

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

SUPREME COURT
FILED

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Deputy

In re,

WILLIE CLIFFORD COLEY

On Habeas Corpus.

Supreme Court No.
S185303

FILED WITH PERMISSION

Los Angeles County Superior Court Case No. MA022987
The Honorable Dorothy Shubin, Judge Presiding

APPELLANT'S REPLY BRIEF ON THE MERITS

NANCY L. TETREAU
Attorney at Law
State Bar No. 150352
346 No. Larchmont Blvd., Suite 100
Los Angeles, California 90004
Telephone: (310) 832-6233

Attorney for Appellant

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APPELLANT’S REPLY BRIEF ON THE MERITS

INTRODUCTION

Respondent incorrectly contends that the imposition of an indeterminate life sentence complies with the fairness principles of the prohibition against cruel and unusual punishment, where appellant failed to discharge his obligation to re-register his residence address within five days of his birthday, even though he registered his address at the beginning of the calendar year and his residence address had not changed. (Answer Brief (“AB”) 9-10; Pen. Code, § 290, subd. (a)(1)(A).)¹ According to respondent,

¹ Statutory references are to the Penal Code unless otherwise indicated.

appellant's registration error was not merely a technical violation because it breached the conditions of his parole. Respondent further argues that, even if this were not true, appellant's extensive criminal history justifies a life sentence. (AB 9-10.) Thus, respondent would have this Court add a harmless error standard to the cruel and unusual punishment determination.

The crime triggering appellant's indeterminate life sentence was his unintended technical violation of not re-registering the same address twice in a single year. (I CT 250.) Appellant's violation constituted the mistaken failure to comply with a highly complicated registration statute and amounted to a purely regulatory offense. (*People v. Carmony* (2005) 127 Cal.App.4th 1066; accord *Gonzalez v. Duncan* (2008) 551 F.3d 875; see § 290.) The fact appellant was arrested at the address he registered at the beginning of the calendar year proved his violation resulted in no actual harm to public safety.

The legislative purpose underlying the Three Strikes law is to deter recidivism. (§ 667, subd. (b).) Sentences that bear a rational relationship to this purpose have withstood constitutional challenge. (*People v. Sipe* (1995) 36 Cal.App.4th 468, 476.) The triggering offense in this case did not fit within the legislative purpose of the Three Strikes law because appellant did not intend to commit a crime. His third strike resulted from a mistake rather than habitual criminal conduct. Because of this distinction, his indeterminate life sentence was not tethered to a legitimate state purpose. This fundamental defect is not overcome by appellant's extensive criminal history because the record does not establish that appellant presents a current risk of reoffending.

The Third District's decision in *People v. Carmony, supra*, 127 Cal. App. 4th 1066 rejected a nearly identical technical violation as the basis for

imposing an indeterminate life sentence under the Three Strikes law based on the fact the violation did not advance the statute's stated purpose. (*Id.*, at p. 1085.) It is not possible to affirm the sentence in this case without reversing the reasoning of *Carmony*. The *Carmony* decision strikes the appropriate balance between California's Three Strikes law and the constitutional prohibition against cruel and unusual punishment. It should be adopted as the rule in this case.

Under the individual circumstances of this case, the felony triggering appellant's indeterminate life sentence did not advance the purpose behind the Three Strikes law because appellant intended no crime. This alone provides sufficient grounds to reverse the sentence. The fact appellant has an extensive criminal history does not overcome this defect. Appellant's last crime occurred in 1988. (I RT 231-238.) He has been crime free since that date. There is nothing in the record establishing that appellant poses a current risk of harm to public safety. Consequently, his indeterminate life sentence for an unintentional ministerial mistake was grossly disproportionate, shocked the conscience of society, and offended the notions of human dignity. (*Solem v. Helm* (1983) 463 U.S. 277, 296.) Reversal of this unconstitutional sentence is mandated.

ARGUMENT

APPELLANT'S INDETERMINATE LIFE SENTENCE AS A THIRD STRIKE OFFENDER VIOLATED THE STATE AND FEDERAL PROHIBITIONS AGAINST CRUEL AND UNUSUAL PUNISHMENT, WHERE APPELLANT'S THIRD STRIKE WAS BASED SOLELY ON HIS FAILURE TO UPDATE HIS ANNUAL REGISTRATION REQUIREMENT AS A SEXUAL OFFENDER.

A. Introduction.

The state and federal prohibitions against cruel and unusual punishment apply to prison sentences that are grossly disproportionate to the crime and fail to serve a legitimate state interest. (U.S. Const., 8th Amend.; Cal. Const., art. 1, § 17; *Harmelin v. Michigan* (1991) 501 U.S. 957, 996-997 *Solem v. Helm, supra*, 463 U.S. at p. 290.) Appellant's indeterminate life sentence under the Three Strikes law for the unintended technical violation of failing to register his residence address for a second time in the same calendar year is grossly disproportionate. This disproportionate sentence is not justified by the Legislature purpose of deterring recidivism because appellant's violation was a mistake, rather than an intentional criminal act. It also caused no threat to public safety because registered his address at the beginning of the year and had not moved. (*People v. Carmony, supra*, 127 Cal.App.4th 1066, 1073; *People v. Cluff* (2001) 87 Cal.App.4th 991, 994; accord *Gonzalez v. Duncan, supra*, 551 F.3d at pp.878-879.)

California's Three Strikes law was enacted to punish recidivism. (§ 667, subd. (b); *People v. Williams* (2004) 34 Cal.4th 397, 402; see *People v. Strong* (2001) 87 Cal.App.4th 328, 338.) The law differs from recidivists statutes of other states in that the third strike need not be a violent or serious felony. (§ 667, subds. (c), (d).) Courts have upheld harsh sentences under the Three Strikes law against constitutional challenges because the sentences bear a rational relationship to the legitimate state interest of harshly punishing repeat offenders. (*People v. Sipe, supra*, 36 Cal.App.4th at p. 476.) It follows from this stated purpose that the felony triggering a Three Strikes sentence must establish that the defendant intended to commit a crime. If the triggering felony does meet this predicate requirement, the resulting sentence has no rational relationship to the Legislature's purpose of deterring recidivism. The excessive length of the sentence would constitute cruel or unusual punishment, because the sentence would be disproportionate to the crime without a legitimate justification. (U.S. Const., 8th Amend.; Cal. Const., art. 1, § 17.)

Admittedly, the United States Supreme Court has condoned minor felonies as sufficient to trigger an indeterminate life sentence under the Three Strikes law. Even so, the High Court has been divided on this issue. (*Ewing v. California* (2003) 538 U.S. 11; see *Graham v. Florida* (2010) __ U.S. __ [130 S. Ct. 2011].) What is clear is that both this Court and the United States Supreme Court require that the circumstances of the triggering crime be assessed individually and on a case by case basis. (*Graham v. Florida, supra*, 130 S.Ct. 2011; accord *In re Lynch* (1972) 8 Cal.3d 410; *People v. Dillon* (1983) 34 Cal.3d 441.)

The question presented in this case has been answered by the Third District in *People v. Carmony, supra*, where the Court of Appeal held that

the defendant's 26-year-to-life sentence for an identical registration violation infringed the state and federal Constitutional prohibitions against cruel and unusual punishment. (*People v. Carmony, supra*, 127 Cal. App. 4th at p. 1085; accord *Gonzalez v. Duncan, supra*, 551 F.3d 875.) The reasoning of *Carmony* correctly implements this Court's standard for evaluating the constitutionality of a Three Strikes sentence and should be used to resolve the present matter in appellant's favor.

B. Appellant's Sentence Violated the Eight Amendment.

Respondent relies on the United States Supreme Court's decisions in *Ewing v. California, supra*, 538 U.S. 11 and *Lockyer v. Andrade* (2003) 538 U.S. 63, 72 as support for the contention that the sentence in the present case meets the narrow proportionality principles of the Eight Amendment. While it is true that the triggering offenses in *Ewing* and *Lockyer* were minor thefts, the crimes differed from the present case in that they resulted from intentional criminal conduct. As such, the triggering crimes demonstrated recidivist criminal behavior.

The defendant's third strike in *Ewing* was for the grand theft offense of stealing three golf clubs, with prior strikes for burglaries and armed robbery. (*Ewing v. California, supra*, 538 U.S. at pp. 18-20.) The triggering felonies in *Andrade* were petty thefts with prior theft convictions, with prior strikes for first degree residential burglary. (*Lockyer v. Andrade, supra*, 538 U.S. at pp. 66-68.) In both *Ewing* and *Andrade* the United States Supreme Court upheld the defendants' indeterminate life sentences against challenges of cruel and unusual punishment. Respondent

claims that appellant cannot distinguish his case from *Andrade* and *Ewing*. Respondent is incorrect.

The defendants in *Andrade* and *Ewing* both intended to commit the theft offenses constituting their third strikes. The defendant in *Ewing* was a career criminal. His third strike of shoplifting three golf clubs might have been insignificant in terms of the monetary value of the golf clubs, but proved the defendant's intention to continue his criminal behavior. (*Ewing v. California, supra*, 538 U.S. at pp. 18-20.)

Similarly, the defendant in *Andrade* made his living burglarizing homes. He had a long record of stealing property and intended to steal the \$150 worth of videotapes from two different stores which resulted in his third strike convictions. (*Lockyere v. Andrade, supra*, 538 U.S. at pp. 66-68.) Though the Three Strikes sentences in these cases were harsh when compared to the gravity of the crimes, the sentences met the legislative purpose of severely punishing repeated offenders and deterring recidivism. (*Ewing v. California, supra*, 538 U.S. at pp. 18-20; see § 667, subd. (b); *People v. Williams, supra*, 34 Cal.4th at p. 402.)

By contrast, appellant was convicted of failing to comply with the duplicate requirement of registering his residence address within five days of his birthday, even though he had registered his address at the beginning of the year. (CT 24-25.) Appellant believed he had complied with his registration requirement because he had not moved from his registered address. (I RT 370-371.) His failure to register a second time in the same year was a mistake. As a result of this unintended violation, appellant received an indeterminate life sentence as a third strike offender. (I CT 250.)

An indeterminate life sentence based on a mistake does not serve the

State's interest of deterring recidivist criminal conduct. There was no rational relationship between appellant's crime and a Three Strikes law. This rendered appellant's life sentence "grossly disproportionate" to the crime. (*Harmelin v. Michigan, supra*, 501 U.S. at p. 1001.)

Respondent tries to overcome appellant's lack of criminal intent in committing the third strike by arguing that he failed to register at all in 2001. This argument is not supported by the record. Appellant was charged with failing to register as a sexual offender (count 1; § 290, subd. (a)(1)(A)) and failing to update his registration annually (count 2; § 290, subd. (a)(1)(D)). (I CT 24-25.) The jury acquitted appellant of count 1, but found him guilty of count 2. (I CT 117-118.) The jury's acquittal meant it weighed both versions of the facts and found appellant's version to be credible. It also meant the felony triggering appellant's Three Strikes sentence was his failure to re-register the same address in the same calendar year. The Third Strike was not for failing to register at all.

In applying the proportionality principle to noncapital sentences, courts must consider "(i) the gravity of the offense and the harshness of the penalty; (ii) the sentences imposed on other criminals in the same jurisdiction; and (iii) the sentences imposed for commission of the same crime in other jurisdictions." (*Solem v. Helm, supra*, 463 U.S., at p. 292.) In assessing the gravity of the offense, courts must consider the harm to society caused by the defendant's conduct and his level of culpability. (*Ibid.*)

Laws directed at curtailing criminal recidivism are an important consideration and entitled to deference in weighing the "gravity of the offense." (See *Rummel v. Estelle* (1980) 445 U.S. 263, 276; see also *Solem v. Helm, supra*, 463 U.S. at p. 290.) Nevertheless, the deference paid to

state recidivism policies in Eighth Amendment cases is not without limits. As repeatedly recognized by the United States Supreme Court, there are cases where the deference afforded a state in enacting recidivist statutes violates the Eighth Amendment. (*Lockyer v. Andrade, supra*, 538 U.S. at p. 73; *Ewing v. California, supra*, 538 U.S. at p. 23; *Harmelin v. Michigan, supra*, 501 U.S. at pp. 998, 1001 [Kennedy, J., concurring].) This is such a case.

Appellant committed a “passive, nonviolent, regulatory offense.” The gravity of the offense was less than low, as was appellant’s level of culpability. There was no harm to society from appellant’s failure to register the same address a second time in the same calendar year, as the police arrested appellant at his registered address. (I RT 231-238.) Appellant was returned to prison, not for his intentional criminal conduct, but for mistakenly failing to comply with the confusing maze of registration requirements making up the sexual offender reporting statute. It is hard to imagine a less just reason for imposing an indeterminate life sentence.

As recognized by the United States Supreme Court, the proportionality concept remains applicable to a narrow class of cases, where the sentence is so starkly unfair that it cannot be abided. (*Solem v. Helm, supra*, 463 U.S., at p. 292.) That principle was meant to prohibit an indeterminate life sentence under the facts of this case.

C. **Appellant’s Sentence Constituted Cruel and Unusual Punishment Under the California Constitution.**

This Court’s standard for assessing whether a sentence constitutes cruel or unusual punishment mirrors that of federal law. In assessing a violation of the Eight Amendment, courts consider the gravity of the offense and harshness of the penalty; the sentences imposed on other criminals in the same jurisdiction; and the sentences imposed for the same crime in other jurisdictions. (*Solem v. Helm, supra*, 463 U.S., at p. 292.) Under the California standard, courts (1) examine the “nature of the offense and/or the offender, with particular regard to the degree of danger both present to society” (*In re Lynch, supra*, 8 Cal.3d at p. 425); (2) a comparison of the challenged punishment with punishments prescribed for more serious offenses in the same jurisdiction; and (3) a comparison of the challenged punishment with punishments prescribed for the same offense in other jurisdictions (*People v. Dillon, supra*, 34 Cal.3d at p. 479.) The difference between the state and federal standards is the emphasis given to the offense, the offender, and the resulting danger to society under California law. (*In re Lynch, supra*, 8 Cal.3d at p. 425)

The first prong of the California standard obligates courts to carefully assess a defendant’s individual circumstances on a case by case basis. (*Ibid.*) In the context of a Three Strikes case, this standard necessarily requires that courts consider if the triggering offense meets the legislative purpose of deterring recidivist criminal conduct, and whether society was placed at risk of harm from the defendant’s conduct. If the defendant’s criminal conduct in committing the third strike failed to show

an intention to reoffend, the legislative purpose justifying the harshness of the Three Strikes sentence is not met.

Respondent argues that appellant's overall criminal history makes a life sentence neither cruel nor unusual punishment. According to respondent, appellant's prior criminality justifies a life sentence. The effect of respondent's contention is to imbue a harmless error analysis into the standard for assessing whether a sentence constitutes cruel and unusual punishment.

The California standard for reviewing a claim of cruel and unusual punishment does not include a harmless error analysis. (*In re Lynch, supra*, 8 Cal.3d at p. 425; *People v. Dillon, supra*, 34 Cal.3d at p. 479.) This Court should not break from its prior decisions by allowing sentencing courts to impose cruel and unusual sentences if the court believes the defendant's history of crime makes him deserving of such a sentence. Every defendant facing a third strike sentence has a history of serious or violent crimes. If a defendant's criminal history were sufficient to override the prohibition against cruel and unusual punishment, it would eliminate this constitutional protection from Three Strikes sentences.

Appellant recognizes that the Courts of Appeal are split on the question of whether a Three Strikes sentence must take into account the gravity of the defendant's triggering felony, or focus instead on the defendant's past record of criminality. (Compare *People v. Sullivan* (2007) 151 Cal.App.4th 524, 570 with *People v. Carmony, supra*, 127 Cal.App.4th at p. 1085; *People v. Cluff* (2001) 87 Cal.App.4th 991, 994.) Though these cases disregard the severity of the third strike, all of the cases involve third strike offenses resulting from intentional criminal conduct. (See, e.g., *People v. Gutierrez* (2009) 174 Cal.App.4th 515, 518 [assault of prison

guard during escape attempt]; *People v. Nichols* (2009) 176 Cal.App.4th 428, 435 [sex offender's failure to register as a sexual offender within five days of changing residence addresses]; *People v. Pearson* (2008) 165 Cal.App.4th 740, 749 [assault of girlfriend with a deadly weapon]; *People v. Sullivan, supra*, 151 Cal.App.4th at p. 536 [six robberies]; *People v. Cline* (1998) 60 Cal.App.4th 1327 [theft of clothing from a department store]; *People v. Haller* (2009) 174 Cal.App.4th 1080, 1083 [stalking, making criminal threats, assault with a weapon].)

Appellant does not argue that the severity of the felony triggering an indeterminate life sentence under the Three Strikes law is the measure of the sentence's constitutionality. Rather, where the crime constituting the third strike shows no intent on the part of the defendant to reoffend, a Three Strikes sentence is inappropriate regardless of the defendant's criminal record. These cases do not compel a different result.

In setting the length of prison sentences, a defendant's criminal history cannot be viewed in isolation. (*In re Lynch, supra*, 8 Cal.3d at p. 425; see generally *In re Lawrence* (2008) 44 Cal.4th 1181, 1191; *In re Shaputis* (2008) 44 Cal.4th 1241, 1246.) Facts from a defendant's past must be considered together with his current circumstances. The weight given to a defendant's past criminal behavior is one factor for the sentencing court's consideration, but the defendant's past misdeeds must be balanced against his current circumstances in determining whether the length of his sentence is just. (*In re Lynch, supra*, 8 Cal.3d at p. 425; *In re Lawrence, supra*, 44 Cal.4th at p. 1191.) The gravity of a defendant's past cannot replace an individualized analysis of his current circumstances in each individual case. (See *In re Lynch, supra*, 8 Cal.3d 410; *People v. Carmony, supra*, 127 Cal.App.4th at p. 1089.)

In the analogous context of parole decisions for inmates serving life sentences, this Court has established that it is unconstitutional to base the length of a sentence solely on a defendant's past where there is no nexus to his current risk to public safety. The Court's reasoning in these cases is instructive here. (*In re Lawrence*, *supra*, 44 Cal.4th at p. 1191; *In re Shaputis*, *supra*, 44 Cal.4th 1241.)

In *In re Lawrence*, the defendant shot her lover's wife four times, then stabbed the wife to death with a potato peeler, after becoming enraged by the husband's ending their affair. After the murder, Ms. Lawrence fled the state and remained a fugitive for eleven years. (*Id.*, at p. 1190.) She voluntarily returned to California and surrendered herself to the authorities, but denied any involvement in the murder. (*Ibid.*) Ms. Lawrence was convicted of first-degree murder and sentenced to an indeterminate life sentence. (*Ibid.*) She had no previous criminal record, but was characterized by prison psychologists as "moderately psychopathic." (*Id.* at p. 1195.)

After spending decades in prison, this Court reversed the decision to deny her parole, which was based on the gravity of her commitment offense, initial lack of remorse, early negative psychological evaluations, and eight rule infractions while in prison. (*Id.*, at pp. 1199.) The Court found that to meet constitutional standards a defendant's past misdeeds must be considered in light of other facts in the record. The importance of historic facts lessens with the passage of time, when balanced against a current record of reform. (*Id.*, at pp. 1212, 1235.) The Court explained that this inquiry is an "individualized one," and cannot be undertaken simply by examining the circumstances of the crime in isolation, without considering the passage of time or other mitigating factors bearing on the defendant's

current risk of harm to society. (*Id.*, at p. 1221.)

The principles articulated by this Court in *Lawrence* mirror the *Lynch* standard for assessing whether a sentence constitutes cruel and unusual punishment. Though respondent would have this Court ignore the character of appellant's triggering felony in favor of his criminal history, such a decision would go against the prior decisions of this Court.

Even ignoring the triggering offense, appellant's individual circumstances do not justify a life sentence as a recidivist criminal. Aside from the reporting violation, appellant sustained his last criminal conviction in 1988. He was sentenced to state prison and given the lifetime requirement of registering as a sexual offender. (I RT 231-238.) Appellant was released from prison in April 1999. He registered as required for four consecutive years (I CT 59-65; I RT 235-236.) In 2001, he registered in January, but did not register from January 17, 2001, to August 22, 2001. This was because he had not moved residence addresses, as he had in the prior four years. (RT 278, 294.)

This history shows that appellant committed no crimes from 1988 to 2001. He was attempting to lead a law-abiding life. Nothing in his conduct from 1988 to 2001, or the registration violation constituting his third strike established that appellant presented a danger of reoffending. Even if the Court were to accept respondent's harmless error argument, appellant criminal history does not justify a life sentence under the Three Strikes law.

D. The Reasoning of *People v. Carmony*, *People v. Nichols*, and *In re Lynch* Establishes the Rule that Should be Applied in this Case.

The Third District’s reasoning in *People v Carmony, supra*, and *People v. Nichols* (2009) 176 Cal.App.4th 428 provides the proper rule for evaluating challenges to Three Strikes sentences as cruel and unusual punishment. In *Carmony*, the Third District reversed an indeterminate life sentence based on the failure to re-register the same address within five days of the defendant’s birthday. In *Nichols*, the court upheld a Three Strikes sentence where the defendant’s triggering offense was his intentional failure to register a new address within five days of moving. (*People v. Nichols, supra*, 176 Cal.App.4th at p. 430.)

The key differences in *Carmony* and *Nichols* were the defendants’ intent in failing to register, and the resulting harm to public safety. The defendant’s registration error in *Carmony* was a “passive, nonviolent, regulatory offense that posed no direct or immediate danger to society,” because the defendant had correctly registered the proper information the prior month. (*People v. Nichols, supra*, 176 Cal.App.4th at p. 435.) Mr. Carmony did not evade or intend to evade law enforcement officers, and his registration violation posed no threat to public safety. His third strike offense was “the most technical and harmless violation of the registration law” the court had ever seen. (*People v. Nichols, supra*, 176 Cal.App.4th at p. 436; see *People v. Carmony, supra*, 127 Cal.App.4th at p. 1078.)

The same was not true of the defendant in *Nichols*. In *Nichols*, the defendant intentionally failed to register a new address. This meant law enforcement officers could not locate him. The triggering offense in

Nichols showed culpable criminal conduct that exposed the public to danger. Given his long criminal history, Mr. Nichols' current criminal conduct fit within the legislature intent of the Three Strikes law, as it showed he continued to ignore his obligation to abide by the rules of society. (*People v. Nichols, supra*, 176 Cal.App.4th at p. 436.)

The rule that emerges from *Carmony* and *Nichols*, together with this Court's decisions in *Lynch* and *Lawrence*, requires that courts consider the individual circumstances of a defendant's case in assessing the constitutionality of a Three Strikes sentence against the prohibition of cruel and unusual punishments. This is accomplished by first deciding if the defendant's conduct in committing the third strike implicates the legislative policy of deterring recidivism. If the triggering felony fails to meet this showing, the sentence cannot be justified under the Three Strikes law because there is no rational relationship between the increased sentence and the State's interest. On the other hand, if the triggering offense shows recidivist criminal conduct, courts must next consider the defendant's entire record to decide if the sentence is just.

Appellant does not dispute that the California Legislature may impose increased penalties on repeat offenders. The constitutional prohibition against cruel and unusual punishment does not preclude harsh sentences as a deterrent to recidivism, provided the harshness of the sentence serves this state interest.

In this case, appellant did not intend to violate his registration requirements. He committed the "hyper technical" crime of failing to re-register the same address within five days of his birthday, even though his residence address had not changed. This was a "most technical violation" that posed no danger to society, and was committed by appellant with no

intention of hiding his current address. (*People v. Carmony, supra*, 127 Cal.App.4th at p. 1069; *People v. Cluff, supra*, 87 Cal.App.4th at p. 996.) The imposition of an indeterminate life sentence for this unintended act did not serve the purpose of preventing recidivist criminal conduct, because appellant meant to do no wrong. It cannot be justified by his criminal history, because there was no evidence in the record that appellant posed a current risk of reoffending. He was attempting to live a law-abiding life and comply with the complicated reporting requirements of a registered sexual offender.

An indeterminate life sentence under these circumstances was “grossly disproportionate to the offense” and failed to serve any legitimate state purpose. (*People v. Carmony, supra*, 127 Cal.App.4th at p. 1069; see *People v. Dillon, supra*, 34 Cal.3d at p. 478.)

CONCLUSION

Appellant is a registered sex offender with a history of criminal conduct. These immutable historic facts are not sufficient to justify an indeterminate life sentence. In order to overcome the state and federal prohibitions against cruel and unusual punishment, appellant's sentence had to serve the Three Strikes law's legislative purpose of harshly punishing repeat offenders and deterring recidivism. Because appellant did not intend to commit a crime, his sentence did not serve the Legislature's purpose.

Appellant mistakenly failed to discharge the hyper technical and redundant requirement that he register the same residence address in the same calendar year. This violation of section 290 amounted to a purely regulatory offense with no resulting harm to society. (*People v. Carmony, supra*, 127 Cal.App.4th 1066; accord *Gonzalez v. Duncan* (2008) 551 F.3d 875.) The imposition of an indeterminate life sentence under these circumstances has no rational relationship to the purpose behind the Three Strikes law. It is both unfair and unconstitutional. Appellant's indeterminate life sentence must be reversed.

Dated: November 11, 2011

Respectfully submitted,

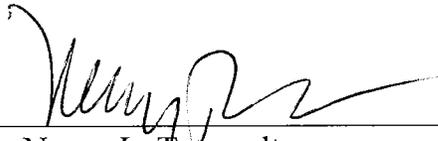


NANCY L. TETREAULT
Attorney for Appellant

CERTIFICATE OF WORD COUNT

The text of this brief consists of 4,843 words as counted by the Corel WordPerfect version 10 word processing program used to generate this brief.

Dated: November 11, 2011

By 

Nancy L. Tetreault
Attorney for Appellant

DECLARATION OF SERVICE BY MAIL

Re: *In re Coley*

Case No. **S185303**

I, Nancy L. Tetreault, am employed in the County of Los Angeles, State of California. I am over 18 years of age, a member of the State Bar and not a party to the within action. My business address is 346 No. Larchmont Boulevard, Los Angeles, California.

I served a copy of the attached document, **Reply Brief on the Merits**, on all parties in this action by placing a true copy thereof in an envelope addressed as follows:

Noah P. Hill
Deputy General's Office
300 South Spring Street
Suite 1702
Los Angeles, CA 90013
(by mail and eservice)

California Appellate Project
520 South Grand Avenue, 4th Floor
Los Angeles, CA 90071
(by mail and eservice)

Office of the Los Angeles District. Atty.
300 East Walnut Street, First Floor
Pasadena, CA 91101

Hon. Dorothy Shubin
Los Angeles County Superior Court
11234 East Valley Boulevard, Department 5
El Monte, CA 91731

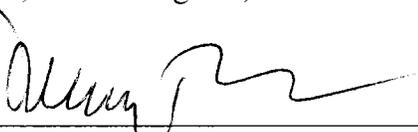
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Centinela State Prison
P.O. Box 901 AL-234 (Low)
Imperial, California 92251
LEGAL MAIL

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Each envelope was then sealed, fully prepaid postage was affixed, and each envelope was deposited in the United States mail at Los Angeles, California, on **November 11, 2011**.

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

Executed on **November 11, 2011**, at Los Angeles, California.



NANCY L. TETREULT