S263375

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, **v.** **MARIO SALVADOR PADILLA,** Defendant and Appellant.	Case No. **S**_____

Second Appellate District, Division Four, Case No. B297213
Los Angeles County Superior Court, Case No. TA051184
The Honorable Ricardo R. Ocampo, Judge

PETITION FOR REVIEW

XAVIER BECERRA
Attorney General of California
LANCE E. WINTERS
Chief Assistant Attorney General
SUSAN SULLIVAN PITHEY
Senior Assistant Attorney General
MICHAEL R. JOHNSEN
Supervising Deputy Attorney General
DAVID E. MADEO
Deputy Attorney General
State Bar No. 180106
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6088
Fax: (916) 731-2122
Email: DocketingLAAWT@doj.ca.gov
David.Madeo@doj.ca.gov
Attorneys for Plaintiff and Respondent

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TO THE HONORABLE CHIEF JUSTICE TANI CANTIL-SAKAUYE AND ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Pursuant to rules 8.500(a)(1) and (b)(1) of the California Rules of Court, the People of the State of California petition this Court to review the published opinion of the California Court of Appeal, Second Appellate District, Division Four, in *People v. Mario Salvador Padilla*, case number B297213. The opinion was filed on June 10, 2020, and is attached hereto. (Exh. A.) Neither party petitioned for rehearing.

ISSUE PRESENTED

In *In re Estrada* (1965) 63 Cal.2d 740, this Court established a presumption that, in the absence of a savings clause, the Legislature intends an ameliorative change in the criminal law to apply to all nonfinal judgments. Does the *Estrada* presumption apply when a judgment was final before the ameliorative change in the law but is later altered or amended for a reason unrelated to the new law?

STATEMENT OF THE CASE

In 1999, appellant was prosecuted in adult court and convicted by a jury of the murder of his mother (Pen. Code,[1] § 187, subd. (a)) and of conspiracy to murder his stepfather (§ 182, subd. (a)(1)). Appellant was 16 years old at the time he

[1] All further statutory references are to the Penal Code unless otherwise indicated.

committed the crimes. The jury found true the special circumstances that the murder was committed during the course of a robbery and while lying in wait. (§ 190.2, subds. (a)(15) & (a)(17).) Appellant was sentenced to life without the possibility of parole (LWOP). (See *People v. Padilla* (June 1, 2001, B135651) [nonpubl. opn.] (*Padilla* I), at pp. 12-13.)

On direct appeal, the Court of Appeal reversed the lying-in-wait special circumstance finding for insufficient evidence but otherwise affirmed the judgment. (*Padilla* I, at pp. 12-13.) This Court denied review (case number S098893) and, on December 18, 2001, the time within which appellant could seek a writ of certiorari in the United States Supreme Court expired. (Opn. 4; see *People v. Ketchel* (1966) 63 Cal.2d 859, 864.)

Beginning about 10 years later, the United States Supreme Court issued a series of decisions recognizing constitutional limits on lengthy sentences for juvenile offenders. (See *Graham v. Florida* (2010) 560 U.S. 48; *Miller v. Alabama* (2012) 567 U.S. 460; *Montgomery v. Louisiana* (2016) 136 S.Ct. 718.) Our Legislature also enacted a statutory procedure, codified in section 1170, subdivision (d)(2), under which certain juvenile offenders may seek resentencing. (*People v. Kirchner* (2017) 2 Cal.5th 1040, 1049-1050.)

In August 2013, appellant filed a petition for recall and resentencing in the trial court pursuant to section 1170, subdivision (d)(2). The trial court denied the petition, finding that appellant was ineligible for resentencing because his offense involved torture. Appellant appealed that ruling in case number

B257408. (*People v. Padilla* (November 20, 2015, B257408) [nonpubl. opn.], at p. 5.) The Court of Appeal concluded that the record of conviction contained insufficient evidence to support the determination that the murder involved torture, and reversed the denial of the resentencing petition. (*Id.* at pp. 5-6, 23-32.) Following a further hearing in the trial court, appellant's resentencing petition was again denied. (See *People v. Padilla* (December 21, 2017, B277715) [nonpubl. opn.].) The Court of Appeal affirmed. (*Id.* at pp. 25-29.)

Meanwhile, appellant had also filed a petition for writ of habeas corpus in the trial court seeking resentencing under United States Supreme Court authority. After a resentencing hearing in July 2015, the trial court reimposed the LWOP term. Appellant appealed in case number B265614. (*People v. Padilla* (2016) 4 Cal.App.5th 656, 661, rev. granted Jan. 25, 2017, S239454.) The Court of Appeal reversed and remanded for the trial court to exercise its discretion in resentencing appellant in light of guidance provided by an intervening United States Supreme Court decision. (*Id.* at pp. 661, 674.) On remand, the trial court held another resentencing hearing and once again sentenced appellant to LWOP. (Opn. 5; 1CT 169-170.) This appeal ensued.

While appellant's habeas corpus proceedings were underway, the electorate passed Proposition 57. (*People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, 304.) The new law made various changes to the Welfare and Institutions Code, such as eliminating mandatory and discretionary direct filing of

juvenile cases in adult court, and eliminating various presumptions that a juvenile is not fit to be prosecuted in juvenile court under certain circumstances. (Welf. & Inst. Code, § 707, subd. (a)(1).) Proposition 57 requires that an allegation of criminal conduct against any person under 18 years of age must be commenced in juvenile court. To prosecute the minor under general criminal law, the prosecution must file a motion to transfer the case from juvenile court to adult court. (Welf. & Inst. Code, § 707, subd. (a)(1); *Lara*, *supra*, at p. 305.) This Court has held that, because Proposition 57 "ameliorated the possible punishment for a class of persons, namely juveniles," it is presumed, under the rule of *In re Estrada* (1965) 63 Cal.2d 740, 744-745, that the Legislature intended it to apply to all nonfinal judgments. (*Lara*, *supra*, at p. 308.) In nonfinal cases that have already proceeded in adult court, the remedy is a conditional reversal for the trial court to make a determination whether the defendant is unfit to be dealt with under the juvenile court law. (*Id*. at pp. 310, 312-313.)

In the present appeal, appellant argued that he is entitled to a Proposition 57 fitness hearing. The Court of Appeal agreed. It held that Proposition 57 applies to appellant's case, under *Estrada*, because "his sentence was vacated and his sentence is no longer final." (Opn. 3.) It acknowledged that finality for *Estrada* purposes is "easy to apply in a typical case" but that "questions have arisen as to how this rule applies in different procedural settings." (Opn. 12.) Invoking this Court's decision in *People v. Jackson* (1967) 67 Cal.2d 96, the court concluded that "a

collateral proceeding may reopen the finality of a sentence for retroactivity purposes, even while the conviction remains final." (Opn. 14.) Because the finality of appellant's sentence had been "reopened" in the course of his habeas corpus litigation, the Court of Appeal remanded for a retroactive fitness hearing under Proposition 57. (Opn. 14-20.)

REASONS FOR GRANTING THE PETITION

THIS CASE PRESENTS AN IMPORTANT QUESTION OF LAW THAT HAS DIVIDED THE LOWER COURTS CONCERNING THE NATURE AND SCOPE OF *ESTRADA*'S PRESUMPTION OF RETROACTIVITY FOR NEW AMELIORATIVE LAWS

This Court's decision in *In re Estrada* (1965) 63 Cal.2d 740 established a presumption that the Legislature intends a new ameliorative law to apply to all nonfinal criminal judgments. This Court has not had occasion to address whether the *Estrada* presumption should extend to a judgment that was final after initial review but is "reopened" through alteration or amendment—for example, on habeas corpus, as in this case—after the enactment of an ameliorative law. That question is an important one that has generated conflicting decisions in the courts below and should be resolved by this Court.

A. The question presented by this case is of broad importance

In *Estrada*, this Court held that "[w]hen the Legislature amends a statute so as to lessen the punishment," the "amendatory act imposing the lighter punishment can be applied constitutionally to acts committed before its passage provided the judgment convicting the defendant of the act is not final." (63

Cal.2d at p. 745.) The basic rule of finality for these purposes is that a criminal judgment becomes final when "the courts can no longer provide a remedy to a defendant on direct review." (*In re Spencer* (1965) 63 Cal.2d 400, 405.) Generally, that rule will be straightforward and easy to apply for *Estrada* purposes. (See *Lara*, *supra*, 4 Cal.5th at pp. 304-305, 309 [holding that Proposition 57 applies retroactively to nonfinal judgments in context of a case still pending in adult trial court].)[2] But as the court below acknowledged, it is not clear whether the *Estrada* presumption applies in other contexts, such as the one at issue here. California law generally considers the sentence an essential part of the judgment. (See *McKenzie*, *supra*, 9 Cal.5th at p. 46.) Thus, as the court below observed, an alteration or amendment to a criminal defendant's sentence can "reopen" a judgment that was final under the general rule.

This Court has not addressed whether *Estrada* applies to a "reopened" judgment. *Estrada* established the presumption of retroactivity in the context of a judgment that was not yet final on a first appeal, and it had no occasion to further define "finality" for purposes of that presumption because the defendant had not yet been tried, convicted, or sentenced when the

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[2] Of course, as with nearly every legal rule, some gray areas may exist even when the vast majority of cases can be easily categorized. (See, e.g., *People v. McKenzie* (2020) 9 Cal.5th 40 [addressing whether judgment was final for *Estrada* purposes where probationer's time to appeal underlying conviction had expired but his case was on appeal following probation revocation and sentencing].)

ameliorative statute went into effect. (*Estrada*, *supra*, 63 Cal.2d at p. 744.) And subsequent cases in which this Court has found *Estrada* applicable to a statutory amendment did not present the question of a "reopened" judgment. (See, e.g., *Lara*, *supra*, 4 Cal.5th at p. 304; *People v. Wright* (2006) 40 Cal.4th 81, 85; *People v. Francis* (1969) 71 Cal.2d 66, 75.) Even where this Court has determined that *Estrada* is not controlling, the relevant statutory change occurred while the defendant was either pending sentencing or on his first direct appeal. (See *People v. Brown* (2012) 54 Cal.4th 314, 318-319; *In re Pedro T.* (1994) 8 Cal.4th 1041, 1044.) The *Jackson* case, upon which the Court of Appeal relied, involved a penalty retrial that occurred after the intervening new law; it did not address the scope or nature of the *Estrada* presumption. (See *Jackson*, *supra*, 67 Cal.2d at p. 100.)

The issue is of broad importance. While the facts of this case concern application of Proposition 57, the determinative legal question has to do with the nature and scope of the *Estrada* presumption. The question whether *Estrada* applies to "reopened" judgments could implicate any similar ameliorative law in any case in which a criminal defendant's judgment is altered or amended after it was initially final on direct review. That would be a significant expansion of the rule. And yet this Court has described the *Estrada* presumption as playing a "limited role" in our jurisprudence. (*Brown*, *supra*, 54 Cal.4th at p. 324.) The Legislature is capable of directing when and how a statute may operate retroactively, and it frequently does so. (See, e.g., *People v. DeHoyos* (2018) 4 Cal.5th 594; *People v. Conley*

(2016) 63 Cal.4th 646). The Court has therefore described the rule as a "reasonable" presumption that is applicable "in a specific context" only when it is otherwise impossible to determine the Legislature's intent. (*Brown*, *supra*, at p. 324.) Whether the rule should be expanded to apply to "reopened" judgments—whether that would be a reasonable presumption of legislative intent, or indeed, whether a contrary limitation would be merely vengeful (see *Estrada*, *supra*, 63 Cal.2d at p. 745)—is a question of substantial import that should be resolved by this Court.

B. This Court's review is warranted to resolve a conflict in the decisions of the Courts of Appeal

The issue has also resulted in conflicting lower court decisions. In the instant case, the Court of Appeal applied *Estrada* where appellant's judgment and sentence were final on direct appeal in 2001 but "reopened" a decade later for reasons unrelated to Proposition 57. (Opn. 14-19.) One day after the decision below was filed, the Fourth District Court of Appeal reached an opposite conclusion in *People v. Federico* (2020) 50 Cal.App.5th 318 [2020 WL 3097092]. There, after the judgment was final on direct review, the defendant's sentence was recalled under section 1170, subdivision (d), and he was resentenced. On appeal, he argued that this "reopened" his judgment for *Estrada* purposes and that he was therefore entitled to a retroactive transfer hearing under Proposition 57, which had been enacted after his judgment was initially final. (*Id.* at *4.) The Court of Appeal held that a resentencing under section 1170, subdivision (d), does not "reopen" a judgment for *Estrada* purposes or for

purposes of the "full resentencing rule." Because the defendant's judgment was "long final" at the time Proposition 57 was enacted, the defendant was not entitled to a retroactive transfer hearing. (*Id*. at *4-5.)

The conflicting results in these opinions should be resolved to secure uniformity of decision. Although the two cases involved different reasons for resentencing, it is far from clear that this provides a basis for distinguishing application of *Estrada* in the two contexts, which are otherwise closely analogous. (See, e.g., *McKenzie*, *supra*, 9 Cal.5th at p. 46 ["the terms 'judgment' and 'sentence' are generally considered synonymous and there is no judgment of conviction without a sentence'; citations and quotation marks omitted].) The *Federico* court suggested that the section 1170, subdivision (d), proceeding did not "reopen" the judgment at all. (*Federico*, *supra*, 2020 WL 3097092 at *4.) But even if that is case, this Court's intervention would provide needed clarity about the circumstances under which the *Estrada* presumption applies.[3] In light of these two decisions, whether and how a particular event in a case after finality on direct appeal might implicate the *Estrada* rule is an issue that could generate confusion and inconsistency. This Court should resolve the conflict.

[3] *Federico*, which was decided one day after the instant case, did not cite or address the decision below.

CONCLUSION

The petition for review should be granted.

Dated: July 17, 2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
LANCE E. WINTERS
Chief Assistant Attorney General
SUSAN SULLIVAN PITHEY
Senior Assistant Attorney General
MICHAEL R. JOHNSEN
Supervising Deputy Attorney General

/S/ DAVID E. MADEO
DAVID E. MADEO
Deputy Attorney General
Attorneys for Plaintiff and Respondent

DEM:lz
LA2020601422

CERTIFICATE OF COMPLIANCE

I certify that the attached **PETITION FOR REVIEW** uses a 13 point Century Schoolbook font and contains 2179 words.

Dated: July 17, 2020

XAVIER BECERRA
Attorney Generalof California

/S/ DAVID E. MADEO
DAVID E. MADEO
Deputy Attorney General
Attorneys for Plaintiff and Respondent

DEM:lz

EXHIBIT A

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. MARIO SALVADOR PADILLA, Defendant and Appellant.	B297213 (Los Angeles County Super. Ct. No. TA051184)

APPEAL from a judgment of the Superior Court of Los Angeles County, Ricardo R. Ocampo, Judge. Conditionally reversed and remanded with directions.

Jonathan E. Demson, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Susan Sullivan Pithey,

Acting Senior Assistant Attorney General, David E. Madeo and Lindsay Boyd, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

In 1999, appellant Mario Salvador Padilla was convicted of a murder he committed when he was 16 years old, and was sentenced to life without the possibility of parole (LWOP). Appellant later successfully petitioned for a writ of habeas corpus, challenging his sentence in light of an intervening decision by the United States Supreme Court. The trial court held a resentencing hearing and again imposed the LWOP term. On appeal, we reversed the new sentence and remanded for another resentencing in light of yet another intervening decision by the Supreme Court. At the second resentencing, the trial court again imposed the LWOP sentence.

In the interim, the electorate passed Proposition 57, the "Public Safety and Rehabilitation Act of 2016." Among other things, Proposition 57 prohibits prosecutors from charging juveniles with crimes directly in adult court. (*People v. Superior Court* (*Lara*) (2018) 4 Cal.5th 299, 303 (*Lara*).) "Instead, they must commence the action in juvenile court. If the prosecution wishes to try the juvenile as an adult, the juvenile court must conduct . . . a 'transfer hearing' to determine whether the matter should remain in

juvenile court or be transferred to adult court. Only if the juvenile court transfers the matter to adult court can the juvenile be tried and sentenced as an adult." (*Ibid.*) The California Supreme Court has held that Proposition 57 applies retroactively to cases not yet final at the time it was enacted. (*Lara, supra,* at 304.)

In this appeal, appellant claims he is entitled to a transfer hearing under Proposition 57 because his judgment is not yet final. Respondent asserts that appellant is not entitled to the benefit of the new law's retroactive application for two reasons. First, respondent argues that appellant's judgment of conviction became final long before Proposition 57's enactment, and his subsequent habeas and resentencing proceedings did not reopen its finality for purposes of that measure. Second, respondent contends that our Supreme Court's holding in *Lara* concerning Proposition 57's retroactive application does not apply to appellant because he is now too old to benefit from rehabilitation as a juvenile.

Because appellant's original sentence was vacated and his sentence is no longer final, and because Proposition 57's primary ameliorative effect is on a juvenile offender's sentence, we conclude that the measure applies to preclude imposition of sentence on appellant as an adult, absent a transfer hearing. Regardless of his current age, appellant fits within our Supreme Court's holding that the voters intended Proposition 57 to apply as broadly as possible. Accordingly, we conditionally reverse appellant's sentence

and remand for appellant to receive a transfer hearing in the juvenile court.[1]

BACKGROUND

In 1998, appellant was charged with first degree murder with special-circumstance allegations and conspiracy to commit murder. He committed the offenses that same year, when he was 16 years old. He was tried as an adult, following a hearing at which he was determined not fit to be dealt with under juvenile court law.

The following year, a jury found appellant guilty as charged, and the court imposed the then-mandatory sentence of LWOP. On appeal, this court reversed one of the special-circumstance findings, but otherwise affirmed. The California Supreme Court denied appellant's petition for review in 2001, and he did not petition for a writ of certiorari.

In 2014, appellant filed a petition for a writ of habeas corpus, seeking resentencing in light of *Miller v. Alabama* (2012) 567 U.S. 460, 465, which held that mandatory LWOP sentences for those under the age of 18 at the time of their crimes violated the Eighth Amendment's prohibition on cruel

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[1] Appellant also challenges his LWOP sentence as unauthorized under Penal Code section 3051, subdivision (b)(4), which affords juveniles sentenced to an LWOP term an opportunity to parole after incarceration for 25 years. In light of our conditional reversal of his sentence, we need not address this additional contention.

and unusual punishments. The trial court agreed appellant was entitled to resentencing, vacated appellant's sentence, and following a resentencing hearing, again imposed the LWOP term.

While appellant's appeal from his resentencing was pending, the United States Supreme Court decided *Montgomery v. Louisiana* (2016) 577 U.S. ___ [136 S.Ct. 718], which among other things, clarified its holding in *Miller v. Alabama*. Because the trial court had exercised its resentencing discretion without the guidance of *Montgomery*, we reversed and remanded the matter for a new resentencing hearing. (See *People v. Padilla* (2016) 4 Cal.App.5th 656, 661, 674.)

In 2019, on remand from this court, the trial court held a second resentencing hearing and once again sentenced appellant to LWOP. Appellant timely appealed. He contends that in light of Proposition 57, enacted after our opinion on appeal from his first resentencing, he is entitled to a transfer hearing in the juvenile court.

DISCUSSION

A. *Governing Principles*

1. *Proposition 57*

At the time appellant was charged in 1998, "'a child could be tried in criminal court only after a judicial determination . . . that he or she was unfit to be dealt with under juvenile court law.'" (*Lara*, *supra*, 4 Cal.5th at 305.) Absent such a determination, "'any individual less than 18

years of age who violate[d] the criminal law [came] within the jurisdiction of the juvenile court . . . .'" (*Ibid.*) "Amendments to [the Welfare and Institutions Code] in 1999 and 2000 . . . changed this historical rule. Under the changes, in specified circumstances, prosecutors were permitted, and sometimes required, to file charges against a juvenile directly in criminal court, where the juvenile would be treated as an adult." (*Lara*, *supra*, at 305.)

In November 2016, voters passed Proposition 57, again changing the procedure for charging juveniles. (*Lara*, *supra*, 4 Cal.5th at 303, 305.) According to the text of this measure, it was intended to "[s]top the revolving door of crime by emphasizing rehabilitation, especially for juveniles" and to "[r]equire a judge, not a prosecutor, to decide whether juveniles should be tried in adult court . . . ." (Voter Information Guide, Gen. Elec. (Nov. 8, 2016) text of Prop. 57, § 2, p. 141, (2016 Voter Guide).) The voters mandated that Proposition 57's provisions be "broadly construed to accomplish its purposes." (2016 Voter Guide, *supra,* at § 5, p. 145.)

"'Among other provisions, Proposition 57 amended the Welfare and Institutions Code so as to eliminate direct filing by prosecutors. Certain categories of minors . . . can still be tried in criminal court, but only after a juvenile court judge conducts a transfer hearing to consider various factors such as the minor's maturity, degree of criminal sophistication, prior delinquent history, and whether the minor can be

rehabilitated.'"[2] (*Lara*, *supra*, 4 Cal.5th at 305.) "Only if the juvenile court transfers the matter to adult court can the juvenile be tried and sentenced as an adult." (*Id.* at 303.)

While Proposition 57's transfer hearing is similar in some respects to the fitness hearing conducted prior to the 1999 and 2000 amendments, there are key differences. Notably, under prior law, juveniles age 16 or older who were accused of certain offenses, including murder, were subject to a rebuttable presumption that they were unfit for juvenile court treatment. (Former Welf. & Inst. Code, § 707.) No such presumption applies in transfer hearings under Proposition 57, and the People have the burden to show that the juvenile should be treated as an adult. (Welf. & Inst. Code, § 707, subd. (a); *Castillero*, *supra*, 33 Cal.App.5th at 398; *J.N. v. Superior Court* (2018) 23 Cal.App.5th 706, 715.) In addition, in fitness hearings under prior law, a juvenile court could retain jurisdiction over a juvenile age 16 or older accused of certain offenses, including murder, only if it found the individual suitable for juvenile court treatment under each of five criteria. (Former Welf. & Inst. Code, § 707, subd. (c) [court must find juvenile suitable "under each and every one of the above criteria"].) In a transfer hearing under current law, the court must consider those five

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[2] Effective January 1, 2019, Senate Bill No. 1391 (2017-2018 Reg. Sess.) further amended the applicable provisions of the Welfare and Institutions Code (*People v. Castillero* (2019) 33 Cal.App.5th 393, 399 (*Castillero*)), but those changes are not relevant to this appeal.

criteria, but has broad discretion in applying them, and need not find that all five support juvenile court treatment. (See Welf. & Inst. Code, § 707, subd. (a)(3) ["the court shall consider the criteria specified"]; *Castillero*, *supra*, at 398 [court has broad discretion to apply these statutory criteria].)[3]

One Court of Appeal to consider the effect of Proposition 57 concluded that its primary benefit to juvenile defendants is in potentially affording them the dispositions rendered in juvenile court, rather than the generally much more severe criminal sentences in adult court.[4] (*People v.*

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[3] The five statutory criteria are: (1) "[t]he degree of criminal sophistication exhibited by the minor" which may include consideration of such factors as "the minor's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense, the minor's impetuosity or failure to appreciate risks and consequences of criminal behavior, . . . and the effect of the minor's family and community environment and childhood trauma on the minor's criminal sophistication"; (2) "[w]hether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction"; (3) "[t]he minor's previous delinquent history"; (4) "[s]uccess of previous attempts by the juvenile court to rehabilitate the minor"; and (5) "[t]he circumstances and gravity of the offense alleged in the petition to have been committed by the minor."

[4] "'There is no "sentence," per se, in juvenile court. Rather, a judge can impose a wide variety of rehabilitation alternatives after conducting a "dispositional hearing," which is equivalent to a sentencing hearing in a criminal court. [Citations.] In the more serious cases, a juvenile court can "commit" a minor to juvenile hall or to the Division of Juvenile Justice (DJJ) . . . . DJJ
(*Fn. continued on the next page*.)

Cervantes (2017) 9 Cal.App.5th 569, 612, (*Cervantes*) disapproved on another ground in *Lara*, *supra*, 4 Cal.5th at 314-315.) Indeed, the court noted that "adult criminal sentencing is the biggest disadvantage to being 'tried in adult court.'" (*Cervantes*, *supra*, at 612.) Despite its conclusion that Proposition 57 did not apply retroactively (a holding disapproved by *Lara*, as discussed below), *Cervantes* held that the purposes and features of Proposition 57 mandated that on remand for resentencing, a juvenile offender could not be "'sentenced in adult court'" without a prior transfer hearing. (*Cervantes*, *supra,* at 612.)

2. *Retroactive Application of Ameliorative Statutes*

Whether a statute operates retroactively or only prospectively is a matter of legislative intent. (*People v. Brown* (2012) 54 Cal.4th 314, 319.) In *In re Estrada* (1965) 63 Cal.2d 740 (*Estrada*), our Supreme Court concluded that statutory amendments mitigating punishment for an offense applied retroactively to a petitioner who at the time of enactment, had committed the offense but had not yet been

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commitments can range from one year or less for nonserious offenses, and up to seven years for the most serious offenses, including murder. [Citation.] A minor committed to DJJ must generally be discharged no later than 23 years of age. [Citation.]'" (*Lara*, *supra*, 4 Cal.5th at 306-307.) Under certain circumstances, that discharge may be further delayed. (Welf. & Inst. Code, §§ 1780, 1782.)

convicted and sentenced. (*Id.* at 742-743, 748.) The court reasoned that when the Legislature makes an ameliorative change to criminal law, it must have determined the former law was too severe. (*Id.* at 744-745.) As a result, absent indications of a contrary intent, "[i]t is an inevitable inference that the Legislature must have intended that the new statute . . . should apply to every case to which it constitutionally could apply." (*Id.* at 745.) According to the court, an ameliorative criminal statute may be constitutionally applied to acts committed before its passage, "provided the judgment convicting the defendant of the act is not final." (*Ibid.*) Thus, under *Estrada*, absent indications of the legislative body's contrary intent, courts presume it intended an ameliorative statute to apply retroactively to all nonfinal judgments. (See *ibid.*)

Applying this rule in *Lara*, our Supreme Court concluded that Proposition 57 constituted an ameliorative change to the criminal law. (*Lara*, *supra*, 4 Cal.5th at 309.) Finding no contrary indications, it further concluded the voters intended Proposition 57 "'to extend as broadly as possible.'" (*Lara*, *supra*, at 309.) Accordingly, the court held Proposition 57 applied retroactively to "all juveniles charged directly in adult court whose judgment was not final at the time it was enacted."[5] (*Lara*, at 304.) As discussed further

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[5] While *Lara* expressly addressed juveniles charged directly in adult court, courts have held that its ruling extends equally to individuals who, like appellant, received a fitness hearing under the former law's standards. (*Castillero*, *supra*, 33 Cal.App.5th at (*Fn. continued on the next page*.)

below, if, at a retroactive transfer hearing, the juvenile court finds a defendant would have been fit for juvenile court treatment, the defendant's sentence must be reversed, and the juvenile court must then treat the convictions as juvenile adjudications and impose an appropriate disposition. (*Lara*, at 310, 313.)

3. *Final Judgments*

Under *Estrada*, "[t]he key date [for retroactivity purposes] is the date of final judgment." (*Estrada*, *supra*, 63 Cal.2d at 744.) A retroactive ameliorative statute applies in a given case if it "becomes effective prior to the date the judgment of conviction becomes final . . . ." (*Ibid.*) The court did not specify when a judgment becomes "final" for retroactivity purposes.

Several months before *Estrada*, however, the California Supreme Court discussed the finality of a judgment in *In re Spencer* (1965) 63 Cal.2d 400 (*Spencer*). In ruling on a habeas petition raising federal constitutional challenges, the *Spencer* court noted the United States Supreme Court had defined the point of finality as "'where the judgment of conviction was rendered, the availability of appeal exhausted, and the time for petition for certiorari . . . elapsed . . . .'" (*Id.* at 405, quoting *Linkletter v. Walker* (1965) 381 U.S. 618, 622, fn. 5.) Finality therefore denoted

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399; *People v. Garcia* (2018) 30 Cal.App.5th 316, 324-325 (*Garcia*).)

"that point at which the courts can no longer provide a remedy to a defendant on direct review." (*Spencer*, *supra,* at 405.) Our Supreme Court has since applied this definition of finality to the *Estrada* retroactivity rule, stating that an amendatory statute applies in "'any [criminal] proceeding [that], at the time of the supervening legislation, has not yet reached final disposition in the highest court authorized to review it.'" (*People v. Rossi* (1976) 18 Cal.3d 295, 304 (*Rossi*), quoting *Bell v. Maryland* (1964) 378 U.S. 226, 230; accord, *People v. Vieira* (2005) 35 Cal.4th 264, 306 [for purposes of *Estrada* rule, "'a judgment is not final until the time for petitioning for a writ of certiorari in the United States Supreme Court has passed'" (quoting *People v. Nasalga* (1996) 12 Cal.4th 784, 789, fn. 5)].)

This rule of finality is easy to apply in a typical case, where a criminal defendant is convicted and sentenced, the judgment is affirmed on appeal, a petition for review in the California Supreme Court is either denied or never filed, and a petition for certiorari in the United States Supreme Court is likewise denied or never filed. But questions have arisen as to how this rule applies in different procedural settings.

In *People v. Jackson* (1967) 67 Cal.2d 96 (*Jackson*), a capital defendant's judgment of death became final when he failed to seek certiorari. (*Id.* at 97, 98.) In a subsequent habeas corpus proceeding, the California Supreme Court reversed his death sentence and remanded for a penalty retrial. (*Id.* at 97.) The defendant was again sentenced to death, and in the automatic appeal, sought to raise both

guilt-phase and penalty-phase claims based on *Escobedo v. State of Illinois* (1964) 378 U.S. 478 (*Escobedo*), decided after his original judgment became final but before his penalty retrial. (*Jackson*, *supra*, at 98-99.) Because *Escobedo* applied retroactively only to judgments not yet final at the time it was decided (*In re Lopez* (1965) 62 Cal.2d 368, 372), our Supreme Court rejected the defendant's attempt to challenge his convictions based on that decision, noting that it had reversed only the defendant's death sentence: "The scope of this retrial is a matter of state procedure under which the original judgment on the issue of guilt remains final during the retrial of the penalty issue and during all appellate proceedings reviewing the trial court's decision on that issue." (*Jackson*, at 99; accord, *People v. Kemp* (1974) 10 Cal.3d 611, 614 (*Kemp*) [applying *Jackson* to preclude capital defendant's *Escobedo*-based challenge to his final judgment on guilt following penalty retrial].)[6] At the same

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[6] Our Supreme Court recently observed that "[i]n criminal actions, the terms 'judgment' and '"sentence"' are generally considered 'synonymous' [citation], and there is no 'judgment of conviction' without a sentence [citation]." (*People v. McKenzie* (2020) 9 Cal.5th 40, 46 (*McKenzie*).) *Jackson*'s distinction between the "judgment on the issue of guilt" and the "penalty" for purposes of finality appears to depart from that rule. (*Jackson*, *supra*, 67 Cal.2d at 99.) As we are aware of no non-capital case applying *Jackson*'s rule, it is conceivable this distinction stems from the unique nature of capital trials, which are subject to bifurcated guilt and penalty phases. (See *Phillips v. Vasquez* (9th Cir. 1995) 56 F.3d 1030, 1033, fn. 1 [describing *Kemp* and *Jackson* as holding "that a conviction under California's
(*Fn. continued on the next page*.)

time, however, the court agreed that the defendant could rely on *Escobedo* to challenge his new *sentence*, notwithstanding that his "conviction was final" before that case was decided. (*Jackson*, *supra*, at 100.)

Jackson therefore established that a collateral proceeding may reopen the finality of a sentence for retroactivity purposes, even while the conviction remains final. While *Jackson* involved the retroactivity of constitutional law, rather than an ameliorative statute, it applied the same definition of finality later applied in *Rossi*. (See *Jackson*, *supra*, 67 Cal.2d at 98 ["A judgment becomes final when all avenues of direct review are exhausted"], citing, inter alia, *Spencer*, *supra*, 63 Cal.2d at 405.)

B. *Analysis*

Appellant claims he is entitled to a transfer hearing under Proposition 57, asserting its provisions apply retroactively to him. He maintains we should therefore conditionally reverse his judgment and refer the matter to the juvenile court. Appellant argues his judgment is not yet final because we reversed his sentence and remanded the case for resentencing in 2016, and he is now appealing from

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bifurcated process for adjudicating death penalty cases is a final judgment"].) Yet the interest in retaining the finality of convictions despite ongoing sentencing proceedings applies in other contexts as well. Because we conclude that Proposition 57 applies retroactively to appellant's resentencing, we need not decide whether *Jackson* applies to non-capital cases.

that resentencing. Respondent counters that appellant's judgment became final in 2001, when he originally exhausted direct appeal procedures. Respondent contends the reopening of appellant's sentencing following his successful habeas petition had no effect on the finality of his "judgment of conviction," and therefore does not entitle him to the benefit of Proposition 57's retroactive application.

We begin with the simple observation that appellant's sentence is not final: the superior court vacated his original sentence and resentenced him, we then reversed his new sentence and remanded for another resentencing, and appellant has taken this direct appeal from his second resentencing. Because appellant's sentence is still pending on direct appeal, his judgment is not final under our Supreme Court's definition of finality for retroactivity purposes. (See *Jackson*, *supra*, 67 Cal.2d at 100; *McKenzie*, *supra*, 9 Cal.5th at 46; *Rossi*, *supra*, 18 Cal.3d at 304.)

Respondent does not suggest that appellant's sentence is entirely immune to challenges based on retroactive changes to the law. Instead, citing the *Jackson*/*Kemp* rule, respondent contends that appellant's judgment remains final as to his conviction and all other matters not encompassed by his resentencing, including "pretrial proceedings under Proposition 57," such that he may not benefit from that measure's retroactive operation. We disagree.

Assuming the rule established in these capital cases applies in other contexts, it would not preclude appellant's claim based on Proposition 57 because that measure affects

his *sentencing*, independent of its potential effect on his convictions. As the *Cervantes* court observed, a juvenile disposition is far more advantageous to the defendant than a criminal sentence for the same offense: indeed, "adult criminal sentencing is the biggest disadvantage to being 'tried in adult court . . . .'" (*Cervantes*, *supra*, 9 Cal.App.5th at 612.)

Based on the purposes underlying Proposition 57 and the substantially more severe consequences of sentencing in adult court for many juvenile felons, the court in *Cervantes* concluded that a juvenile felon may not be "'sentenced in adult court'" without a prior transfer hearing. (*Cervantes*, *supra*, 9 Cal.App.5th at 612.) Thus, even before its ruling that Proposition 57 was not retroactive was disapproved in *Lara,* the *Cervantes* court recognized that a defendant may not be resentenced on remand without a prior transfer hearing. (*Cervantes*, *supra*, at 612.) *Lara* left undisturbed *Cervantes*'s conclusion about Proposition 57's application to sentencing.

In *Lara* itself, the court stated that "[o]nly if the juvenile court transfers the matter to adult court can the juvenile be tried and sentenced as an adult." (*Lara*, *supra*, 4 Cal.5th at 303.) Relying on this language, the court in *People v. Ramirez* (2019) 35 Cal.App.5th 55, 64 (*Ramirez*) held that on a limited remand for resentencing, "the trial court was *required* to consider the effect of Proposition 57 and issue any related orders," thereby rejecting the People's contention that the defendant's request for a transfer

hearing exceeded the scope of a limited remand. The *Ramirez* court explained that although it had remanded the defendants' case for resentencing in light of intervening precedent, "the trial court had jurisdiction to consider any and all factors that would affect sentencing," including Proposition 57. (*Ramirez*, *supra*, at 64.)

Because Proposition 57's primary ameliorative effect is on a juvenile offender's sentence, independent of the convictions, we conclude it applies retroactively to appellant's nonfinal sentence and requires that he receive a transfer hearing.[7] (See *Lara*, s*upra*, 4 Cal.5th at 303; *Ramirez*, *supra*, 35 Cal.App.5th at 64; *Cervantes*, s*upra*, 9 Cal.App.5th at 612.) Any resulting effect on appellant's convictions would be a mere byproduct of his required treatment as a juvenile, should the juvenile court decide that he would have been fit for such treatment. (See *Lara*, *supra*, at 306 ["'there are no "conviction[s]" in juvenile court'"]; Welf. & Inst. Code, § 203 ["An order adjudging a minor to be a ward of the juvenile court shall not be deemed a conviction of a crime for any purpose"].) A juvenile court's decision in a retroactive transfer hearing to treat the defendant as a juvenile does not disturb the jury's findings; rather, the court must treat the defendant's convictions as juvenile

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[7] For similar reasons, we reject respondent's contention that appellant's claim should be denied because it falls outside the scope of our prior limited remand for resentencing. (See *Ramirez*, *supra*, 35 Cal.App.5th at 64.)

adjudications and impose an appropriate disposition. (See *Lara, supra*, at 309-310, 313; see also *id.* at 309-310 ["'Nothing is to be gained by having a "jurisdictional hearing," or effectively a second trial, in the juvenile court'"].) And we see no reason why juvenile court treatment should open the jury's adjudications to challenge under new rules to which they would not otherwise be subject.

Respondent argues that *Lara*'s conclusion about Proposition 57's retroactivity nevertheless does not apply to appellant because "*Lara* considered the specific circumstance of a defendant who had been charged but not sentenced." Respondent maintains it is unlikely the voters intended the provisions of Proposition 57 to apply to those, like appellant, far removed from their teenage years and for whom treatment as a juvenile would likely result in release from custody. These assertions, however, are at odds with our Supreme Court's determination of the electorate's intent -- that Proposition 57 should apply retroactively to "all juveniles charged directly in adult court whose judgment was not yet final at the time it was enacted." (*Lara, supra*, 4 Cal.5th at 304.) It is not for us to say, at this time, whether appellant should be treated as a juvenile offender -- only that our Supreme Court's pronouncement that Proposition 57 should apply "as broadly as possible" encompasses appellant, regardless of his current age. (*Lara, supra*, at 308; see *Ramirez*, *supra*, 35 Cal.App.5th at 60-61 [affirming referral for transfer hearing for defendant who was 28 years old]; *Garcia*, *supra*, 30 Cal.App.5th at 321, 330 [ordering transfer

hearing for defendant who was over 40 years old].) Moreover, we see no reason why the juvenile court cannot adapt Proposition 57's criteria to assess whether a person like appellant, who committed a crime as a minor but is now an adult, should or should not have been tried as an adult. (See *Lara*, *supra*, at 313 [courts can implement retroactive transfer hearings "without undue difficulty," and the potential complexity in providing such hearings "is no reason to deny [them]"].)

Our conclusion that Proposition 57 applies retroactively to appellant's sentence is consistent with our Supreme Court's determination in *Lara* that the voters intended Proposition 57 "'to extend as broadly as possible'" (*Lara*, *supra*, 4 Cal.5th at 309), i.e., "to every case to which it constitutionally could apply" (*Estrada*, *supra*, 63 Cal.2d at 745). Respondent offers no basis for concluding that this ameliorative amendment may not be applied constitutionally to appellant's sentence. Accordingly, we conclude appellant is entitled to a retroactive transfer hearing under Proposition 57.

DISPOSITION

In *Lara*, the court approved the remedy one Court of Appeal had ordered for a juvenile defendant who had been convicted and sentenced without having received a transfer hearing. (See *Lara*, *supra*, 4 Cal. 5th at 310, 313.) We afford appellant a similar remedy.

Appellant's sentence is conditionally reversed. The matter is remanded to the trial court with directions to refer the case to the juvenile court for a transfer hearing, to determine if it would have transferred the case to adult criminal court had it originally been filed in juvenile court in accordance with current law.

If the juvenile court determines it would not have transferred appellant to criminal court under current law, it shall treat appellant's convictions as juvenile adjudications and impose an appropriate disposition. If the juvenile court determines it would have transferred appellant to adult criminal court, it shall transfer the case to criminal court, which shall then reinstate appellant's sentence.

CERTIFIED FOR PUBLICATION

MANELLA, P. J.

We concur:

WILLHITE, J.

COLLINS, J.

EXHIBIT B

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

MARIO SALVADOR PADILLA,

Defendant and Appellant.

B297213
(Los Angeles County
Super. Ct. No. TA051184)

ORDER MODIFYING OPINION
[NO CHANGE IN JUDGMENT]

THE COURT*

It is ordered that the opinion filed June 10, 2020 be modified as follows:

On page 4, the following language is added after the last sentence of footnote 1, ending with "additional contention.": "If, on remand, the juvenile court transfers the case to criminal court, appellant will be able to reassert this contention on appeal from the reinstatement of his sentence."

The modification does not change the judgment.

*MANELLA, P.J. WILLHITE, J. COLLINS, J.

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

Case Name: People v. Mario Salvador Padilla
No.:

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 collecting and processing electronic and physical correspondence. 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 with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On July 17, 2020, I electronically served the attached PETITION FOR REVIEW by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on July 17, 2020, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

Jonathan E. Demson
Attorney at Law
1158 26th Street, #291
Santa Monica, CA 90403
jedlaw@me.com

Beatriz Dieringer
Deputy District Attorney
Los Angeles County District
Attorney's Office
bdieringer@da.lacounty.gov

Clerk of the Court
Hon. Ricardo R. Ocampo, Judge
Los Angeles Superior Court
South Central District
Compton Courthouse
200 West Compton Boulevard
Department J
Compton, CA 90220

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 July 17, 2020, at Los Angeles, California.

Lupe Zavala	/s/ Lupe Zavala
Declarant	Signature

LA2020601422

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **People v. Mario Salvador Padilla**
Case Number: **TEMP-WWX5XONL**
Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **david.madeo@doj.ca.gov**

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

7/17/2020
Date

/s/Guadalupe Zavala
Signature

Madeo, David (180106)
Last Name, First Name (PNum)

CA Attorney General's Office - Los Angeles
Law Firm