SUPREME COURT COPY

FILED WITH PERMISSION

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. LAURA REYNOSO VALENZUELA, Defendant and Appellant.	S232900

SUPREME COURT
FILED
NOV 22 2016
Jorge Navarrete Clerk
Deputy

Fourth Appeliate District, Division One, Case No. D066907
Imperial County Superior Court No. JCF32712
Honorable Christopher J. Plourd, Judge

CRC 8.25(b)

APPLICATION FROM THE CALIFORNIA PUBLIC DEFENDER'S ASSOCIATION FOR PERMISSION TO FILE A TIMELY AMICUS CURIAE BRIEF IN SUPPORT OF LAURA R. VALENZUELA, APPELLANT

AND

AMICUS CURIAE BRIEF OF THE CALIFORNIA PUBLIC DEFENDER'S ASSOCIATION

THE CALIFORNIA PUBLIC DEFENDER'S ASSOCIATION

WILLIAM J. ARZBAECHER III
State Bar No. 137439
2150 River Plaza Drive, Suite 300
Sacramento, CA 95818
(916) 441-3792

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. LAURA REYNOSO VALENZUELA, Defendant and Appellant.	S232900

Fourth Appellate District, Division One, Case No. D066907
Imperial County Superior Court No. JCF32712
Honorable Christopher J. Plourd, Judge

APPLICATION FROM THE CALIFORNIA PUBLIC DEFENDER'S ASSOCIATION FOR PERMISSION TO FILE A TIMELY AMICUS CURIAE BRIEF IN SUPPORT OF LAURA R. VALENZUELA, APPELLANT

AND

AMICUS CURIAE BRIEF OF THE CALIFORNIA PUBLIC DEFENDER'S ASSOCIATION

THE CALIFORNIA PUBLIC DEFENDER'S ASSOCIATION

WILLIAM J. ARZBAECHER III
State Bar No. 137439
2150 River Plaza Drive, Suite 300
Sacramento, CA 95818
(916) 441-3792

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

STATE STATUTES

STATE RULES

CALIFORNIA CONSTITUTION

OTHER REFERENCES

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent v. LAURA REYNOSO VALENZUELA, Defendant and Appellant.	S232900 Fourth Appellate District Court No. D066907 Imperial Superior Court Case No. JCF32712 **Application by the *CALIFORNIA PUBLIC DEFENDERS ASSOCIATION* for permission to file an amicus curiae brief in support of Appellant**

TO: CHIEF JUSTICE TANI CANTIL-SAKAUYE AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT

The CALIFORNIA PUBLIC DEFENDERS ASSOCIATION (CPDA) applies, under California Rules of Court, Rule 8.520(f), for permission to file the accompanying amicus curiae brief in support of appellant. This application summarizes the nature and history of CPDA, and our interest in the issues presented in this case. It also demonstrates that our proposed brief will assist the court in the analysis and consideration of the merits.

A

Identification of CPDA[1]

The California Public Defenders Association is the largest and most influential association of criminal defense attorneys and public defenders in the State of California. CPDA's membership of approximately 4,000 public defenders and attorneys in private practice exceeds that of our comparable sister association, California Attorneys for Criminal Justice. Because our voting members are public defenders, rather than private counsel, CPDA has been the primary resource for collective experience in county government in nearly all of California's counties. CPDA provides management training and assistance to counties that are experiencing difficulty in providing indigent defense services.

CPDA has been a leader in continuing legal education for defense attorneys for almost 40 years and is recognized by the California State Bar as an approved provider of Mandatory Continuing Legal Education,

---

[1] As required by Rule 8.520(f)(4), the undersigned, William Arzbaecher, on behalf of CPDA, certifies to this Court that no party involved in this litigation has authored any part of the attached amicus brief, tendered any form of compensation, monetary or otherwise, for legal services related to the writing or production of the amicus brief, and additionally certifies that no person or entity, other than amicus curiae, its members or its counsel has contributed any monies, services, or other form of donation to assist in the production of the amicus brief.

Criminal Law Specialization Education, and Appellate Law Specialization Education. CPDA is one of only two organizations deemed by the Legislature to be an "automatically" approved legal education provider. (Bus. & Prof. Code, §6070, subd. (b).)

The courts have granted CPDA leave to appear as amicus curiae in well over 30 California cases which culminated in published opinions. We believe that our participation was helpful in many important cases. (See, e.g., *People v. Albillar* (2010) 51 Cal.4th 47 [sufficiency of the evidence in a gang-related prosecution]; *Barnett v. Superior Court* (2010) 50 Cal.4th 890 [post-trial discovery]; *Galindo v. Superior Court* (2010) 50 Cal.4th 1 [pre-prelim discovery]; *People v. Lenix* (2008) 44 Cal.4th 602 [comparative juror analysis for first time on appeal], *People v. Nelson* (2008) 43 Cal.4th 1242 [DNA evidence in a cold-hit case]; *Chambers v. Superior Court* (2007) 42 Cal.4th 673 [*Pitchess* procedures]; *People v. Sanders* (2003) 31 Cal.4th 318 [search could not be a reasonable "parole search" without knowledge of the suspect's parole status]; *Mandalay v. Superior Court* (2002) 27 Cal.4th 537 [no separation of powers violation by the direct filing of juvenile cases in the criminal court]; *Morse v. Municipal Court* (1974) 13 Cal.3d 149 [mandate issued to compel consideration of diversion].) CPDA has also served as amicus curiae in the United States Court in numerous

cases. (See, e.g., *California v. Trombetta* (1984) 467 U.S. 479 [the duty to preserve evidence is limited to evidence that might be expected to play a significant role in the suspect's defense]; *Monge v. California* (1998) 524 U.S. 721 [double jeopardy clause does not bar retrial of a prior conviction allegation after an appellate finding of evidentiary insufficiency].)

The author of this amicus brief has authored (or helped author) briefs and argued before the Court in *People v. French* (2008) 43 Cal.4th 36; *People v. Sloan* (2007) 42 Cal.4th 110; *People v. Navarro* (2007) 40 Cal.4th 668; *People v. Britt* (2004) 32 Cal.4th 944; *People v. Toney* (2004) 32 Cal.4th 228; and *People v. Reyes* (1998) 19 Cal.4th 747. He also authored the amicus brief submitted by CPDA in *People v. Sasser* (2014) 61 Cal.4th 1, and has assisted appointed counsel in a number of other cases decided by this Court.

CPDA is also involved in legislative solutions. Members of the CPDA Legislative Committee and our paid lobbyist attend key state Senate and Assembly committee meetings on a weekly basis and take positions on hundreds of bills relating to the administration of justice.

In summary, CPDA and its legal representatives have the necessary experience, collective wisdom, and interest in matters of court policy to serve this court as amicus curiae. Our statewide perspective can be helpful

when the court is confronted by a controversy that effects practitioners statewide.

B

Statement of Interest of CPDA

The legal question that is the subject of this case is whether a defendant who is currently serving a prison term is eligible for resentencing on a penalty enhancement for serving a prior prison term on a felony conviction (Pen. Code § 667.5, subd. (b)) after the superior court has reclassified the underlying felony as a misdemeanor under the provisions of Proposition 47. The Court of Appeal resolved this question in the negative, as have all published Court of Appeal opinions to date on the issue.[2] This Court has granted review of all of these cases, with briefing deferred pending the Court's resolution of this case. CPDA is interested in this issue because it believes, for the reasons set forth in the accompanying amicus brief, that the Court of Appeal's decision in this case was incorrect (as are the other published or formerly published cases addressing the issue), because it is contrary to the express provisions and express intent of

---

[2] *People v. Carrea* (2016) 244 Cal.App.4th 966, rev. granted Apr. 27, 2016, No. S233011; *People v. Ruff* (2016) 244 Cal.App.4th 935, rev. granted May 11, 2016, No. S233201; *People v. Williams* (2016) 245 Cal.App.4th 458, rev. granted May 11, 2016, No. S233539; and *People v. Jones* (2016) 1 Cal.App.5th 221, rev. granted Sept. 14, 2016, No. S235901.

Proposition 47.

As this Court recently recognized, "One of Proposition 47's primary purposes is to reduce the number of nonviolent offenders in state prisons, thereby saving money and focusing prison on offenders considered more serious under the terms of the initiative." (*Harris v. Superior Court* (Nov. 10, 2016, No. S231489) ___Cal.5th___ [2016 Cal. LEXIS 9040, at *13].)

As explained in the accompanying amicus brief, Proposition 47 expressly allows defendants to get prior felony convictions in final judgments re-designated as misdemeanors (§ 1170.18, subds. (f), (g)) and provides that, once such relief has been obtained, the conviction "*shall* be considered a misdemeanor *for all purposes*" except firearm possession and ownership. (§ 1170.18, subd. (k), italics added.) The plain language of these provisions, their statutory context, and the voter intent they were created to effectuate all make clear that, once a defendant has obtained relief pursuant section 1170.18, subdivisions (f), (g) and (k), she should be able to ask the trial court to reduce her sentence so that she no longer spends time (at the taxpayers' expense) being incarcerated in state prison for what is no longer a felony.

CPDA believes that the accompanying brief will assist the Court in its resolution of this case, because it explains how the reasoning in support

of the Court of Appeal's ruling is flawed, because it is based on case law pertaining to statutes that are inapposite to the construction of the statutory scheme Proposition 47 created to enable imprisoned defendants to obtain retroactive application of the ameliorative changes in the law effected by Proposition 47 to the prison sentences they are currently serving.

CPDA believes that a ruling affirming the decision of the Court of Appeal will have a substantial adverse effect on the rights of numerous indigent criminal defendants in this state, an effect that is contrary to the intent of California voters.

C

The brief is timely

This application is timely pursuant to Rule 8.520(f)(2) of the California Rules of Court.

///

D

Prayer

Based upon this Application and the accompanying brief, the California Public Defenders Association applies for an order granting permission to file an amicus curiae brief in support of Appellant. That brief is combined with this Application.

Dated: November 16, 2016

WILLIAM J. ARZBAECHER III

On Behalf of California Public Defenders Association, Applicant for amicus status in support of Appellant

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. LAURA REYNOSO VALENZUELA, Defendant and Appellant.	S232900 AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANT

Pursuant to Rule 8.520(f) of the California Rules of Court, the California Public Defender's Association ("CPDA") submits the following argument in support of defendant/appellant Laura Reynoso Valenzuela.

ISSUE PRESENTED

The Court has granted review of the following question: Is defendant 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 Proposition 47?

ARGUMENT

I. Under Proposition 47, a Defendant Who Is Currently Serving a Sentence That Includes a "Prison Prior" That Is Based on a Felony Conviction Which Has Been Reclassified as a Misdemeanor Pursuant to Proposition 47 May Petition to Have Her Current Sentence Reduced on the Basis of That Reclassification.

A. Introduction.

1. Relevant provisions of Proposition 47.

On November 4, 2014, California voters approved Proposition 47, the Safe Neighborhoods and Schools Act (Ballot Pamp., Gen. Elec. (Nov. 4, 2014) ("Prop. 47")), which became effective on November 5, 2014. (See Cal. Const., art II, § 10, subd. (a).) The initiative prospectively amends various statutes for minor theft and drug-possession offenses, by providing that such offenses (which previously were eligible for punishment as felonies) are now misdemeanors punishable by no more than a year in county jail, unless the defendant has one or more prior convictions for an offense specified in Penal Code section 667, subdivision (e)(2)(C)(iv) or for an offense requiring registration as a sex offender (Pen. Code[3] § 290, subd. (c)). (Prop. 47 §§ 5-13, pp. 71-73.)

///

---

[3] Undesignated statutory references in this brief are to the California Penal Code.

Proposition 47 also created Penal Code section 1170.18, which provides a vehicle for persons previously convicted of a Proposition-47-eligible offense to seek retroactive application of the ameliorative effects of the voter initiative to prior felony convictions for Proposition-47-eligible offenses. (Prop. 47 § 14, pp. 73-74.) Subdivision (a) of section 1170.18 (quoted in footnote 4, below) allows defendants to petition for resentencing if they are currently serving a sentence for a felony conviction for a Proposition-47-eligible offense.[4] And subdivision (f) of section 1170.18 (quoted in footnote 5, below) allows defendants to apply to have prior felony convictions for Proposition-47-eligible offenses as to which they have already completed their sentence designated misdemeanors.[5] (See *People v. Diaz* (2015) 238 Cal.App.4th 1323, 1328-1329.)

---

[4] "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." (§ 1170.18, subd. (a).)

[5] "A person who has completed his or her sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under this act had this act been in effect at the time of the offense, may file an application before the trial court that entered the judgment of conviction in his or her case to have the felony conviction or convictions designated as misdemeanors." (§ 1170.18, subd. (f).)

Unlike a petition pursuant to subdivision (a) of section 1170.18, which gives the trial court discretion to deny the petition if it determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety (see § 1170.18, subd. (b)), an application pursuant to subdivision (f) of section 1170.18 as to a Prop.-47-eligible conviction and applicant must be granted. (See § 1170.18, subd. (g).) Subdivision (k) of section 1170.18 provides that, once such relief has been obtained, the conviction "shall be considered a misdemeanor for all purposes" except firearm possession and ownership. (§ 1170.18, subd. (k).)[6]

2. Relevant procedural history of this case.

As CPDA understands it, this case concerns a defendant (Ms. Valenzuela) who is currently serving a prison sentence, pursuant to a judgment that is not yet final on appeal, that includes a one-year "prison prior" enhancement for a prior felony conviction for which she served a prison term (§ 667.5, subd. (b)). The felony conviction underlying her prison prior has been designated a misdemeanor pursuant to section

---

[6] Subdivision (k) of section 1170.18 states: "Any felony conviction that is recalled and resentenced under subdivision (b) or designated as a misdemeanor under subdivision (g) shall be considered a misdemeanor for all purposes, except that such resentencing shall not permit that person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6."

1170.18, subdivisions (f) and (g).[7]

Both Ms. Valenzuela and the Attorney General asked the Court of Appeal to remand the case (Imperial Co. case no. JCF32712) to the superior court so that she may ask that court to resentence her pursuant to the retroactive provisions of Proposition 47 applicable to convictions as to which the defendant is *currently* serving a sentence, *viz.*, Penal Code section 1170.18, subdivision (a). (See Slip Opn., pp. 20-21.)[8] The Court of Appeal refused to do so, holding that no further relief as to the prison prior was available under Proposition 47. (See Slip Opn., pp. 21-24.)

The Court of Appeal reasoned that "Section 1170.18 provides a mechanism for reducing felony convictions to misdemeanors, but contains no procedure for striking a prison prior if the felony underlying the enhancement has subsequently been reduced to a misdemeanor." (Slip

---

[7] The Court of Appeal's opinion in this case states that Ms. Valenzuela obtained a misdemeanor-reclassification of the felony conviction underlying her "prison prior" in the case in which it was entered (Imperial Co. case no. JCF28616) pursuant to a petition filed under subdivision (a) of section 1170.18. (Slip Opn., pp. 19-20.) However, subdivision (f) of section 1170.18 would have been the proper statutory basis for seeking such relief.

[8] These were the ultimate positions of the parties in the Court of Appeal. Earlier, before they had become aware that the felony conviction underlying the prison prior had been reduced to a misdemeanor in Superior Court case no. JCF28616, the parties had both taken different views about what the Court of Appeal should do regarding the prison prior pursuant to Proposition 47. (*Ibid.*)

Opn., p. 21.) The Court of Appeal also rejected Ms. Valenzuela's argument that the "for all purposes" language of subdivision (k) of section 1170.18 supports a resentencing at which her prison prior may be stricken on the basis of the reduction of the felony underlying it to a misdemeanor. "Nothing in this language or the ballot materials for Proposition 47 indicates that this provision was intended to have the retroactive collateral consequences that Valenzuela advances." (Slip Opn., p. 22.)

The Court of Appeal also distinguished the cases Ms. Valenzuela cited in support of her resentencing request (*People v. Park* (2013) 56 Cal.4th 782; *People v. Flores* (1979) Cal.App.3d 461), concluding that those cases hold that a sentence enhancement for a prior felony conviction is not available when the prior conviction that forms basis for the enhancement is reduced *before* the new offense is committed. (Slip Opn., pp. 22-24.) The Court of Appeal also agreed with the Attorney General that further relief as to Ms. Valenzuela's prison prior was not available under Proposition 47, because "a section 667.5 enhancement is based on the defendant's status as a recidivist, not on the underlying criminal conduct. (See *People v. Gokey* (1998) 62 Cal.App.4th 932, 936 ['Sentence enhancements for prior prison terms are based on the defendant's status as a recidivist, and not on the underlying criminal conduct, or the act or

omission, giving rise to the current conviction'].)" (Slip Opn., p. 24.)

In her Answer Brief on the Merits, the Attorney General echoes the reasoning of the Court of Appeal and contends that case law regarding the reduction of felonies to misdemeanors pursuant to Penal Code section 17, subdivision (b), supports the Attorney General's (and Court of Appeal's) view that a prison prior that is reduced "for all purposes" pursuant to Proposition 47 (§ 1170.18, subds. (f), (g) and (k)) is reduced only prospectively; its reduction does not support a retroactive modification of a judgment in which the prison prior constitutes part of a sentence that the defendant is currently serving. (Answer Brief, pp. 4-25.)

3. The analysis of Judge Couzens and Justice Bigelow and its inconsistency with the express provisions and purposes of Proposition 47.

CPDA suspects that a likely source of the position of the Attorney General and Court of Appeal (and of the views expressed in the other review-granted opinions on the matter)[9] is the treatise on Proposition 47 of Judge Couzens and Justice Bigelow, which reaches the same conclusion as the Court of Appeal in this case on the basis of similar reasoning. Judge Couzens and Justice Bigelow reason as follows:

///

---

[9] See footnote 2, *ante*.

> The fact that the underlying offense resulting in a prior prison term is now a misdemeanor under Proposition 47 likely does not change the validity of the enhancement because section 667.5(b) is accounting for recidivist conduct. "Sentence enhancements for prior prison terms are based on the defendant's status as a recidivist, and not on the underlying criminal conduct, or the act or omission, giving rise to the current conviction." (*People v. Gokey* (1998) 62 Cal.App.4th 932, 936.) "The purpose of the section 667.5(b) enhancement is 'to punish individuals' who have shown that they are 'hardened criminal[s] who [are] undeterred by the fear of prison.' (*People v. Jones* (1993) 5 Cal.4th 1142, 1148, 22 Cal.Rptr.2d 753, 857 P.2d 1163.) 'Imposition of a sentence enhancement under Penal Code section 667.5[(b)] requires proof that the defendant: (1) was previously convicted of a felony; (2) was imprisoned as a result of that conviction; (3) completed that term of imprisonment; and (4) did not remain free for five years of both prison custody and the commission of a new offense resulting in a felony conviction. [Citation.]' (*People v. Tenner* (1993) 6 Cal.4th 559, 563, 24 Cal.Rptr.2d 840, 862 P.2d 840.)" (*In re Preston* (2009) 176 Cal.App.4th 1109, 1115.) An offense originally sentenced to state prison as a felony meets all of the requirements of *Tenner*, notwithstanding its new misdemeanor status. As observed by the Supreme Court, a reduction to a misdemeanor "for all purposes" under section 17(b) does not apply retroactively. (*People v. Feyrer* (2010) 48 Cal.4th 426, 438-439; *People v. Banks* (1959) 53 Cal.3d 370, 381-382; see also *People v. Rivera* (2015) 233 Cal.App.4th 1085, 1094-1095.)

(Couzens & Bigelow, Proposition 47, "The Safe Neighborhoods and Schools Act," (Barrister Press, May 2016), at pp. 87-88.)[10]

---

[10] The Couzens & Bigelow treatise on Proposition 47 is available at www.courts.ca.gov/documents/Prop-47-Information.pdf. Although the edition of the treatise cited is relatively recent and post-dates the Court of Appeal's opinion in this case, the initial edition of the Treatise, which contained substantially similar analysis of the issue, was published shortly after Proposition 47 became law. (See Couzens & Bigelow, Proposition 47, "The Safe Neighborhoods and Schools Act," (Barrister Press, Dec. 12,

Appellant respectfully submits that Judge Couzens' and Justice Bigelow's analysis, the Attorney General's arguments, and the Court of Appeal's opinion on this issue are all incorrect because they are inconsistent with the express provisions and clear intent of Proposition 47.

The express purposes of Proposition 47 include "ensur[ing] that prison spending is focused on violent and serious offenses, ... maximiz[ing] alternatives for nonserious, nonviolent crime[, and] [r]equir[ing] misdemeanors instead of felonies for nonserious, nonviolent crimes like petty theft and drug possession, unless the defendant has prior convictions for specified violent or serious crimes." (Prop. 47, §§2 and 3, p. 70.) Proposition 47 dictates that its provisions "shall be broadly" and "liberally construed to effectuate its purposes." (Prop. 47, §§ 15, 18, p. 74.)

The official argument in favor of Proposition 47 repeatedly stated that the measure would stop "wasting" prison space and taxpayers' money punishing petty offenses. (See Prop. 47. [argument in favor], p. 38 ["Proposition 47 will .. [r]educe prison spending and government waste."]; *ibid.* ["Stops wasting prison space on petty crimes ..."]; *ibid.* ["Stops wasting money on warehousing people in prisons for nonviolent crimes ... ."]; *ibid.* ["For too long, California's overcrowded prisons have been

---

2014), at p. 76.)

disproportionately draining taxpayer dollars and law enforcement resources, and incarcerating too many people convicted of low-level, nonviolent offenses."].)

Consistent with these purposes, Proposition 47 includes a new statutory mechanism – section 1170.18 – that allows defendants previously convicted of felonies for petty offenses that Proposition 47 has reclassified as misdemeanors to obtain retroactive application of the ameliorative effects of the initiative even as to judgments that are already final on appeal. The obvious purpose of this statute is to reduce the time that defendants spend in prison for offenses that are now deemed misdemeanors under Proposition 47, and to thereby reduce the money taxpayers spend in imprisoning defendants for petty offenses, whenever they are – or were – committed.

Proposition 47 expressly allows defendants to get prior felony convictions in final judgments re-designated as misdemeanors (§ 1170.18, subds. (f), (g)) and provides that, once such relief has been obtained, the conviction "*shall* be considered a misdemeanor *for all purposes*" except firearm possession and ownership. (§ 1170.18, subd. (k), italics added.) The plain language of these provisions, their statutory context, and the voter intent they were created to effectuate all make clear that, once a defendant