



Human Services Division

Christopher Gardner
Public Defender

Thomas Sone
Assistant Public Defender

Jennie Cannady
Chief Deputy Public Defender

SUPREME COURT
FILED

DEC 06 2018

Jorge Navarrete Clerk

Deputy

November 30, 2018

Supreme Court of California
350 McAllister Street
Room 1295
San Francisco, CA 94102-4797

Re: *Gardener v. Superior Court*, S246214; Supplemental letter brief

To the Court:

On November 20, 2018, the court issued an order directing the parties to file simultaneous letter briefs discussing the relevance, if any, of article I, section 15 of the California Constitution to the issues in this case, including whether a defendant facing misdemeanor charges is entitled to the assistance of appointed counsel at critical stages of the criminal cause, without regard to whether the defendant will ultimately be sentenced to a term of imprisonment. For the reasons set forth below, petitioner’s answer to this question is that under article I, section 15 a defendant in a criminal case is entitled to the assistance of counsel at any critical stage of the proceedings without regard to whether the defendant will ultimately be sentenced to a term of imprisonment.

The court’s question was directly addressed and answered by *Mills v. Superior Court* (1973) 10 Cal.3d 288 and *Gordon v. Justice Court* (1974) 12 Cal.3d 323. In both cases this court made a threshold determination that under article I section 13 of the California Constitution (now art. I, § 15) a defendant charged with a misdemeanor offense has a right to counsel regardless of whether a term of imprisonment is imposed. *Mills* held that “[u]nder the California Constitution, a trial judge must advise a defendant of his right to appointed counsel in all felony and misdemeanor proceedings whether actual imprisonment is to follow or not. ([Citations].)” (*Mills, supra*, 10 Cal.3d at p. 301.) *Gordon* held that the misdemeanor defendant’s fundamental right to counsel in that case was guaranteed under article I, section 13 “regardless of the severity of the punishment he faces if convicted.” (*Gordon, supra*, 12 Cal.3d at p. 332.) Both cases directly answer this court’s question and leave no doubt that under article I, section 15 a defendant in a criminal case is entitled to the assistance of counsel at any critical stage of the proceedings regardless of whether she will be sentenced to a term of imprisonment.

Although not directly responsive to the court’s question, petitioner would still like to bring *Tracy v. Municipal Court* (1978) 22 Cal.3d 760 to the court’s attention. In *Tracy* this court held that defendants charged with misdemeanor offenses have a statutory right to appointed counsel even if the misdemeanor is only punishable by a fine. (*Id.* at p. 765.) And that statutory right exists independent of any federal or state constitutional right to counsel. (*Ibid.*)

BOARD OF SUPERVISORS

ROBERT A. LOYINGOOD
Vice Chairman, First District

JANICE RUTHERFORD
Second District

JAMES RAMOS
Chairman, Third District

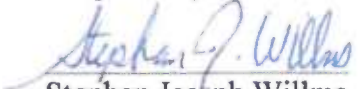
CURT HAGMAN
Fourth District

JOSIE GONZALES
Fifth District

GREGORY D. DEVEREAUX
Chief Executive Officer

Petitioner hopes that she has sufficiently addressed the court's question. If not, she will of course immediately comply with any requests for clarification, further briefing, or any other order.

Respectfully submitted,



Stephan Joseph Willms
Deputy Public Defender
Counsel for Petitioner

DECLARATION OF SERVICE BY U.S. MAIL

Case: *Gardner v. The Superior Court; The People*

Case no.: S246214

Stephan J. Willms declares as follows:

I am a resident of the State of California and over the age of eighteen years; I am not a party to this action; my business address is 9411 Haven Avenue, Rancho Cucamonga, CA 91730; I am familiar with the business practice of the San Bernardino County Public Defender for collection and processing of correspondence for mailing in the United States Postal System. In accordance with this practice, all correspondence placed in the internal mail collection system at the San Bernardino County Public Defender's Office is deposited with the United States Postal System that same day, or the following day, in the ordinary course of business.

On November 30, 2018, I served copies of the

SUPPLEMENTAL LETTER BRIEF

by placing a copy in a sealed envelope, and placing said envelope in the internal mail collection system at the San Bernardino County Public Defender's Office located at 9411 Haven Avenue, Rancho Cucamonga, CA 91730, and addressed to:

Robert Laurens Driessen
Superior Court of California
Appellate Division
8303 Haven Avenue
Rancho Cucamonga, CA 91730

Ryan Wade Rutledge
O'Melveny & Myers, LLP
610 Newport Center Drive, #1700
Newport Beach, CA 92660-6429

Attorney General – San Diego Office
P.O. Box 85266
San Diego, CA 92186-5266

Laura Beth Arnold
Office of the Public Defender
4200 Orange Street
Riverside, CA 92501

District Attorney – San Bernardino County
Appellate Services Unit
303 West Third Street, 5th Floor
San Bernardino, CA 92415-0511

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

Dated: November 30, 2018


Stephan J. Willms
Deputy Public Defender

