

SUPREME COURT COPY

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff and Respondent,

v.

ERNEST L. OROZCO,

Defendant and Appellant.

Case No. S249495
SUPREME COURT
FILED

DEC 27 2019

Jorge Navarrete Clerk

Fourth Appellate District Division One, Case No. D067313^{Deputy}
San Diego County Superior Court, Case No. SCN335521
The Honorable Michael Popkins, Judge

RESPONDENT'S SUPPLEMENTAL BRIEF

XAVIER BECERRA
Attorney General of California
LANCE E. WINTERS
Chief Assistant Attorney General
JULIE L. GARLAND
Senior Assistant Attorney General
MICHAEL PULOS
Supervising Deputy Attorney General
MINH U. LE
Deputy Attorney General
State Bar No. 292440
600 West Broadway, Suite 1800
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 738-9055
Fax: (619) 645-2044
Email: Minh.Le@doj.ca.gov
Attorneys for Plaintiff and Respondent

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INTRODUCTION

Pursuant to California Rules of Court, rule 8.520(d), respondent files this Supplemental Brief of new authority. After briefing in this case was complete, this Court issued its decision in *People v. Lara* (2019) 6 Cal.5th 1128 (*Lara*). In *Lara*, this Court held, “Defendants who had not yet been sentenced as of Proposition 47’s effective date are entitled to initial sentencing under Proposition 47’s amended penalty provisions, without regard to the sentencing procedures applicable to those who were already serving their sentences.” (*Lara, supra*, 6 Cal.5th at p. 1131.) Respondent maintains that Proposition 47 does not apply to receiving a stolen vehicle under Penal Code section 459d. However, if this Court disagrees, *Lara* is instructive as to which penalty provision applies to appellant.

ARGUMENT

IF THIS COURT CONCLUDES PENAL CODE SECTION 496D FALLS WITHIN THE AMBIT OF PROPOSITION 47, APPELLANT IS ENTITLED TO INITIAL SENTENCING UNDER *LARA*; NEVERTHELESS, BECAUSE HE WAS CHARGED AND CONVICTED BEFORE PROPOSITION 47 WENT INTO EFFECT, HE MUST SHOW HE QUALIFIES FOR MISDEMEANOR SENTENCING

In *Lara*, the defendant was charged, convicted and sentenced after Proposition 47 went into effect. (*Lara, supra*, 6 Cal.5th at pp. 1131-1132.) This Court held that “defendants who committed theft crimes before the effective date of Proposition 47, but who are tried or sentenced after the measure’s effective date, are entitled to initial sentencing under Proposition 47, and need not invoke the resentencing procedure set out in Penal Code section 1170.18.” (*Id.* at pp. 1133-1134.) Under *Lara*, appellant is entitled to initial sentencing under Proposition 47 because he was sentenced after the proposition went into effect.

However, unlike the defendant in *Lara*, appellant was charged and convicted by plea, before the passage of Proposition 47. Because his felony conviction under Penal Code section 496d was indisputably valid under the law at the time it was sustained, “initial sentencing under Proposition 47’s amended penalty provisions” is a more difficult question than it was in *Lara*. As appellant’s conviction does not meet the requirements of Proposition 47 on its face (i.e., that the value of the property was \$950 or less), for him to receive the benefit of sentencing under the amended penalty provisions, it appears that he would need to show that his conduct qualifies as a misdemeanor. Notably, appellant already attempted to do that here by providing evidence in the form of an arrest report that listed the value of the stolen vehicle at \$301. (CT 33-44.) Should appellant prevail in this Court, and should the matter be remanded to the superior court to apply Proposition 47 to Penal Code section 496d, that court could consider that and other evidence in determining whether appellant’s conduct qualifies as a misdemeanor.

CONCLUSION

For the reasons stated here and in the Answering Brief on the Merits, this court should affirm the Court of Appeal's decision.

Dated: December 26, 2019

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
LANCE E. WINTERS
Chief Assistant Attorney General
JULIE L. GARLAND
Senior Assistant Attorney General
MICHAEL PULOS
Supervising Deputy Attorney General



MINH U. LE
Deputy Attorney General
Attorneys for Plaintiff and Respondent

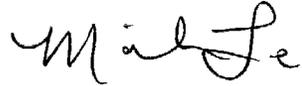
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CERTIFICATE OF COMPLIANCE

I certify that the attached **RESPONDENT'S SUPPLEMENTAL BRIEF** uses a 13 point Times New Roman font and contains 752 words.

Dated: December 26, 2019

XAVIER BECERRA
Attorney General of California

A handwritten signature in cursive script, appearing to read "Minh U. Le".

MINH U. LE
Deputy Attorney General
Attorneys for Plaintiff and Respondent

DECLARATION OF SERVICE BY OVERNIGHT COURIER

Case Name: **People v. Orozco**

No.: **S249495**

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; my business address is: 600 West Broadway, Suite 1800, P.O. Box 85266, San Diego, CA 92186-5266.

On December 26, 2019, I served the attached **RESPONDENT'S SUPPLEMENTAL BRIEF** by placing a true copy thereof enclosed in a sealed envelope with the **FED EX**, addressed as follows:

Benjamin Kington, Esq.
Boyce & Schaefer
934 23rd Street
San Diego, CA 92101-1914

Appellate Defenders, Inc.
555 West Beech Street, Suite 300
San Diego, CA 92101

Attorney for Defendant and Appellant

San Diego County Superior Court
1100 Union Street
San Diego, CA 92101

Court of Appeal of the State of California
Fourth Appellate District, Division One
Symphony Towers
750 B Street, Suite 300
San Diego, CA 92101

San Diego County District Attorney's Office
Hall of Justice
330 West Broadway Ste 1320
San Diego, CA 92101

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 December 26, 2019, at San Diego, California.

N. Rodriguez

Declarant



Signature