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Supreme Court of California
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**IN THE SUPREME COURT OF
THE STATE OF CALIFORNIA**

VICTOR TELLEZ,

Petitioner,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO,

Respondent.

THE PEOPLE OF THE STATE OF CALIFORNIA, BY AND THROUGH SUMMER STEPHAN, DISTRICT ATTORNEY FOR THE COUNTY OF SAN DIEGO,

Real Party in Interest.

Supreme Court No.
S277072

Court of Appeals No.
D079716

Superior Court No.
SCE369196

PETITIONER'S OPENING BRIEF ON THE MERITS

**After Published Opinion by the Court of Appeal,
Fourth District, Division One, No. D079716
Filed October 18, 2022**

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ISSUES PRESENTED

(1) Does constitutionally effective assistance of counsel require defense counsel to advise a defendant that a guilty plea may subject the defendant to commitment proceedings under the Sexually Violent Predator Act (Welf. & Inst. Code §6600 et seq.; SVPA)? If so, did petitioner in this case suffer prejudice?

(2) In the alternative, should this Court, in the exercise of its supervisory powers (see e.g., *People v. Howard* (1992) 1 Cal.4th 1132, 1175; *Bunnell v Superior Court* (1975) 13 Cal.3d 592, 602), require that a defendant be advised that a guilty plea may subject him to SVPA commitment proceedings? If so, is petitioner entitled to relief?

FACTUAL AND PROCEDURAL BACKGROUND

On March 25, 2017, Victor Tellez consumed approximately a pint of vodka and went to the mall. While there, he approached three boys, laid down behind them, and ran his hand across the backs of two of the boys, ages 9 and 10. The boys got up quickly and walked away. Tellez began walking in the same direction where he then approached a girl, 13, from behind, wrapped his arms around her, and pulled her closer. When she turned around and faced Tellez, he let go of her, walked away, and sat down elsewhere. At this point she found a security guard and informed them of the incident. Tellez was then arrested for a misdemeanor violation of Penal Code section 647.6, subdivision (a)(1), annoying or molesting a child.

Tellez was arraigned on March 29, 2017, upon a three-count complaint. (Tellez Petition for Review S277072 Ex. A: Complaint.) The Complaint charged three separate felony counts of lewd acts in violation of Penal Code section 288, subdivision (a). There were no enhancements on any of the charges. Tellez's maximum exposure in the case was 12 years in state prison.

At arraignment, the Office of the San Diego County Public Defender was appointed to represent Tellez. The case was assigned to a Deputy Public Defender as defense counsel.

At arraignment, a readiness hearing was set for April 7, 2017, and a preliminary hearing was set for April 12, 2017.

On December 11, 2017, Tellez, without effective assistance, entered a change of plea to one count of lewd act upon a child in violation of Penal Code section 288, subdivision (a). (Tellez Petition for Review S277072 Ex. B: Change of Plea Form and Docket; Ex. C: Change of Plea Transcript.)

Tellez was not advised that his guilty plea could subject him to an indeterminate commitment under the Sexually Violent Predator Act (SVPA). (Tellez Petition for Review S277072 Exhibit D: Petitioner's Declaration; Ex.B: Change of Plea Form and Docket; Ex. C: Change of Plea Transcript.) If Tellez had been advised of possible SVPA consequences, he would not have pled guilty. (Tellez Petition for Review S277072 Ex.t D: Petitioner's Declaration.)

Tellez was sentenced on the case by the Honorable Robert Amador on December 20, 2017, to three years in state prison. (Tellez Petition for Review S277072 Ex.t E: Sentencing Docket and Abstract of Judgment.)

On August 1, 2019, Tellez was released by the Department of Corrections and Rehabilitation and was immediately arrested by the San Diego County Sheriff's Department pursuant to an Order to Produce for Arraignment under Welfare and Institutions Code section 6600 *et seq*. regarding the involuntary treatment of a sexually violent predator. (Tellez Petition for Review S277072 Ex. F: Petition for Involuntary Treatment of a Sexually Violent Predator, Filed May 21, 2019; Ex. G: Order to Produce.) Since then, Tellez has been in the physical custody of the San Diego County Sheriff's Department pending civil commitment proceedings under the SVPA.

The Alternate Public Defender was appointed to represent Tellez in these proceedings after the Primary Public Defender declared a conflict on or around October 4, 2019.

On March 2, 2021, Petitioner filed a petition for writ of habeas corpus in the Superior Court of San Diego, East County Division, claiming ineffective assistance of counsel. On May 4, 2021, the Honorable Roderick Shelton issued an order to show cause and subsequently denied the petition.

On November 22, 2021, Petitioner filed a petition for writ of habeas corpus in the Fourth District Court of Appeal, Division 1. The appellate court summarily denied the petition on November 30, 2021.

On December 14, 2021, Petitioner filed a petition for review in this Court. On February 16, 2022, this Court granted review and transferred the matter back to the appellate court and ordered the appellate court to vacate the summary denial and issue an order to show cause.

Oral argument was heard in the appellate court on October 12, 2022, and the court denied the petition in a published opinion on October 18, 2022. (*In re Tellez* (2022) 84 Cal.App.5th 292.) Petitioner again filed a petition for review.

In granting Tellez's petition for review, this Court requested briefing on the above issues presented. In this opening brief, Tellez addresses these issues and incorporates by reference the arguments asserted in his original petition for review and at the Court of Appeal.

ARGUMENT

I. Tellez Suffered Ineffective Assistance of Counsel Because Counsel Failed to Advise Tellez of the Significant and Severe Consequences of An Indeterminate Commitment Under the SVPA, In Violation of the Sixth Amendment

A. The Sixth Amendment Requires Defense Counsel to Advise a Defendant that a Guilty Plea May Subject the Defendant to Commitment Proceedings Under the SVPA

1. A Defendant is Entitled to Competent Counsel's Advice Before Pleading Guilty

"Under both the Sixth Amendment to the United States Constitution and article I, section 15, of the California Constitution, a criminal defendant has the right to the assistance of counsel." (*People v. Ledesma* (1987) 43 Cal.3d 171, 215, citing *Strickland v. Washington* (1984) 466 U.S. 668, 684-685; *People v. Pope* (1979) 23 Cal.3d 412, 424-425.) Counsel alone is not enough, rather "the right to counsel is the right to the effective assistance of counsel." (*Strickland*, *supra,* 466 U.S. at pp. 685-686, citing *McMann v. Richardson* (1970) 397 U.S. 759, 771, fn 14.)

The Sixth Amendment right to competent counsel extends to plea bargaining. "Plea bargaining and pleading are critical stages in the criminal process at which a defendant is entitled, under both the Sixth Amendment to the federal Constitution and article I, section 15 of the California Constitution, to the effective assistance of legal counsel." (*In re Resendiz* (2001) 25 Cal.4th 230, 239, abrogated in part on other grounds by *Padilla v. Kentucky* (2010) 559 U.S. 356, citing *In re Alvernas* (1992) 2 Cal.4th 924.) When a defendant enters a guilty plea they may only do so after a knowing

and intelligent waiver of their constitutional rights. (*In re Alvernaz*, *supra,* 2 Cal.4th at p. 933; *Brady v. United States* (1970) 397 U.S. 742, 748.) Such waivers can only be made with the assistance of competent counsel. (*In re Ibarra* (1983) 34 Cal.3d 277, 284.) Therefore, if ineffective assistance of counsel results in a defendant pleading guilty, the defendant's Sixth Amendment rights have been violated. (*Id.* at p. 239.)

Although the decision to plead guilty is ultimately made by the defendant, it is his counsel—not the defendant—who is "particularly qualified to make an informed evaluation of the proffered plea bargain." (*People v. Maguire* (1998) 67 Cal.App.4th 1022, 1028, citing *In re Alvernaz*, *supra*, 2 Cal.4th at p. 1027-1028; *People v. Stanworth* (1974) 11 Cal. 3d 588, 611.) It is thus expected that a criminal defendant relies on his "counsel's independent evaluation of the charges, applicable law, evidence, and risks and probable outcome of trial." (*People v. Maguire, supra,* 67 Cal.App.4th at p. 1028, citing *In re Alvernaz*, *supra*, 2 Cal.4th at p. 1027-1028.)

In *Strickland,* the United States Supreme Court developed a two-pronged inquiry to be applied to an ineffective assistance of counsel claim. The inquiry begins with whether counsel's representation "fell below an objective standard of reasonableness." (*Padilla, supra*, 559 U.S. at p. 366, citing *Strickland*, *supra*, 466 U.S. at p. 688; *People v. Mai* (2013) 57 Cal.4th 986, 1009.) For the second prong of the inquiry, a defendant must show that, "but for counsel's unprofessional errors, the result of the proceeding would have been different. (*Padilla, supra*, 559 U.S. at p. 366, citing *Strickland*, *supra*, 466 U.S. at p. 694.) When a defendant claims that his guilty plea was a result of ineffective assistance of counsel, he must "show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty." (*Hill v. Lockhart* (1985) 474 U.S. 52, 59.)

2. The Duty of Counsel Under the Sixth Amendment to Advise of Potential Consequences of a Guilty Plea Is Not Limited by the Collateral Consequence Doctrine

In *In re Resendiz*, this Court grappled with whether the Sixth Amendment required counsel to advise of potential immigration consequences that would result from a guilty plea. This Court refused to find a categorical bar to "an ineffective assistance of counsel claim based on counsel's affirmative misadvice about the adverse immigration consequences of a plea." (*In re Resendiz*, *supra*, 25 Cal.4th at p. 248.) While the United States Supreme Court's decision in *Padilla v. Kentucky*, *supra*, abrogated the holding in *In re Resendiz*, in that *Padilla* held that the Sixth Amendment imposed a duty on counsel to advise of the potential immigration consequences of a plea, rather than *Resendiz's* narrower duty to avoid affirmative misadvice, this Court's insight into the scope of the Sixth Amendment is still instructive. (See *Padilla, supra*, 559 U.S. at p. 366, ["We conclude that advice regarding deportation is not categorically removed from the ambit of the Sixth Amendment right to counsel"].)

In *Resendiz*, the Attorney General argued, in part, that there should be a complete categorical bar to ineffective assistance of counsel claims based on immigration consequences because immigration consequences are "collateral" in nature. (*In re Resendiz*, *supra*, 25 Cal.4th at p. 242.) In the government's view, defense counsel only must advise of "direct" consequences, meaning those consequences that inexorably follow from a conviction. (*Ibid*.) However, this Court correctly noted that "the collateral consequences doctrine and ineffective assistance claims have separate origins." (*Id*. at p. 243.) "The collateral consequences doctrine . . . originated as a policy-based adjunct to the due process requirement that a *court* ensure the guilty pleas it accepts are voluntarily given. (*Ibid.* [emphasis added].) In contrast, the right to competent counsel in the context

of guilty pleas arises out of the Sixth Amendment's requirement that defendants are entitled to effective assistance of counsel. (*Ibid.*) The duties and requirements of court and counsel are not the same when it comes to their respective roles in the plea bargaining process in that "[d]efense counsel clearly has far greater duties toward the defendant than has the court taking a plea." (*Id.* at p. 246.) Therefore, the Sixth Amendment demands more from counsel than does the due process clause from the courts. (*Ibid.*)

Resedniz highlighted, and *Padilla* later stated affirmatively, that the United States Supreme Court has never embraced a distinction between collateral and direct consequences in evaluating a claim of ineffective assistance of counsel under the Sixth Amendment. (*Padilla, supra,* 559 U.S. at p. 364 ["We, however, have never applied a distinction between direct and collateral consequences."]; *In re Resendiz*, *supra*, 25 Cal.4th at p. 244.) Under *Strickland*, the critical inquiry is whether counsel's performance was reasonable considering the particular facts of the case and the totality of the circumstances. (*In re Resendiz*, *supra*, 25 Cal.4th at p. 240.)

Part of defense counsel's affirmative duties required by the Sixth Amendment is to "consult with the defendant on important issues." (*Id*. at p. 246, citing *Strickland*, *supra*, 466 U.S. at p. 688.) A defendant's decision whether to plead guilty or preserve their constitutional rights and proceed to trial is certainly one of those "important issues," if not the most important. Because the inquiry under *Strickland*, requires a case-by-case analysis of the totality of the circumstances to determine if counsel's assistance was objectionably reasonable, a bright line distinction between direct and collateral consequences cannot exist in harmony with the duties imposed by the Sixth Amendment.

Padilla v. Kentucky changed the landscape of counsel's duty under the Sixth Amendment in regard to advising defendants of the consequences of their pleas. The Court's decision in *Padilla* underscored that the Sixth Amendment's right to competent counsel should not be limited. In holding that the Sixth Amendment requires counsel to advise of the potential for deportation, *Padilla* acknowledged that there are certain consequences of a guilty plea that are so unique and severe that defendants must be made aware of them prior to pleading guilty. (*Padilla*, *supra*, 5559 U.S. at p. 365)

Effective assistance of counsel is guaranteed by the Sixth Amendment and is not governed by the same standard imposed by the due process clause. A defendant is guaranteed competent counsel during the plea bargaining process, which includes the right to have counsel advise on potential consequences of their plea. As such, an inquiry into a claim of ineffective assistance of counsel that arises from a guilty plea should not be hindered by any categorical bar, but instead must be analyzed on a case-by-case basis to determine whether counsels conduct was objectionably reasonable under the totality of the circumstances.

3. Consequences Under the SVPA are Analogous to Immigration Consequences and Therefore Under *Padilla v. Kentucky* There is A Sixth Amendment Duty to Advise of SVPA Consequences

The United States Supreme Court in *Padilla* found that it had "long been recognized that deportation is a "particularly severe 'penalty'" (*Padilla*, *supra*, 559, U.S. at p. 365, citing *Fong Yue Ting v. United States* (1983) 149 U.S. 698, 740.) Acknowledging that removal proceedings are civil in nature, the Court noted that "deportation is nevertheless intimately related to the criminal process." (*Ibid.*) In fact, deportation may be the most

significant “penalty” imposed as a result of a guilty plea. (*Id.* at p. 364.) Because deportation is so “enmeshed” in the criminal process, “advice regarding deportation is not categorically removed from the ambit of the Sixth Amendment right to counsel.” (*Id.* at p. 366.)

Padilla held that the Sixth Amendment requires counsel to “inform her client whether his plea carries a risk of deportation” (*Padilla*, *supra*, 559, U.S. at p. 373.) In so holding, the Court noted that the severity of deportation, which is akin to “banishment” or “exile,” made it critical for counsel to advise a client of even the risk of deportation. (*Id.* at p. 374.)

In *People v. Moore* (1998) 69 Cal.App.4th 626, the court analogized SVPA proceedings to deportation. The issue in *Moore* was whether the *court* had a duty to advise of SVPA consequences. As discussed previously, whether a *court* must advise a defendant of the consequence of a plea is a matter of due process. Therefore, in that context, the court in *Moore* utilized the collateral consequence doctrine, finding that a possible commitment under the SVPA was not a direct consequence. (*Id.* at p. 630) The court analogized SVPA proceedings with deportation since each depend on “additional findings by a different tribunal after the defendant has been sentenced.” (*Id.* at p. 633.) At the time, a court had to advise a defendant of the possibility of deportation, even though it was considered a collateral consequence. (*Ibid.*) However, that requirement was imposed by statute. (*Ibid*.) Since there was no similar statute regarding the SVPA, the court held that there was no duty to advise of potential commitment proceedings under the SVPA.

In *People v. Codinha* (2021) 71 Cal.App.5th 1047, the court held that the Sixth Amendment did not require counsel to advise of potential consequences under the SVPA. *Codinha* found that SVPA consequences are not analogous to immigration consequences, stating the “analogy is inapt.” (*Id.* at p. 1065.) The court acknowledged *Moore* but found it

distinguishable since it dealt with the *court's* obligation to advise. (*Id.* at p. 1066.) However, the analogy stands regardless of the distinction. Nothing about the holding in *Moore* affects the court's conclusion that SVPA and immigration consequences are analogous.

Moore is correct, SVPA and immigration consequences are analogous. The risk of a lifetime deprivation of freedom under the SVPA is a significant consequence akin to deportation. *Padilla* likened deportation to "banishment" or "exile". If a petition under the SVPA is sustained, "the person shall be committed for an indeterminate term to the custody of the State Department of State Hospitals." (Welf. & Inst. Code § 6604.) An indefinite involuntary commitment in a state hospital is essentially a banishment from society, where an individual's freedom is even more significantly curtailed than if they had been deported. And just as deportation is a potential lifetime penalty, so too is a commitment under the SVPA. Additional similarities between SVPA and immigration consequences are: 1) both are civil matters, 2) both involve detention proceedings, and 3) as noted in *Moore*, both require additional findings by a tribunal other than the one that took the plea.

Furthermore, like deportation proceedings, SVPA proceedings are wholly "enmeshed" in the criminal justice system. Only individuals who have been convicted of a specified offense are subjected to SVPA proceedings. (Welf. & Inst. Code § 6600, subd. (a)(2).) Unlike deportation, the only way an individual finds themselves in SVPA proceedings is through the criminal justice system. Every person who is serving a prison term and has a qualifying conviction under the SVPA is referred for an evaluation. (Welf. & Inst. Code § 6601, subd. (a).) If that individual is determined to be a sexually violent predator, then a petition is filed in the superior court. (*Id.* at subd. (h).) An individual facing a petition under the SVPA is entitled to an attorney. (Welf. & Inst. Code § 6602, subd. (a).) The

individual is afforded a probable cause hearing and a jury trial where the burden on the government is beyond a reasonable doubt. (Welf. & Inst. Code §§ 6602, 6604.) The similarities between a felony prosecution and SVPA proceedings are striking, and a substantial basis to conclude that SVPA and immigration consequences are both enmeshed within the criminal justice system.

Like deportation, the potential lifetime deprivation of liberty under an SVPA commitment is a significant penalty. Additionally, both SVPA proceedings and deportation proceedings are enmeshed in the criminal justice system. Based on these substantial similarities, and under *Moore*, SVPA consequences and immigration consequences are analogous. *Padilla* found a requirement under the Sixth Amendment to advise of the potential for deportation, and so too should this Court find the same requirement for the potential of SVPA commitment.

B. Tellez Suffered Actual Prejudice

In addition to establishing that defense counsel did not meet the threshold standards of competency, Tellez must establish that defense counsel's incompetence resulted in prejudice. (*In re Alvernaz, supra,* 2 Cal.4th at p. 936.) The United States Supreme Court has held that prejudice is established when there is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." (*Strickland, supra,* 466 U.S. at p. 669.) In the context of guilty pleas, prejudice exists when there is "a reasonable probability that, but for counsel's errors, [Defendant] would not have pleaded guilty and would have insisted on going to trial." (*Hill v. Lockhart, supra,* 474 U.S. at p. 59; *In re Alvernaz, supra,* 2 Cal.4th at p. 934; *In re Vargas*, *supra,* 83 Cal.App.4th at p. 1140; *People v. Maguire, supra,* 67

Cal.App.4th at p. 1032.) The likelihood of prevailing at said trial is not relevant to these findings. (*Lee v. United States* (2017) 137 S.Ct. 1958, 1965.)

Tellez would not have entered a guilty plea, and instead would have proceeded to trial, had he been advised of the possible consequences of an indefinite commitment under the SVPA. The maximum penalty that Tellez faced after trial based on the charges on the complaint was twelve years in state prison. Tellez was guaranteed three years in state prison in exchange for his guilty plea prior to trial. His attorney advised him that the maximum that he would serve was three years. However, the reality was and is that Tellez's freedom was never guaranteed because of the potential of a lifetime commitment under the SVPA. Tellez served his three-year term and believed he was going to be released only to be retaken into custody in order to face the petition filed against him. Had Tellez been advised that, instead of being released after three years, he may never be released, he would have preserved his constitutional rights and put the prosecution to their burden. Just as *Padilla* noted that "preserving a client's right to remain in the United States may be more important to the client than any potential jail sentence," so too is Tellez's desire to preserve his freedom the most important consideration to him, even if that means risking a longer determinate sentence after trial. (*Padilla*, *supra*, 559 U.S. at p. 368, citing *INS v. St. Cyr* (2001) 533 U.S. 289, 322.) The failure to advise of such a significant consequence robbed Tellez of making a knowing, intelligent, and voluntary decision regarding his fundamental constitutional rights.

Having obtained ineffective assistance of counsel in his guilty plea, Tellez suffered prejudice of a constitutional magnitude that warrants a reversal of his conviction.

II. This Court Should, In the Exercise of Its Supervisory Powers, Require That a Defendant Be Advised That a Guilty Plea May Subject Him to SVPA Commitment Proceedings

A. This Court Has the Inherent Authority Through Its Supervisory Powers to Require Trial Courts to Advise Defendants That a Guilty Plea May Subject Them to SVPA Commitment Proceedings

"The judicial power of this state is vested in the Supreme Court, courts of appeals, and superior courts. . .." (Cal. Const., art. VI, § 1.) It is well settled that this Court has inherent supervisory powers over lower courts, which includes the power "to formulate rules of procedure where justice demands it." (*McDonald v. Antelope Valley Community College Dist.* (2008) 45 Cal.4th 88, 100; see Code Civ Proc. § 187.)

In *In re Roberts* (2005) 36 Cal.4th 389, this Court acknowledged its "inherent authority to establish 'rules of judicial procedure'" for superior courts in the context of habeas corpus petitions. (*Id.* at p. 593, citing *Griggs v. Superior Court of San Bernadino County* (1976) 16 Cal.3d 341.) This Court has previously used its supervisory powers to create a rule that prevents lower courts from making race-conscious assignments from the jury assembly room (*People v. Burgener* (2003) 29 Cal.4th 833) and in prohibiting an appellate court from utilizing a form that it found to interfere with an appellant's right to oral argument (*People v. Pena* (2004) 32 Cal.4th 389). Most relevant to the present case, is this Court's willingness to use its supervisory powers to create procedural rules that seek to ensure the validity of guilty pleas and the knowing and voluntary waiver of rights. (See *Bunnell v. Superior Court* (1975) 13 Cal.3d 592; *People v. Howard* (1992) 1 Cal.4th 1132.)

In *Bunnell*, the defendant entered into a "slow plea" by submitting on the preliminary hearing transcript at a bench trial where the court had indicated that the defendant would be convicted of second-degree murder, but where the defendant did not intend to admit guilt. (*Bunnell*, *supra*, 13 Cal.3d at p. 600.) After the defendant was convicted, he appealed, and the Court of Appeal reversed the judgement finding that defendant had not received a fair trial. (*Ibid.*) After remand, the prosecution asserted that the defendant once again faced a charge of first-degree murder, while the defendant argued that the prior proceedings had been a trial, and that the conviction of second-degree murder "necessarily implied an acquittal of the greater charge of first-degree murder." (*Id*. at p. 601.) The defendant ultimately filed a writ of prohibition to restrain the superior court from allowing him to be charged with anything greater than second-degree murder. (*Id.* at p. 598.)

Concerned with the unnecessary burden placed upon trial courts in distinguishing between a submission that is "tantamount to a plea of guilty" and those where the defendant intends to contest his guilt, this Court found that:

> [I]n order to relieve trial courts of this burden and in order to give maximum assurance that defendants are fully aware of the significant rights that they surrender in any submission and of the possible consequences thereof, such defendants shall be fully advised of these rights and consequences and that the record shall reflect such advice, waivers, and acknowledgement by the defendant of his understanding of these consequences in all submissions.

(*Bunnell*, *supra*, 13 Cal.3d at p. 605.) In the exercise of its supervisory

powers, this Court ordered, upon the date on which *Bunnell* became final, that:

> [I]n all cases which the defendant seeks to submit his case for decision on the transcript or plead guilty, the record shall reflect that he has been advised of his right to a jury trial, to confront and cross-examine witnesses, and against self-incrimination. It shall also demonstrate that he understands the nature of the charges. Express waivers of the enumerated constitutional rights shall appear.

(*Bunnell*, *supra* 13 Cal.3d at p. 605.)

The newly created rule included several other advisals that are required depending on the specific circumstance of the case before the trial court, including all direct consequences of a conviction. (*Bunnell, supra* 13 Cal.3d at p. 605.) This Court reasoned that the new requirements would not "unduly burden trial courts" and that any "additional burden, if any, will be far outweighed by the benefits" of ensuring defendants are aware of their constitutional and statutory rights, and that any waiver of those rights are both *voluntary* and *intelligent.* (*Id.* at pp. 605-606 [emphasis added].)

After the United States Supreme Court held in *Boykin v. Alabama* (1969) 395 U.S. 238, that a defendant's guilty plea is only valid if the record shows a voluntary waiver of constitutional rights, this Court went further in *In re Tahl* (1969) 1 Cal.3d 122, requiring that the rights mentioned in *Boykin* "must be specifically and expressly enumerated for the benefit of and waived by the accused prior to acceptance of his guilty plea." (*In re Tahl, supra* at pp. 131-132.) The use of this Court's supervisory powers to prescribe the new *Boykin/Tahl* advisement was done to ensure the validity of all guilty pleas. This Court noted that while *Boykin*

did not require such an express acknowledgment and waiver of a defendant's rights, it was within its inherent power to create rules that require more than the minimal federal standard to ensure "greater assurance of the validity of convictions, to protect more fully defendant's rights, or to anticipate future constitutional developments." (*Id.* at p. 131-132, fn 5.)

Subsequent to *Tahl*, this Court declared in *In re Yurko* (1974) 10 Cal.3d 857, that *Boykin/Tahl* admonitions regarding the waiver of important constitutional rights extended to admissions of prior felony convictions. However, considering the significant impact the admission of a prior felony conviction would have on the defendant, this Court once again used its supervisory powers to create a new "judicially declared rule of criminal procedure." (*Id*. at p. 864.) The new rule mandated that, prior to admitting an allegation of a prior criminal conviction, a defendant be advised that: 1) he may be adjudged a habitual offender, 2) of the increase in punishment that may be imposed, and 3) the effect an increased punishment would have on parole eligibility. (*Ibid.)* The new ruled addressed concerns that an admission of a prior criminal conviction involved "severe sanctions" and "numerous and complex circumstances" in which those sanctions could affect the defendant. This Court reasoned that, "[t]he consequences of an admission could, without imposing any undue burden on the judicial process, be explained to an accused in the interest of achieving justice." (*Ibid.*) Ultimately, at the heart of this new rule was the acknowledgment that a knowing and intelligent waiver of constitutional rights necessitates an understanding of the consequences of that waiver.

In *People v. Howard* (1992) 1 Cal.4th 1132, this court exercised its supervisory powers yet again, affirming the requirement that courts

"expressly advise defendants on the record of their *Boykin/Tahl* rights. (*Id.* at p. 1175.) *Howard* involved "*Yurko* Error", and specifically addressed what standard of review courts should apply when there is no explicit admonition or waiver of the rights enumerated in *Boykin/Tahl*. This Court held that since *Boykin/Tahl* admonitions involve federal Constitutional rights, the test of whether a plea is valid should be judged under the federal standard – "that a plea is valid if the record affirmatively shows that it is voluntary and intelligent under the totality of the circumstances." (*Ibid.*)

In doing so, this Court adopted the federal test and rejected the prior standard requiring per se reversal. (*Id.* at p. 1178.) For the present case, however, the importance of *Howard* is in this Court's continued use of its supervisory powers to safeguard the sanctity of guilty pleas. This Court recognized that the requirements set out in *Tahl* were more extensive than what was required under federal law yet reiterated that this Court's judicially created rule mandating explicit admonitions and waivers remains intact. (*Id.* at p. 1178-1179.) Furthermore, this Court encouraged trial courts to take the necessary time to explain each right involved and obtain express waivers, stating that what's at stake "is the protection of both the accused and the People." (*Ibid.*)

This Court has, on numerous occasions, used its inherent supervisory powers to implement rules of criminal procedure that are directed at protecting the validity of guilty pleas. The rules that this Court has fashioned in this area are almost entirely intended to ensure that a defendant, prior to pleading guilty and waiving significant constitutional rights, understands, not only the rights that are being waived, but the consequences of the waiver. Therefore, it is well within this courts supervisory power to craft a rule that requires a defendant to be advised that a guilty plea may subject him to SVPA commitment proceedings.

B. This Court Should Require that a Defendant be Advised that a Guilty Plea May Subject Him to SVPA Commitment Proceedings to Ensure the Plea Is Knowing and Voluntary

A guilty plea is only valid when "the plea represents a voluntary and intelligent choice among the alternative course of action open to the defendant." (*People v. Howard*, *supra*, 1 Cal.4th a p. 1177, citing *North Carolina v. Alford* (1969) 400 U.S. 25, 31.)

When a defendant pleads guilty to one of the enumerated offenses under the SVPA, every time that they are committed to the Department of Corrections and Rehabilitation they must be screened prior to their release to determine if they are likely to be a sexually violent predator. (Welf. & Inst. Code §§ 6600, subd. (a), 6601, subds. (a), (b).) Such a screening may result in a petition being filed in the superior court and ultimately an indefinite, lifetime, deprivation of liberty. (Welf. & Inst. Code § 6600, et seq.)

An indefinite commitment under the SVPA is a significant consequence. Such a consequence is certainly relevant to a defendant attempting to determine whether to waive his constitutional rights and plead guilty. Inherent in a knowing and intelligent waiver of rights is the understanding of the ultimate outcome. While it is not certain at the time of the plea that a defendant will in fact be committed for life under the SVPA, it is certain that they will be screened. Additionally, the fact that the potential outcome of such a screening is an indefinite curtailment of one's freedom certainly diminishes any argument that one should not be informed of the potential consequence given the severity of that consequence. It is the magnitude of the consequence that makes it

immaterial of whether it is certain or not.

This Court should, in the exercise of its supervisory powers, require that a defendant be advised that a guilty plea may subject him to SVPA commitment proceedings because of the severity of the potential consequence. The decision to waive important constitutional rights is never an easy one and is made even more difficult when faced with the nature of charges that would trigger a commitment under the SVPA. A defendant should be advised whenever a waiver of those rights may result in an indefinite loss of freedom. By requiring that a defendant be advised of the potential for lifetime commitment, this Court would be ensuring that a defendant's decision to plead guilty in these very serious cases is truly knowing, intelligent and voluntary.

C. Tellez Is Entitled to Relieve Because He Was Not Advised of The Significant Consequence of Potential SVPA Proceedings Rendering His Plea Involuntary

Tellez has suffered actual prejudice as a result of the failure of counsel and court to advise him that his plea of guilty could potentially result in his indefinite commitment to a state hospital. Tellez is currently incarcerated in San Diego County Jail, after already serving his prison sentence for the underlying conviction and faces a petition under the SVPA that could potentially deprive him of his freedom for the remainder of his life.

As part of his plea deal, Tellez was informed that he would serve three years in state prison and be released on parole. Based on that knowledge, he made the decision to waive his constitutional rights and change his plea to guilty. However, that waiver of rights was not knowing or intelligent because he was not informed that, despite his plea deal, his

freedom could be forever curtailed under the SVPA. He lacked critical information regarding the consequences of his plea that render his plea involuntary. No defendant should be allowed to enter into a plea that could result in a permanent deprivation of liberty without being adequately advised of the potential consequences. As such, and as a matter of fundamental fairness, Tellez's conviction should be vacated and he should be afforded the opportunity to make a knowing, intelligent and voluntary decision regarding the disposition of his case.

CONCLUSION

Tellez's defense counsel was ineffective, because counsel neither diligently nor competently advocated for the protection of his constitutional rights. Defense counsel failed to advise Tellez of the particularly severe penalty of possible SVPA commitment prior to his guilty plea, resulting in a plea and waiver of rights that was not voluntary, knowing, or intelligent. Were Tellez afforded effective counsel, he would have proceeded to trial or advanced plea negotiations to a more favorable resolution. Deprived of such assistance, Tellez was prejudiced by the involuntary and unknowing waiver of his rights, in violation of his Sixth Amendment rights.

Additionally, this Court, under the exercise of its supervisory powers, should require that all defendants be advised that a guilty plea may subject them to SVPA commitment proceedings to prevent the injustice that has befallen Tellez. A knowing and intelligent plea and waiver of rights requires the advisal that the plea could result in an indefinite commitment in a state hospital.

Accordingly, Tellez asks this Court to vacate his conviction and set further proceedings.

Dated: April 18, 2023

Respectfully submitted,

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/s/ Anthony B. Parker
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VICTOR TELLEZ

III. CERTIFICATE OF WORD COUNT COMPLIANCE

I, ANTHONY B PARKER, hereby certify that, based on the software in the Microsoft Word program used to prepare this document, the word count for this brief is 5,713 words. I swear under the penalty of perjury that the foregoing is true and correct.

Dated: April 18, 2023

Respectfully submitted,

/s/ Anthony B. Parker
ANTHONY B PARKER
Deputy Alternate Public Defender

Attorney for Petitioner
VICTOR TELLEZ

PROOF OF SERVICE

I, undersigned declarant, state that I am a citizen of the United States and a resident of the County of San Diego, State of California. I am over the age of 18 years and not a party to the action herein. My office address is 451 "A" Street, Suite 1200, San Diego, California 92101.

On the date of execution of this document, served the attached **PETITIONER TELLEZ'S OPENING BRIEF ON THE MERITS** to the following parties:

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(*through counsel*)

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 18, 2023, in San Diego, California.

Signed: /s/ Anthony B. Parker

____

Printed: Anthony B. Parker

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DECLARANT

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 4/18/2023 by Karissa Castro, Deputy Clerk

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **TELLEZ (VICTOR RAUL) ON H.C.**
Case Number: **S277072**
Lower Court Case Number: **D079716**

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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.

4/18/2023
Date

/s/Anthony Parker
Signature

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