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SIXTH DISTRICT APPELLATE PROGRAM

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February 22, 2018

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

**SUPREME COURT
FILED**

FEB 23 2018

Jorge Navarrete Clerk

Re: *In re John Manuel Guiomar*, S238888
Supplemental Letter concerning New Authority

Deputy

Dear Mr. Navarrete,

Please transmit this letter to the Honorable Chief Justice and to the Associate Justices of the Supreme Court:

* * *

Dear Justices,

In anticipation of oral argument on March 6, 2018 at 1:30 p.m., Petitioner John Manuel Guiomar refers this court to recent authority relevant to his case: *People v. Page* (2017) 3 Cal.5th 1175.

Petitioner contends that his felony conviction for failure to appear (Pen. Code, § 1320.5) is no longer valid because the underlying offense for which he failed to appear, a violation for possessing drugs (Health & Saf. Code, § 11350, subd. (a)), has been declared a misdemeanor "for all purposes" under Proposition 47. (Pen. Code, § 1170.18, subd. (k).) Though section 1320.5 is not expressly mentioned in the text of Proposition 47 (see Pen. Code, § 1170.18, subd. (a)), it can be charged only if the defendant fails to appear on a felony matter.

On this point, *Page, supra*, 3 Cal.5th 1175 is helpful. In holding that Proposition 47 applies to taking a motor vehicle (Veh. Code, § 10851, subd. (a)), this Court stated:

The Attorney General's argument misconceives the nature of the list in section 1170.18, subdivision (a). The statute does not say that only those

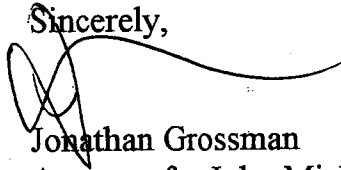
defendants who were convicted under the listed sections are eligible for resentencing. The statute instead says that those who are eligible (i.e., defendants serving a felony sentence who would have only been guilty of a misdemeanor had Proposition 47 been in effect at the time of their offenses) may "request resentencing in accordance with" the listed sections. (§ 1170.18, subd. (a).) Defendants requesting resentencing for Vehicle Code section 10851 convictions, like defendant here, are asking to be given a misdemeanor sentence "in accordance with" section 490.2, which is on the list; their resentencing thus falls within the terms of section 1170.18, subdivision (a).

(Page, at p. 1184.)

Petitioner is requesting that the resentencing under Proposition 47 include the felony conviction for failing to appear in accordance with redesignating the drug possession case as a misdemeanor. Petitioner could not have been charged with a felony failure to appear today because his underlying drug case would be a misdemeanor. Because his drug conviction has been reduced to a misdemeanor "for all purposes," the felony failure to appear can no longer stand.

Thank you for your consideration.

Sincerely,



Jonathan Grossman
Attorney for John Michael Guiomar

DECLARATION OF SERVICE BY E-MAIL AND U.S. MAIL

Case Name: *In re Guiomar*

Case No.: S238888

I declare that I am over the age of 18, not a party to this action and my business address is 95 S. Market Street, Suite 570, San Jose, California 95113. On the date shown below, I served the within **SUPPLEMENTAL LETTER CONCERNING NEW AUTHORITY** to the following parties hereinafter named by:

X **BY ELECTRONIC TRANSMISSION** - I transmitted a PDF version of this document by electronic mail to the party(s) identified on the attached service list using the e-mail address(es) indicated.

Served electronically via email:

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X **BY MAIL** - Placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Jose, California, addressed as follows:

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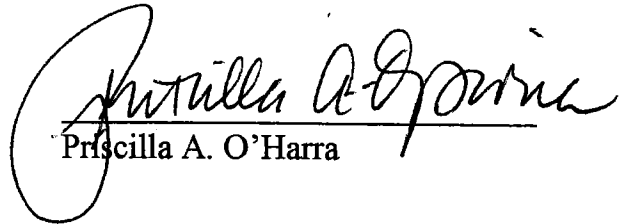
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I declare under penalty of perjury the foregoing is true and correct. Executed this 22nd day of February, 2018, at San Jose, California.


Priscilla A. O'Harra