finally, appellant argues that this Court should apply the "rule of lenity." (AOB 20.) The rule of lenity applies when a penal statute is susceptible of two reasonable interpretations, and then """only if the court

can do no more than guess what the legislative body intended; there must be an egregious ambiguity and uncertainty to justify invoking the rule.'" [Citation.] In other words, 'the rule of lenity is a tie-breaking principle, of relevance when "'two reasonable interpretations of the same provision stand in relative equipoise ... .'"' [Citation.]" (*People v. Manzo* (2012) 53 Cal.4th 880, 889.) Here, there is no statutory ambiguity for this Court to resolve. The Legislature specifically intended to punish a person who knowingly provides affirmative aid to a felon with intent that the felon avoid the penal consequences of his conduct. The only ambiguity is whether appellant's conduct enabled Gray to avoid an element of punishment imposed as a direct consequence of his felony conviction or it merely enabled him to violate a condition of his parole.

Punishing appellant for her conduct under section 32 does not lead to absurd results. Her crime was not, as she suggests, simply aiding Gray to violate a term of his parole; rather, it was to help him avoid direct and punitive consequences of his felony conviction, namely parole supervision.

CONCLUSION

For the reasons stated above, respondent respectfully requests that this Court affirm the judgment below.

Dated: September 27, 2012

Respectfully submitted,

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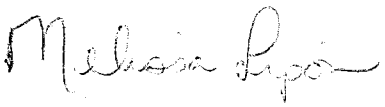

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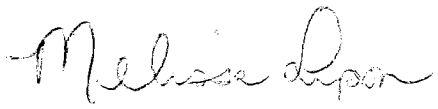
CERTIFICATE OF COMPLIANCE

I certify that the attached **RESPONDENT'S ANSWERING BRIEF ON THE MERITS** uses a 13 point Times New Roman font and contains 4,478 words.

Dated: September 27, 2012

KAMALA D. HARRIS
Attorney General of California



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DECLARATION OF SERVICE BY U.S. MAIL

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I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on September 28, 2012, at Sacramento, California.

_____
Signature