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February 13, 2017

Mr. Jorge E. Navarrete
Clerk, Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

SUPREME COURT
FILED

FEB 14 2017

Jorge Navarrete Clerk

Deputy

RE: *People v. Veronica L. De Hoyos, et al.*
California Supreme Court Case No. S228230
San Diego Superior Court, Case No. SCD252670
Fourth Appellate District, Division One Case No. D065961

Dear Mr. Navarrete:

On January 25, 2017, this court directed the parties to file supplemental letter briefs on the significance of this court's decision in *People v. Conley* (2016) 63 Cal.4th 646 (*Conley*) on the issues in this case. *Conley* disposes of appellant's arguments. There, this court analyzed the resentencing procedure of Proposition 36 and held that individuals whose judgments were not yet final were not entitled to automatic relief but must follow the prescribed petitioning procedure. Because Proposition 47's resentencing procedure resembles Proposition 36's resentencing procedure, the reasoning of this court's opinion in *Conley* forecloses appellant's claim here.

Under Proposition 36, the language of Penal Code¹ section 1170.126 extends the benefits of the Three Strikes Reform Act to "persons presently serving an indeterminate term of imprisonment" by allowing them to file a petition for a recall of sentence before the trial court that entered the judgment of conviction. (§ 1170.126, subs. (a) & (b).) The statute requires the trial court to determine if the petitioner is eligible for a shorter sentence and to resentence the petitioner unless the court, in its discretion, determines that resentencing would pose an unreasonable risk of danger to public safety (§ 1170.126, subs. (f) & (g)).

¹ All further unspecified statutory references will be to the Penal Code.

The petitioner in *Conley* argued that he was entitled to automatic resentencing under *In re Estrada* (1965) 63 Cal.2d 740 (*Estrada*), without filing a petition under section 1170.126 and without any determination of his dangerousness. (*Conley, supra*, 63 Cal.4th at pp. 655–656.) This court rejected that argument and held that third strike offenders who were sentenced under the Three Strikes law before the effective date of Proposition 36, but whose judgments were not yet final as of that date, are not entitled to automatic resentencing under the reasoning of *Estrada*. (*Conley, supra*, at pp. 651, 661–662.) The court explained that Proposition 36 “is not silent on the question of retroactivity.” (*Conley, supra*, at p. 657.) Rather, section 1170.126 extends the benefits of the Three Strikes Reform Act retroactively by creating a “mechanism that entitles all persons ‘presently serving’ indeterminate life terms imposed under the prior law to seek resentencing under the new law.” (*Conley, supra*, at p. 657.) The court reasoned that while *Estrada* presumes an intent to apply ameliorative changes to all non-final sentences, section 1170.126 goes even further, “including even prisoners serving *final* sentences within the Act’s ameliorative reach.” (*Conley, supra*, at pp. 657–658.)

This court also found it important that the recall mechanism in section 1170.126 “makes retroactive application of the lesser punishment contingent on a court’s evaluation of the defendant’s dangerousness.” (*Conley, supra*, 63 Cal.4th at p. 658.) That limitation on retroactivity, designed to protect public safety, convinced the court that it could not “say with confidence, as [it] did in *Estrada*, that the enacting body lacked any discernible reason to limit application of the law with respect to cases pending on direct review. On the contrary, to confer an automatic entitlement to resentencing under these circumstances would undermine the apparent intent of the electorate that approved section 1170.126: to create broad access to resentencing for prisoners previously sentenced to indeterminate life terms, but subject to judicial evaluation of the impact of resentencing on public safety, based on the prisoner’s criminal history, record of incarceration, and other factors.” (*Id.* at pp. 658–659.) The court could “discern no basis to conclude that the electorate would have intended for courts to bypass the public safety inquiry altogether in the case of defendants serving sentences that are not yet final.” (*Id.* at p. 659.)

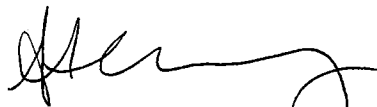
Here, section 1170.18’s petitioning procedure is strikingly similar to the resentencing procedure at issue in *Conley*, and appellant makes the same arguments this court rejected in that case. As with Proposition 36, Proposition 47 “is not silent on the question of retroactivity,” but rather expressly addresses that question in section 1170.18. (*Conley, supra*, 63 Cal.4th at p. 657.) Section 1170.18, subdivision (a), extends retroactive relief to those “currently serving a sentence,” through a petitioning procedure in the trial court. Also, by drawing no distinction between persons serving final sentences and those serving non-final sentences, section 1170.18 extends relief beyond

the reach of *Estrada* to those serving a *final* sentence. (*Conley, supra*, 63 Cal.4th at pp. 657–658.)

Also similar to section 1170.126’s resentencing procedure, section 1170.18 requires that those “currently serving a sentence” be evaluated for dangerousness. (§ 1170.18, subd. (b).) As this court explained in *Conley*, “The recall procedures . . . were designed to strike a balance between [the] objectives of mitigating punishment and protecting public safety by creating a resentencing mechanism . . . but making resentencing subject to the trial court’s evaluation of whether . . . their early release would pose an ‘unreasonable risk of danger to public safety.’” (*Conley, supra*, 63 Cal.4th at p. 658.) Nothing indicates the voters intended for defendants serving sentences that are not yet final to be able to obtain resentencing outside the confines of a section 1170.18 petition for recall of sentence and without the corresponding public safety inquiry.

Finally, in *Conley*, this court rejected appellant’s argument that she is entitled to automatic resentencing under section 1170.18, subdivision (m). That same language, “Nothing in this section is intended to diminish or abrogate any rights or remedies otherwise available,” is also present in section 1170.126, subdivision (k), and this court explained that the language “contains no indication that automatic resentencing—as opposed to, for example, habeas corpus relief—ranks among the ‘rights’ the electorate sought to preserve.” (*Conley, supra*, 63 Cal.4th at p. 661.) As in *Conley*, to obtain relief under Proposition 47, individuals currently serving a sentence for eligible offenses must file a petition for recall of sentence so the trial court can determine if they are eligible for relief and if they pose an unreasonable risk of danger to the public.

Respectfully submitted,



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For XAVIER BECERRA
Attorney General

DECLARATION OF SERVICE BY U.S. MAIL & ELECTRONIC SERVICE

Case Name: **People v. Veronica L. De Hoyos, et al.** Case No.: **S228230**

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 that same day in the ordinary course of business.

On February 13, 2017, I served the attached **Respondent's Supplemental Letter Brief**, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 600 West Broadway, Suite 1800, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

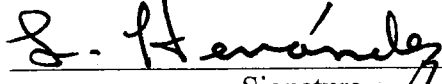
Leslie Ann Rose [Counsel for Appellant Veronica De Hoyos]
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and, furthermore I declare, in compliance with California Rules of Court, rules 2.251(i)(1)(A)-(D) and 8.71 (f)(1)(A)-(D), I electronically served a copy of the above document by 5:00 p.m. on the close of business day as follows:

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Kevin J. Lane, Court Administrator Fourth District Court of Appeal, Division I	Via truefiling

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 February 13, 2017, at San Diego, California.

L. Hernández
Declarant


Signature