

MAR 10 2017

Jorge Navarrete Clerk

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Appellant,

v.

STEVEN ANDREW ADELMANN,

Defendant and Respondent.

S237602

Court of Appeal
No. E064099

(Riverside
County Superior
Court No.
SWF1208202)

Deputy

**MOTION FOR JUDICIAL NOTICE OF (1) PROPOSITION 47
DATA SUMMARY REPORT PREPARED BY THE JUDICIAL
COUNCIL OF CALIFORNIA,
AND (2) NOVEMBER 2014 VOTER GUIDE**

[Evid. Code, § 459; Rule of Court 8.252]

GENE D. VOROBYOV, California Bar No. 200193
LAW OFFICE OF GENE VOROBYOV
450 Taraval Street, # 112
San Francisco, CA 94116
Telephone: (415) 425-2693; gene.law@gmail.com

Attorney for Respondent
STEVEN ANDREW ADELMANN

INTRODUCTION

Pursuant to Evidence Code sections 452, subdivision (d) and 459, subdivision (a), and California Rules of Court, rules 8.54(a) and 8.252(a), respondent Steven Andrew Adelman respectfully moves this Court for an order taking judicial notice of (1) 2016 Proposition 47 Data Summary report prepared by Judicial Council of California, Criminal Justice Services, and (2) November 2014 Voter Guide. A copy of the 2016 report is attached hereto as Exhibit A.¹ A copy of the voter guide is too lengthy to attach to the motion, but can be conveniently downloaded off the Internet.²

Existence *and* contents of these documents are relevant to respondent's argument in the Answering Brief on the Merits ("ABM") that the Court of Appeal correctly harmonized Penal Code sections 1170.18 and 1203.9 to hold that section 1203.9 receiving

¹*Proposition 47 Data Summary Report*

<http://www.courts.ca.gov/documents/for-publication_prop-47.pdf> (as of March 8, 2017).

²*November 2014 Official Voter Information Guide*

<<http://vig.cdn.sos.ca.gov/2014/general/pdf/complete-vig.pdf>> (as of March 8, 2017).

court has the authority to decide a request for Proposition 47 relief if the defendant elects to initiate his request in that court.³ These documents are cited in the brief to show that the appellate court's construction is consistent with the intent of the voters in enacting Proposition 47 and is also the most practical. (ABM at pp. 8, 38-39 [Judicial Council report]; 32-34 [Voter Guide].)

Argument

A. The Subject Documents Are a Proper Subject of Judicial Notice

Evidence Code section 459 provides that "a reviewing court may take judicial notice of any matter specified in Section 452."

It is well established that courts can take judicial notice of official records of Judicial Council of California. (*Whittaker v. Superior Court* (1968) 68 Cal.2d 357, 362, fn. 4 [official records of the Judicial Council are proper matters for judicial notice]; *Butler-Rupp v. Lourdreaux* (2007) 154 Cal.App.4th 918, 926 [appellate court took judicial notice of Judicial Council report prepared in connection

³ All further unassigned statutory references are to the Penal Code.

with revision of a court rule]; *Vidrio v. Hernandez* (2009) 172 Cal.App.4th 1443, 1457, fn. 7 [appellate court took judicial notice of reports to Judicial Council recommending amendment to a rule of court].)

Similarly, it is well settled that in construing voter intent in passing an initiative, the courts take judicial notice of ballot pamphlet materials. (*Strong v. State Bd. of Equalization* (2007) 155 Cal.App.4th 1182, 1187-188, fn. 3.)

B. The Subject Documents Are Relevant In This Case

The contents of ballot pamphlet for Proposition 47 are relevant to support respondent's arguments that the Court of Appeal's reading of sections 1170.18 and 1203.9 as permitting the receiving court to rule on a request for Proposition 47 relief if the defendant elects to initiate the request in that court. (ABM 32-34.) Such reading of the statutes is the most consistent with the voters' goal in passing Proposition 47 to generate monetary savings and channel that money into victim services and rehabilitation programs. Because the receiving court will have the sole and entire jurisdiction

over the case, as well as possession of the court file, it will be the most practical and efficient place to decide a request for Proposition 47 relief.

Conversely, under the People's proposed reading of the statutes, *any* section 1203.9 transferee desiring Proposition 47 relief must engage in the following 3-step process *regardless of circumstances*. First, file a petition to transfer the case to the original court of conviction. Second, file and litigate a Proposition 47 request for relief away from the county of current residence. Third, once Proposition 47 issues are settled, file a petition to send the case back to the current county of residence. Ballot materials demonstrate that given the voters' intent in passing this proposition, they could not have reasonably intended to achieve money savings by requiring such cumbersome and unnecessary process in every case.

Furthermore, the contents of the 2016 Judicial Council report underscore why the People's proposed construction of the statutes is completely impractical. As the report shows, most of Proposition 47 requests going forward will likely be applications to designate

under section 1170.18, subdivision (f). (ABM 8, 38-39.) These applications do not implicate the concerns voiced by the People because the court adjudicates them without making a current dangerousness determination. There will not be any hearings involving victims or witnesses regarding these applications. (ABM 9, 39.)

Moreover, for a few section 1203.9 cases where there is a petition for resentencing under section 1170.18, subdivision (a), *and* a case-specific need for a contested current dangerousness hearing, the court retains the authority to transfer the case back under section 1203.9, subd. (c). (ABM 39-40.)

Thus, the Judicial Council report further demonstrates that the People's proposed statutory construction will impose a wasteful and cumbersome process for everyone involved without achieving any tangible benefit. The Court of Appeal was right in rejecting this reading of the law. This Court should uphold the Court of Appeal's decision.

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CONCLUSION

For the foregoing reasons, this Court should take judicial notice of existence and contents of (1) 2016 Proposition 47 Data Summary Report prepared by Judicial Council of California, and (2) the November 2014 Official Voter Guide.

DATE: March 8, 2017

By: _____

Gene D. Vorobyov
Attorney for Appellant
STEVEN ADELMANN

**[proposed] ORDER GRANTING MOTION FOR JUDICIAL
NOTICE**

BY THE COURT:

Good cause appearing, this Court takes judicial notice of the following documents:

- 2016 Proposition 47 Data Summary report prepared by
Judicial Council of California;
- November 2014 Official Voter Guide.

It is so ordered.

CHIEF JUSTICE

PROOF OF SERVICE

I declare that I am over the age of 18, not a party to this action and my business address is 450 Taraval Street, # 112, San Francisco, CA 94116. Pursuant to California Rule of Court 8.71, on the date shown below, I transmitted a PDF version of APPELLANT'S MOTION FOR JUDICIAL NOTICE AND PROPOSED ORDER GRANTING THE MOTION to the following e-mail addresses:

Donald W. Ostertag, Deputy District Attorney (Via Truefiling)

Howard C. Cohen, Staff Attorney, Appellate Defenders, Inc.
(Via Truefiling)

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

Executed on March 8, 2017, at San Francisco, California.

/s/ Gene D. Vorobyov

Respondent's Request for Judicial Notice

Exhibit A

Proposition 47 Data Summary Report

The data contained in these tables enumerates the self-reported petitions from each court filed for resentencing and/or reclassification under Proposition 47. Note that these data reflect filings/cases, not individual persons, and that data may vary due to revision/corrections in subsequent reports. The final disposition of these filings is not reported to the Judicial Council.

Quarter/Month	Counties reporting	Resentencing petitions	Reclassification Applications	Juvenile Petitions for Relief ^a	Total
Nov-Dec 2014	56	53,597	6,140		59,737
January 2015	57	18,149	4,116		22,265
February 2015	57	11,833	4,500		16,333
March 2015	57	9,060	5,700		14,760
April 2015	58	16,297	5,928		22,225
May 2015	58	11,211	5,000		16,211
June 2015	55	8,107	5,513		13,620
July-Sept 2015	54	17,556	12,188	389	30,133
Oct-Dec 2015	55	8,913	8,721	392	18,026
Jan-March 2016	55	6,680	15,381	49	22,110
April-June 2016	58	5,493	18,031	231	23,755
July-Sept 2016	58	4,322	15,527	211	20,060
Total		171,218	106,745	1,272	279,235

Nov 2014 - September 2016 Totals

County	Resentencing petitions	Reclassification Applications	Total Adult	Total Juvenile
Alameda ^b	4,753	0	4,753	5
Alpine	0	0	0	0
Amador	148	150	298	0
Butte	1,526	536	2,062	1
Calaveras	178	100	278	0
Colusa	39	14	53	0
Contra Costa	2,812	371	3,183	152
Del Norte	90	35	125	0
El Dorado	628	372	1,000	0
Fresno	6,541	3,362	9,903	59
Glenn	105	105	210	2
Humboldt	536	425	961	0
Imperial	419	172	591	0
Inyo	35	5	40	0
Kern	2,862	9,233	12,095	0
Kings	1,086	845	1,931	0
Lake	333	144	477	0
Lassen	119	62	181	0
Los Angeles	27,246	21,702	48,948	4
Madera	396	649	1,045	0
Marin	156	305	461	0
Mariposa	13	20	33	0
Mendocino	145	162	307	Data Unavailable
Merced	558	229	787	0
Modoc	16	7	23	0
Mono	66	72	138	0
Monterey	604	602	1,206	36
Napa	65	222	287	0
Nevada	84	118	202	0
Orange	18,742	10,528	29,270	50
Placer	883	501	1,384	10
Plumas	37	23	60	0
Riverside	8,533	4,277	12,810	41
Sacramento	7,592	3,860	11,452	2
San Benito	253	91	344	0
San Bernardino	5,319	5,572	10,891	76
San Diego ^b	48,707	1,280	49,987	563
San Francisco	651	756	1,407	36
San Joaquin	3,463	7,542	11,005	0
San Luis Obispo	942	599	1,541	0
San Mateo	3,149	4,957	8,106	1
Santa Barbara	1,571	445	2,016	0
Santa Clara	1,033	3,297	4,330	Data Unavailable
Santa Cruz	1,855	1,383	3,238	0
Shasta	1,812	976	2,788	23
Sierra	3	2	5	0
Siskiyou	141	20	161	10
Solano	270	1,758	2,028	19
Sonoma	1,194	884	2,078	17
Stanislaus ^b	3,995	677	4,672	Data Unavailable
Sutter	491	212	703	0
Tehama	426	309	735	1
Trinity	49	29	78	0
Tulare	2,019	2,408	4,427	3
Tuolumne	424	199	623	0
Ventura	2,453	13,963	16,416	161
Yolo ^b	3,424	0	3,424	0
Yuba	228	178	406	0

^aJuvenile data reported by the courts in the July-September 2015 survey are the total filings from November 4, 2014 through September 30, 2015. Some courts have been unable to report juvenile petitions and applications.

^bThese courts do not distinguish between petitions for resentencing and applications for reclassification. Both are reported under petitions for resentencing.