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February 14, 2017

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

Re: *People v. Veronica Lorraine DeHoyos*
Supreme Court Case No. S228230
Court of Appeal Case No. D065961

Dear Mr. Navarrete:

By order of January 25, 2016, this court requested the parties "to brief the significance, if any, of this court's decision in *People v. Conley* (2016) 63 Cal.4th 646 [*Conley*], on the issues in this case." In *Conley* this court held in the context of Proposition 36, that a defendant who had suffered a Third Strike conviction before the passage of the proposition, then had appealed, but whose appeal was pending – and, hence, the judgment was not yet final – was not entitled to the ameliorative benefits of the proposition under the principles of *In re Estrada* (1965) 63 Cal.2d 740 (*Estrada*).

In considering *Estrada* principles, this court in *Conley* weighed a "set of interpretive considerations" and was persuaded "that the voters who passed [Proposition 36] did not intend to authorize automatic resentencing for third strike defendants serving nonfinal sentences imposed under the former version of the Three Strikes law." (*Conley*, *supra*, at p. 657.) In other words, it is the intent of the legislative body, whether the Legislature or the electorate, which the court must discern to determine if *Estrada* does apply to any particular legislation.

Appellant acknowledges the similarity of the language in question in both Proposition 36 (Pen. Code,[1] 1170.126) and Proposition 47 (§ 1170.18, subd. (a)). But it does *not* necessarily follow that the same language *must* be given the same meaning if the "set of interpretive considerations" surrounding and imbedded within Proposition 47 are entirely

[1]All statutory references shall be to the Penal Code.

different than those which this court considered in Proposition 36.

ARGUMENT

I.
WHILE PROPOSITIONS 36 AND 47 SHARE SOME SIMILAR LANGUAGE, THIS COURT SHOULD CONFINE ITS INTERPRETATION OF THE LATTER TO THE CONTEXT OF *THAT* PROPOSITION AND THE VOTERS' INTENT IN ENACTING *IT*. THE COURT MUST ADOPT AN INTERPRETATION CONSISTENT WITH THE VOTERS' INTENT IN ENACTING PROPOSITION 47 AND REFRAIN FROM FALLING BACK ON THE UNDERSTANDINGS OF SIMILAR TERMS IN OTHER CONTEXTS WHICH CONFLICT WITH THE VOTERS' INTENT IN ENACTING PROPOSITION 47.

When legislation is enacted by the initiative process, indicia of the electorate's intent is comparatively meager when contrasted to the legislative process utilized by the Legislature. Typically, with a Voter Information Guide there will be the actual language of the text of the proposed law, a very brief summary by the Attorney General, analysis by the legislative analyst, and the various arguments, pro and con, of proponents and opponents. For there to be any rational system to determine intent, a primary given, whether denoted as a legal fiction or not, is the presumption that the electorate read and considered the relevant portions of the Voter Information Guide. (Cf. *People v. Buford* (2016) 4 Cal.App.5th 886, 916 (*Buford*) [voters are provided with voter information guides containing not only actual text of measure, but also a neutral explanation and analysis by the Legislative Analyst and arguments in support of and opposition to the measure, because they are not asked or presumed to be able to discern all potential effects of proposed initiative].) Or, as this court recognized in *Amador Valley Joint Union High School District v. State Board of Equalization* (1978) 22 Cal.3d 208, 245–246, "[T]he ballot summary and arguments and analysis presented to the electorate in connection with a particular measure may be helpful in determining the probable meaning of uncertain language. [Citations]." In *Amador*, this court observed "that we ordinarily should assume that the voters who approved a constitutional amendment '. . . have voted intelligently upon an amendment to their organic law, the whole text of which was supplied each of them prior to the election and which they must be assumed to have duly considered.' " (*Id.* at pp. 243–244.) In *Amador*, what was in question was a constitutional amendment, but this court's same conclusion should hold true in statutory amendment. Of paramount importance to the question propounded by this court's order is to compare and contrast the presentation to the electorate of the two propositions.

The very first sentence of Proposition 36, i.e., Section 1, Findings and Declaration, is, with emphasis added, "The People enact the Three Strikes Reform Act of 2012 *to restore the original intent* of California's Three Strikes Law – . . . ." (Voter Information Guide, Gen. Elec. (Nov. 6, 2012) [Voter Guide 2012], Text of Proposed Laws, p. 105.) Similarly, that same section provided, again with emphasis added, "This act will: . . . (2) *Restore* the Three Strikes law to the *public's original understanding* by requiring life sentences only when a defendant's current conviction is for a violent or serious crime." (*Ibid.*) By "restoring" a scheme, albeit somewhat belatedly, to its "original intent," by its very terms, Proposition 36 would not be a wholesale, widespread, never-before-seen sea change in California criminal jurisprudence as has been Proposition 47. One may note that nowhere in *Conley*, *supra*, is "restore" or "original intent" or "original understanding" found.

In stark contrast to Proposition 36, Proposition 47 reduced a number of wobbler and felony offenses to misdemeanor offenses (assuming an offender does not have a "super-strike" history), allowed for resentencing for those under judgment (even if no appeal was taken or if one had become final), and, without precedent, allowed for those with qualifying offenses to seek to have their felonies designated misdemeanors (again assuming no "super-strike" history) *no matter* how far in the past the offenses had been committed. As noted in previous briefing but bears repeating in the context of this supplemental brief requested by the court, the first three bullet points of the Summary, "Prepared by the Attorney General" *herself* (Voter Information Guide, Gen. Elec. (Nov. 4, 2014) [Voter Guide 2014], Official Title & Summary, at p. 34), the very first words a voter would read, indicate a considerable reduction in sentences for *new* offenses so long as the defendant has no "super-strike" or required sex registration offense:

- Requires misdemeanor sentence instead of felony for certain drug possession offenses.
- Requires misdemeanor sentence instead of felony for the following crimes when amount involved is $950 or less: petty theft, receiving stolen property, and forging/writing bad checks.
- Allows felony sentence for these offenses if person has previous conviction for crimes such as rape, murder, or child molestation or is registered sex offender.

Only the fourth bullet refers to required resentencing unless the court finds unreasonable public safety risks.

Similarly, when reviewing the Analysis by the Legislative Analyst, under "Proposal," there is first a short one paragraph introduction followed by *ten* detailed paragraphs describing the "**Reduction of Existing Penalties**" should Proposition 47 be

enacted. (Guide 2014, *supra*, Analysis, at pp. 35-36.) Following these ten descriptive paragraphs is a *one*-paragraph discussion concerning resentencing from felonies to misdemeanors for previously convicted offenders – the petition process of section 1170.18, including a mention of the designation as misdemeanors for completed felony sentences. (*Id.* at p. 36.)

Simply put, this vast retroactive scheme bespeaks an intent of the electorate far different that merely "restoring" an "original intent," an intent which should compel the application of *Estrada*. With such a far-reaching, unprecedented retroactive effect, should *Estrada*, *supra*, apply to defendants such as appellant in the same manner as this court held in *In re Kirk* (1963) 63 Cal.2d 761 (*Kirk*) [when prior to affirmance of conviction by reviewing court, ameliorative legislation was enacted, the problem is precisely the same as the one involved in *Estrada*, and petitioner entitled to benefits of amendatory statute, i.e., *Kirk*-defendants] or should be such defendants be linked with those whose affirmances have come after the date of enactment (or who never availed themselves of appeal)?

One cannot answer that question simply by looking at the similarity of the language. Such a simplistic approach has been rejected by several cases. One case in point is *Buford, supra,* 4 Cal.App.5th 886. While the underlying issues in *Buford* were different, i.e., burdens of proof and presumptions inherent in Proposition 36, still, to address those issues the *Buford* court emphasized the differences between the intent of the electorate in enacting the earlier and later propositions. "[Proposition 36] clearly placed public safety above the cost savings likely to accrue as a result of its enactment. Thus, uncodified section 7 of [Proposition 36] provides: 'This act is an exercise of the public power of the people of the State of California *for the protection of the health, safety, and welfare of the people of the State of California*, and shall be liberally construed to effectuate those purposes." (Voter Information Guide, Gen. Elec. [(Nov. 6, 2012)] text of Prop. 36, p. 110, some italics omitted.)" (*Id.* at pp. 908-909) " . . . , 'Although the Act "diluted" the three strikes law somewhat [citation], "[e]nhancing public safety was a key purpose of the Act" [citation].' " (*Id.* at p. 909.)

The *Buford* court continued: "In contrast, Proposition 47 . . . emphasized monetary savings. The 'Findings and Declarations' state: 'The people of the State of California find and declare as follows: [¶] The people enact the Safe Neighborhoods and Schools Act to ensure that prison spending is focused on violent and serious offenses, to maximize alternatives for nonserious, nonviolent crime, and to invest the savings generated from this act into prevention and support programs in K–12 schools, victim services, and mental health and drug treatment. This act ensures that sentences for people convicted of dangerous crimes like rape, murder, and child molestation are not changed.' (Voter Information Guide, Gen. Elec. (Nov. 4, 2014) text of Prop. 47, § 2, p. 70.)

Uncodified section 15 of the measure provides: 'This act shall be broadly construed to accomplish its purposes,' while uncodified section 18 states: 'This act shall be liberally construed to effectuate its purposes.' (Voter Information Guide, Gen. Elec., *supra*, text of Prop. 47, p. 74.) Proposition 47 requires misdemeanor sentences for various drug possession and property offenses, unless the perpetrator has a prior conviction for a 'super strike' offense or for an offense requiring sex offender registration pursuant to section 290, subdivision (c). [Citations.]" (*Buford, supra*, 2016 WL 6302502 at p. *17.) From this the court concluded, "Nowhere in the ballot materials for Proposition 47 were voters given any indication that initiative, which dealt with offenders whose current convictions would now be misdemeanors rather than felonies, had any impact on Proposition 36 . . . ." (*Buford, supra*, 4 Cal.App.5th at p. 909.))

So, too, this court in *Harris v. Superior Court* (2016) 1 Cal.5th 984, 992, recognized the cost-saving purpose of Proposition 47: "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. [Citations.]"

Similarly, in *People v. Walker* (2016) 5 Cal.App.5th 872, 878 (*Walker*), while noting, with emphasis added, that the two propositions "*share some similar language*," still, "*the two ballot initiatives reflect profound differences in purpose and intent.* The voters enacted Proposition 47 'to ensure that prison spending is focused on violent and serious offenses, to *maximize alternatives for nonserious, nonviolent crime, and to invest the savings generated from this act into prevention and support programs*.' (Voter Information Guide [(Nov. 4, 2014)] text of Prop. 47, § 2, p. 70.) [*Proposition 47] achieves these goals by classifying specific nonserious, nonviolent crimes as misdemeanors rather than felonies*, while expressly disqualifying offenders with super strike convictions from benefitting from its provisions." (*Ibid.*) On the other hand, *"Proposition 36 . . . was aimed at 'restor[ing] the original intent of California's Three Strikes law.'* (Voter Information Guide, Gen. Elec. (Nov. 6, 2012) text of Prop. 36, § 1, p. 105.)" (*Ibid.*)

While an expressed intent and purpose of Proposition 47 was 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, appellant notes that an implied intent and purpose must have also have been to ameliorate the erstwhile felony consequences under which those convicted of felonies of the affected statutes who had *completed* their sentences still travail. Since the individuals have completed their incarceration, parole, or probation, there is no longer any money to be saved by reducing their felonies to misdemeanors, and, hence, some purpose other than pure money-savings must be present. Also, the sooner individuals such as appellant may achieve their

reduction, the sooner the money savings are realized – both in costs of incarceration *and judicial resources.*

Returning to *Walker, supra*, most relevant to the instant discussion, the court wrote, "Noting that "[t]here is a presumption that terms must be interpreted to be consistent with the statutory scheme of which they are a part," [*People v. Spiller* (2016) 2 Cal.App.5th 1014] kept its analysis within the context of Proposition 36 and consistent with the provisions of the Three Strikes scheme as a whole. (*Spiller, supra*, 2 Cal.App.5th at p. 1023, 207 Cal.Rptr.3d 151.) We must likewise confine our interpretation of "prior conviction" to the context of Proposition 47 and the voters' intent in enacting it. *That means we must adopt the interpretation most consistent with the intent of the voters, and refrain from falling back on understandings of the term from other contexts which conflict with the voters' intent in enacting this law.*" (*Walker, supra*, 5 Cal.App.5th at p. 879, emphasis added.)

The principle that an interpretation consistent with the electorate's intent and refraining from the employment of terms in other contexts is not a one-way street or a gauge subject to a double-standard, i.e., to be utilized in favor of a more severe interpretation of Proposition 36, but ignored in the discourse of Proposition 47. When applied in the context of Proposition 47, the conclusion shall follow that the electorate's intent requires an adoption of an interpretation consistent with appellant's argument.

The intent of the electorate was not only 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. If that were its only intent, the proposition would not have also included its wide, broad ameliorative scheme permitting erstwhile felons with convictions decades old to gain reduction. (§ 1170.18, subd. (f).) Similarly, any eligible offense for which judgment had not been imposed would likewise be subject to amelioration. (*Estrada, supra*, 63 Cal.2d 740.) The offenses are presumptively misdemeanors unless the prosecution pleads and proves a disqualifying factor such as a super-Strike (and in the case of value limitation that such value was exceeded).

These intents – massive reductions in the criminal sanctions of both current prosecutions and long-past convictions – extensive and wide-scale, are in stark contrast to restoring the original intent of our Three Strikes law.

II.

THE RATIONALES IN *CONLEY, SUPRA*, APPLICABLE TO THE RESENTENCING OF THREE STRIKERS UNDER SECTION 1170.126 ARE INAPPOSITE TO PROPOSITION 47 AND ITS WIDE-SCALE AMELIORATION OF CRIMINAL PUNISHMENT.

Appellant is not unmindful of this court's conclusion in *Conley, supra*, 63 Cal.4th at page 657, distinguishing the electorate's intent in enacting Proposition 36 from "[t]he *Estrada* rule [which] rests on an inference that, in the absence of contrary indications, a legislative body ordinarily intends for ameliorative changes to the criminal law to extend as broadly as possible, distinguishing only as necessary between sentences that are final and sentences that are not."

This court then set forth three rationales for why the electorate's intent evinced a contrary indication excluding Proposition 36 from the *Estrada* realm. The second rationale, in essence, was that "the nature of the recall mechanism and the substantive limitations it contains call into question the central premise underlying the *Estrada* presumption: that when an amendment lessens the punishment for a crime, it is reasonable to infer that the enacting legislative body has categorically determined that 'imposition of a lesser punishment' will in all cases 'sufficiently serve the public interest.' [Citation.]" (*Conley, supra*, 63 Cal.4th at p. 658.) This court then concluded, "Where, as here, the enacting body creates a special mechanism for application of the new lesser punishment to persons who have previously been sentenced, and where the body expressly makes retroactive application of the lesser punishment contingent on a court's evaluation of the defendant's dangerousness, we can no longer say with confidence, as we 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."

But the contrary is true in the circumstances of Proposition 47; here's why: The expressed purpose of Proposition 36 was "to restore the original intent of California's Three Strikes Law," and to that end, this court recognized that intent required resentencing to be "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." (*Conley, supra*, 63 Cal.4th at p. 659.) And, of course, Proposition 36 would only be applicable to individuals who had two-plus serious/violent felony offenses, certainly not an enviable criminal history.

In contrast, while some – certainly a small fraction of the tens or hundreds of

thousands who have sought Proposition 47 relief may be individuals who have been Two or Three Strikers, by far, *far*, the vast majority are those who have no serious/violent felonies, let alone a so-called "super Strike." In determining the electorate's intent re the *Estrada* principle, this court should not look at section 1170.18, subdivision (a) in myopic isolation from the entire proposition, but rather in mind with the complete change in the legal landscape wrought by composite whole. This court should not be blinded by the blizzard of litigation occasioned by the differences of opinions on the meaning of section 1170.18. Truth be told, the real influence on California's judicial system was and continues to be de-felonization of a slew of offenses and the prosecution of same as misdemeanors.

The contrast between the two propositions is again highlighted by this court's third rationale – "unlike in *Estrada*, the revised sentencing provisions at issue in this case do more than merely reduce previously prescribed criminal penalties. They also establish a new set of disqualifying factors [such as being armed with firearm] that preclude a third strike defendant from receiving a second strike sentence. (See Pen. Code, § 1170.12, subd. (c)(2)(C).) The sentencing provisions further require that these factors be 'plead[ed] and prove[d]' by the prosecution. (*Ibid.*) [¶] These provisions add an additional layer of complexity to defendant's request for automatic resentencing under the revised penalty scheme." (*Conley, supra*, 63 Cal.4th at p. 659.) But not so, for all intents and purposes, in the Proposition 47 sphere.

For Proposition 47, for all of the potential misdemeanors – those who were in the process of being prosecuted on November 5, 2014; those who were sentenced and who did not appeal or whose appeals were final and would petition under section 1170.18, subdivision (a); those whose convictions were long final and would apply for those felonies to be designated under section 1170.18, subdivision (f); those like appellant who are *Kirk*-defendants; and those who are currently being prosecuted – to be eligible for misdemeanor treatment must be free from so-called super-Strikes or sex registration offenses. More accurately, the People have the burden to plead and prove their ineligibility. In other words, this past criminal history, which renders presumptive misdemeanants ineligible, is equally applicable to those to whom *Estrada*, *supra*, unquestionably would otherwise apply as well as to current offenders, and there is nothing to distinguish the *Kirk*-defendants from them.

There, thus, remains this court's first rationale, "the voters adopted a different approach. They took the extraordinary step of extending the retroactive benefits of [Proposition 36] beyond the bounds contemplated by *Estrada* – including even prisoners serving final sentences within the [proposition's] ameliorative reach – but subject to a

special procedural mechanism for the recall of sentences already imposed. In prescribing the scope and manner of the [proposition's] retroactive application, the voters did not distinguish between final and nonfinal sentences, as *Estrada* would presume, but instead drew the relevant line between prisoners 'presently serving' indeterminate life terms—whether final or not—and defendants yet to be sentenced." (*Conley, supra*, 63 Cal.4th at pp. 658-659.)

This rationale does not support a similar conclusion as to Proposition 47. First, the implication that the operative language of section 1170.126 refers to the "*presently* serving an indeterminate [life] term" (emphasis added) is inaccurate. Actually, in the language of operative subdivision, which refers to who may and how to file the actual petition, there is there is no adverb "presently" modifying "serving":

> Any person serving an indeterminate term of life imprisonment imposed pursuant to [the Three Strikes law], whether by trial or plea, of a felony or felonies that are not defined as serious and/or violent felonies by subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7, may file a petition for a recall of sentence, within two years after the effective date of the act that added this section or at a later date upon a showing of good cause, before the trial court that entered the judgment of conviction in his or her case, to request resentencing in accordance with the provisions of subdivision (e) of Section 667, and subdivision (c) of Section 1170.12, as those statutes have been amended by the act that added this section.

(§ 1170.126, subd. (b.)[2]

Can one say that the presence of "presently" in subdivisions (a) and (c) but not in the paramount subdivision (b), can be and should be considered just a draftsman's oversight, a scrivener's error? Considering that subdivisions (a) and (c) *exclude others* from the application of the legislation while subdivision (b) actually defines the parameters of who may and how to petition, the omission of "presently" cannot be presumed to be accidental.

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[2]In contrast, section 1170.126, subdivision (a), which sets forth the intent to apply the ameliorative effect of the state, does limit the beneficial effect only to those "presently" serving an indeterminate sentence whose sentence would not otherwise have been an indeterminate act. Similarly, section 1170.126, subdivision (c), which precludes application of the act to second Strikers, refers to those "presently" serving a "second strike" sentence.

But then, what of "currently" in Proposition 47, specifically section 1170.18, subdivision (a)? Appellant has previously addressed this question (e.g., Reply Brief, p. 46 et seq.), but it bears repeating here. In contrast to Proposition 36 in question in *Conley*, *supra*, where there were only sentenced Three Strikers and pre-sentenced Three Strikers whose offenses and sentencing were in question, in the Proposition 47 context there is a far broader smorgasbord. Relevant to the discussion here would be the dichotomy between the language re "currently serving a sentence" (§ 1170.18, subd. (a)) and "completed his or her sentence" (§ 1170.18, subd. (f)). The differences between the two regimes are not inconsequential.

The primary difference between the two regimes is that for the latter, the sentence having already been completed, there is nothing to be completed, and there is no "resentencing." The electorate, in its wisdom, drew a bright-line: whether the applicant's sentence had been completed yesterday or decades ago, the applicant fell under the subdivision (f) regime. One may reasonably infer that, although some applicants may have only recently just completed their sentences, for many more thousands upon thousands of applicants who may have been out of custody living ordinary law-abiding lives, with the exception of having a solitary felony record, it was not economically feasible, wise, or welcomed – especially in light of the amelioration of the current misdemeanors – to question their present "dangerousness." Therefore, unless an applicant had a past history of a so-called super-Strike, the applicant was entitled to reduction.

Because of this more relaxed standard of granting relief, another difference – which actually is a boon to the courts – is that no hearing is necessary to grant (or deny[3]) relief, unless the applicant requests one. (§ 1170.18, subd. (h).)

One other difference between the "current"/"completed" regimes may exist as to the firearm exception in section 1170.18, subdivision (k), which provides, with emphasis added, "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 [certain offenses commencing with Section 29800]." The first clause is unquestionably applicable to both petitioners for resentencing under section 1170.18,

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[3]Presumably, the only reasons to deny relief would be (a) if the offense sought to be reduced was not a qualifying offense or (b) the applicant had a disqualifying super-Strike history.

subdivisions (a) and applicants for designation under subdivision (f), but the exception clause refers ONLY to resentencing and not to designation. Are we again to subscribe this to draftsman's oversight or scrivener's error in a different proposition at a different time with a different electorate's intent? The bottom-line lesson to be drawn is that there *is* a decided distinction between those who have a "current" sentence and those who have "completed" sentence under the two regimes.

Given the entire context of Proposition 47 as well as that the disputed language must be interpreted in the context of *that* proposition rather similar terms in other contexts which conflict with the voters' intent in enacting Proposition 47 (see Argument I, *ante*), the most reasonable interpretation is that the "currently serving a sentence"/"complete his or her sentence" language is aimed at individuals whose judgments had become final. While some minuscule percentage of appellants could possibly complete their sentences before an appeal became final, section 1170.18, subdivision (f) is a legislative means, an unprecedented and previously unheard of mechanism, for former felons whose judgments may be years or decades old to reduce their felon status. Given this unprecedented amelioration, section 1170.18, subdivisions (a) and (f) should be read in conjunction, as a way of distinguishing the procedures and prerequisites for reduction for those individuals whose judgments are indeed final.

Though the most reasonable construction of "currently" in section 1170.18, subdivision (a) is in contrast with a "completed" sentence as meant in subdivision (f), at the very minimum, whether "currently" could have the same meaning as "presently" as used in section 1170.126, subdivisions (a) and (c) – but apparently deliberately omitted from the critical subdivision (b) – or whether it may have been used to distinguish section 1170.18, subdivision (a) from "completed" sentence in subdivision (f), at the very minimum, there would exist an ambiguity.

In both her opening brief on the merits and in reply, appellant has addressed California law on ambiguous legislation and the rule of lenity (BOM, pp. 44-51; Reply, pp. 40-41), law to which respondent has not fully responded. Given the function of this supplemental briefing, appellant shall not iterate same here, except to note simply the rule that " ' . . . "ambiguity in a criminal statute should be resolved in favor of lenity, giving the defendant the benefit of every reasonable doubt on questions of interpretation. But . . . 'that rule applies "only if two reasonable interpretations of the statute stand in relative equipoise." [Citation.]' [Citations.]" [Citations.]' [Citation.]" (*People v. Nuckles* (2013)

56 Cal.4th 601, 611.)[4]

It would be anomalous to conclude that the intent of the electorate was not to give *Estrada-Kirk* treatment to defendants such as appellant. Had Proposition 47 been enacted without section 1170.18 at all, would there be any doubt? None – there would be a straight-forward application of *Estrada-Kirk*. Had Proposition 47 been enacted, but with section 1170.18 limited to subdivisions (f) et seq. sans language re resentencing, again would there be any dispute as to the application of *Estrada-Kirk*? Doubtful. Only the linkage of subdivision (a) to subdivision (f) causes any question, but the most reasonable conclusion would be that these two categories of post-conviction relief were intended for the two related groups of felons with final judgment. And all other defendants whose judgments were not final fell under the well known *Estrada-Kirk* rule.

SUMMARY

In concise summary –

- Interpretation of section 1170.18, subdivision (a) must be confined to the circumstance of Proposition 47 and the voters' intent in enacting *it*;
- In contrast to restoring the original intent of The Three Strikes Law which was the intent of the electorate in enacting Proposition 36, the electorate's intent in enacting Proposition 47 was far-reaching amelioration, with the greatest emphasis on a new regime of new misdemeanors in lieu of former wobblers/felonies;
- The rationales underlying *Conley*, *supra*, are, thus, not present in the Proposition 47 context, namely, Proposition 36 resentencing scheme was intended to restore the electorate's original intent in sentencing Three Strikers whereas the electorate's intent in enacting Proposition 47 was a classic (and wide-scale) reduction in sentencing; and while Proposition 36 added a new set of disqualifying factors which have to be pleaded and proved by the prosecution, under Proposition 47, *all* potential misdemeanants, current or past, are subject to the same disqualifying factors, i.e., super-Strike or sex offense registration;
- One key and unprecedented component of Proposition 47 is section

[4]Appellant also took pains to set forth the questionable introduction of "egregious" into California's lexicon via Witkin editorializing. (BOM, p. 46 et seq.)

1170.18, subdivision (f) by which former felons may apply for misdemeanant status for judgments long ago final, i.e., after having "complete[d] his or her sentence";

- The most reasonable interpretation of "currently serving a sentence" is to distinguish petitioners under subdivision (a) from applicants who have "completed" their sentence and seek designation as a misdemeanor under subdivision (f) amongst those who comprise the class of litigants whose judgments are final, rendering defendants such as appellant whose judgments are not final to fall under the *Estrada-Kirk* rule;
- If any lingering ambiguity doubt remains, the preceding interpretation remains equipoised with any competing interpretation, and the rule of lenity in favor of the defendant prevails.

CONCLUSION

The holding of *Conley*, *supra*, is inapplicable to Proposition 47. The *Estrada-Kirk* rule does apply to appellant. This court should reverse the Court of Appeal.

Respectfully Submitted,

Dated: 2-14-17

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Case Name: People v. Veronica L. Dehoyos
Supreme Court No. S228230
Court of Appeal No. D065961
Superior Court No. SCD252670

I, Will Bookout, declare: I am employed in the County of San Diego, California. I am over 18 years of age and not a party to the within entitled cause; my business address is 555 West Beech Street, Suite 300, San Diego, California 92101-2939.

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Will Bookout
(Typed Name)


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