IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Appellant,

v.

STEVEN ANDREW ADELMAN,

Defendant and Respondent.

S237602

Court of Appeal Case No. E064099
Riverside County Superior Court No. SWF1208202
The Honorable Edward D. Webster, Judge

OPENING BRIEF ON THE MERITS

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INTRODUCTION

Penal Code[1] section 1170.18, subdivisions (a) and (f), requires a request for relief under that section be filed "before the trial court that entered the judgment of conviction . . ." In apparent conflict with that statute, section 1203.9, subdivision (b), provides that when a probationer's case is transferred between counties, "[t]he court of the receiving county

[1] All further unspecified statutory references are to the Penal Code.

shall accept the entire jurisdiction over the case effective the date that the transferring court orders the transfer."

The lower courts have struggled with reconciling these conflicting statutes. In *People v. Curry* (2016) 1 Cal.App.5th 1073, 1081-1082 (*Curry*), the Court of Appeal, First Appellate District, issued a published opinion holding that under the plain language of section 1170.18, the request for relief must be filed in the county that entered the judgment of conviction.[2] Conversely, in the present case, the Court of Appeal, Fourth Appellate District, issued a published opinion holding that under the plain language of section 1203.9, the court of the county receiving a transfer of probation has entire jurisdiction over the case, including the filing of a request for relief under section 1170.18. (Slip opn. at pp. 6-10.)

Due to the lack of guidance from the higher courts, the trial courts in both *Curry* and the present case initially rejected the defendants' Proposition 47 petitions. Specifically, in *Curry*, the defendant initially attempted to file her petition in the county that received her probation, but that court rejected the petition on the grounds that it must be filed in the county that entered the judgment of conviction. (*People v. Curry, supra,* 1 Cal.App.5th at p. 1077.) Conversely, in the present case, the defendant initially attempted to file his petition in the county that entered the judgment of conviction, but that court rejected the petition on the grounds that it must be filed in the county that received his probation. (Slip opn. at p. 3.)

It is imperative to provide the lower courts with clear guidance so that persons who are eligible for relief under Proposition 47, such as

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[2] On November 9, 2016, this Court granted a petition for review in *Curry* (case number S237037) and deferred further action pending disposition of the present case.

respondent in the present case, are not left unable to file their petitions and subjected to prolonged litigation. As set forth in more detail below, a petition seeking relief under Proposition 47 must be initiated in the court that entered the judgment of conviction. Such a resolution is not only mandated by long-established tenets of statutory construction that give precedence to a more recent and more specific statute, it also appropriately addresses relevant policy considerations, such as avoiding the potential need for local crime victims and witnesses to travel long distances to faraway courts for dangerousness hearings. Accordingly, appellant respectfully requests this Court reverse the judgment of the Court of Appeal and hold that a petition seeking relief under Proposition 47 must be initiated in the court that entered the judgment of conviction.

ISSUE PRESENTED

When a defendant's probation is transferred between counties, must a request for relief under Proposition 47 be filed in the county of conviction or the county receiving probation?

STATEMENT OF FACTS[3]

On June 23, 2012, deputies from the San Diego Sheriff's Department responded to a report of a possible vehicle collision in San Marcos. (CT 14.) Upon arrival, officers found respondent behind the wheel of his car, which was parked crooked across two parking spaces. (CT 14.) The car was not moving at the time, but the reverse lights were illuminated, indicating the car was in gear. (CT 14.) The deputies

[3] The underlying facts are not relevant to the sole issue raised on appeal and certified for review by this Court. As such, this Statement of Facts is abbreviated and taken from the probation report.

contacted respondent and noticed his face was flushed, his pupils were constricted, and he was fidgeting during the encounter. (CT 14.) Respondent had a piece of foil containing a burnt Oxycodone pill on his lap. (CT 14.) Respondent had 26 more Oxycodone pills inside his car, in addition to .13 grams of cocaine, a silver spoon, a yellow lighter, and a clear Bic pen tube with burn marks on the inside. (CT 14.) A subsequent blood analysis revealed the presence of Oxycodone and cocaine in respondent's system. (CT 14.) Respondent admitted driving his car to that location and planning to drive away had the deputies not contacted him. (CT 14.)

PROCEDURAL HISTORY

On June 28, 2012, the San Diego County District Attorney filed a complaint in case number SCN307269 charging respondent with felony possession of cocaine and oxycodone (count 1; Health & Saf. Code, § 11350, subd. (a)) and misdemeanor driving under the influence of a drug (count 2; Veh. Code, § 23152, subd. (a)). (CT 1-3.) As to count 2, the complaint alleged that respondent had a prior conviction for driving under the influence within the past 10 years (Veh. Code, §§ 23626 and 23540). (CT 2.)

On August 27, 2012, respondent pleaded guilty in the San Diego County Superior Court to both charged offenses and admitted the truth of his prior driving-under-the-influence conviction. (CT 9-12.)

On September 25, 2012, the San Diego County Superior Court granted respondent three years of formal probation with specified terms and conditions. (CT 26-30.)

On September 27, 2012, respondent filed a request under section 1203.9 to have his probation transferred to Riverside County. (CT 31-32.)

On December 7, 2012, respondent's request was granted and probation was transferred to the Riverside County Superior Court in case number SWF1208202. (CT 35-37.)

On January 6, 2015, respondent filed a petition for resentencing under section 1170.18, subdivision (a), in the Riverside County Superior Court. (CT 38-66.) On May 14, 2015, the Riverside County District Attorney filed an opposition to the motion on the ground that section 1170.18, subdivision (a), requires the petition be filed in the San Diego County Superior Court, which is the court that entered the judgment of conviction. (CT 68-71.) The prosecution did not argue that petitioner was ineligible for the requested relief, just that section 1170.18, subdivision (a), mandates the court in which the petition must be filed. (See CT 68-71.)

On June 19, 2015, the Riverside County Superior Court conducted a hearing regarding respondent's petition. (CT 74.) At that hearing, respondent's counsel represented that he read section 1170.18 in the same manner as the prosecution, and for that reason he initially attempted to file the petition in the San Diego County Superior Court. (RT 5.) Respondent's counsel stated that the San Diego County Superior Court rejected the filing because the matter had been transferred to the Riverside County Superior Court. (RT 5.)

The Riverside County Superior Court granted respondent's petition. (CT 74.) In so doing, however, the court noted the lack of guidance from the appellate courts regarding the issue, and encouraged the prosecution to file an appeal so the "Court of Appeal [can] tell us and give us clear instructions so we don't have to go through this nonsense again." (RT 6.)

On July 21, 2015, the prosecution filed a notice of appeal. (CT 75.) On August 31, 2016—following briefing and oral argument by the parties—the Court of Appeal, Fourth Appellate District, Division Two,

issued a unanimous published opinion affirming the judgment of the trial court, holding that under the plain language of section 1203.9, the court of the county receiving a transfer of probation has entire jurisdiction over the case, including the filing of a petition under section 1170.18, and therefore respondent properly filed his petition in the Riverside County Superior Court. (Slip opn. at pp. 4-6, 8.)

ARGUMENT

A REQUEST SEEKING RELIEF UNDER PROPOSITION 47 MUST BE INITIATED IN THE COURT THAT ENTERED THE JUDGMENT OF CONVICTION

The plain language of section 1170.18 is clear and unambiguous: A request seeking relief under that section is to be made before the trial court that entered the judgment of conviction. The Court of Appeal circumvented this clear directive by invoking section 1203.9—a previously enacted statute that applies generally to all probationers who have their probation transferred—to conclude that the court that entered respondent's judgment of conviction no longer had jurisdiction to hear his petition filed under section 1170.18. The Court of Appeal's ruling not only runs afoul of well-established principles of statutory construction, it also creates the potential for a number of negative consequences, such as requiring local crime victims and witnesses to travel long distances to faraway courts for hearings, and removing the ability of the prosecutor's office and trial court most familiar with the case to review the petition. For these reasons, in addition to the reasons set forth in more detail below, a petition seeking relief under section 1170.18 must be initiated in the court that entered the judgment of conviction.

A. Standard Of Review

Questions of statutory construction are reviewed de novo. (*People v. Blackburn* (2015) 61 Cal.4th 1113, 1123, citing *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 387; see also *People v. Rizo* (2000) 22 Cal.4th 681, 685 ["In interpreting a voter initiative . . ., [the courts] apply the same principles that govern statutory construction."].)

B. Relevant Provisions Of Proposition 47

On November 4, 2014, California voters approved Proposition 47, the Safe Neighborhoods and Schools Act, which went into effect the next day. (*People v. Johnson* (2016) 1 Cal.App.5th 953, 957; Cal. Const., art. II, § 10, subd. (a) [an initiative approved by the voters takes effect the day after the election unless the measure provides otherwise].) Proposition 47 reduced certain drug- and theft-related offenses from felonies or "wobblers" to misdemeanors for qualified defendants. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.) In addition, Proposition 47 not only altered the status of certain offenses moving forward, but also added section 1170.18, which contained retroactive language permitting certain persons previously convicted of such offenses an avenue to seek the benefits of the newly enacted laws. (See generally *People v. Lynall* (2015) 233 Cal.App.4th 1102, 1108-1109.)

Specifically, section 1170.18, subdivision (a), provides:

> A person currently serving a sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under the act that added this section ("this act") had this act been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the

> judgment of conviction in his or her case to request resentencing in accordance with Sections 11350, 11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended or added by this act.

Similarly, section 1170.18, subdivision (f), provides:

> A person who has completed his or her sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under this act had this act been in effect at the time of the offense, may file an application before the trial court that entered the judgment of conviction in his or her case to have the felony conviction or convictions designated as misdemeanors.

Section 1170.18, subdivision (g), continues that if an application satisfies the criteria in subdivision (f), "the court shall designate the offense or offenses as a misdemeanor."

The requirements and eligibility for persons seeking retroactive relief of Proposition 47 vary between persons filing petitions under subdivision (a), and persons filing applications under subdivision (f). (§ 1170.18.) But as indicated above, one constant among both provisions is the location where the request for relief must be initiated. Specifically, section 1170.18, subdivision (a), mandates that a petition for recall of sentence be filed "*before the trial court that entered the judgment of conviction* in his or her case . . ." (§ 1170.18, subd. (a), emphasis added.) Likewise, section 1170.18, subdivision (f), mandates that an application for redesignation be filed "*before the trial court that entered the judgment of conviction* in his or her case . . ." (§ 1170.18, subd. (f), emphasis added.)

C. Based On The Plain Language of Section 1170.18, A Request For Relief Under That Section Must Be Initiated In The Trial Court That Entered The Judgment Of Conviction

A court interpreting the language of a voter initiative applies the same principles that govern statutory construction generally. (*Horwich v. Superior Court* (1999) 21 Cal.4th 272, 276.) The electorate's intent controls and, as with any statute, "[t]he court turns first to the words themselves for the answer." (*People v. Jones* (1993) 5 Cal.4th 1142, 1146.) The language of the proposition must be given its plain, ordinary meaning. (*Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 900; *People v. Birkett* (1999) 21 Cal.4th 226, 231.) Unless a statute includes a specifically defined meaning, "a court looks to the plain meaning of a word as understood by the ordinary person, which would typically be a dictionary definition." (*Hammond v. Agran* (1999) 76 Cal.App.4th 1181, 1189, citing *Scott v. Continental Ins. Co.* (1996) 44 Cal.App.4th 24, 28-30 [listing authorities using general dictionaries to ascertain "'ordinary' meaning of words used in a statute"]; accord *People v. Massicot* (2002) 97 Cal.App.4th 920, 925-926.) The court must presume that "the lawmakers meant what they said, and the plain meaning of the language governs." (*People v. Martinez* (2004) 116 Cal.App.4th 753, 761.)

Only when the language of a provision is unclear or ambiguous does the court turn to extrinsic aids to determine the electorate's intent. (*People v. Birkett*, *supra*, 21 Cal.4th at pp. 231-232.) In the case of voter initiatives, where there is no "legislative history" per se, the court may look to "indicia of the voters' intent, particularly the analyses and arguments contained in the official ballot pamphlet." (*Horwich v. Superior Court*, *supra*, 21 Cal.4th at p. 276; accord *Robert L. v. Superior Court*, *supra*, 30 Cal.4th at

pp. 903-904; *People v. Rizo, supra,* 22 Cal.4th at p. 685; *People v. Garcia* (1999) 21 Cal.4th 1, 8.)

Here, the plain language of section 1170.18 is clear and unambiguous: A request for relief under that section must be initiated in the trial court that entered the judgment of conviction. (§ 1170.18, subds. (a) and (f).) That plain language must be construed to effectuate Proposition 47's purpose, not to conform to an unwritten intent to exempt section 1203.9 from its operation. (E.g., *People v. Arroyo* (2016) 62 Cal.4th 589, 593; *People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 570.) Indeed, section 1170.18 did not employ language of technical or specialized meanings, but used words of common meaning. (See *Robert L. v. Superior Court, supra,* 30 Cal.4th at pp. 901-902.) Under the analysis employed by the Court of Appeal, however, the common meaning of section 1170.18, subdivisions (a) and (f), is set aside in favor of a result contrary to the statute's plain language and the electorate's demonstrated intent. (E.g., *People v. Garcia, supra,* 21 Cal.4th at p. 14; *People v. Cruz* (1996) 13 Cal.4th 764, 782-783.)

Conversely, there is nothing in section 1170.18, or in the ballot summaries or arguments, suggesting that the voters intended the plain language of subdivisions (a) and (f) be subject to an exception for persons whose probation has been transferred. And to the extent there is any uncertainty in this regard, it is well established that any doubts must be resolved in favor of the initiative. (See *Legislature v. Eu* (1991) 54 Cal.3d 492, 512.) As this Court has stated: "'[W]e may not properly interpret the measure in a way that the electorate did not contemplate: the voters should get what they enacted, not more and not less.'" (*People v. Park* (2013) 56 Cal.4th 782, 796, quoting *Hodges v. Superior Court* (1999) 21 Cal.4th 109, 114.) Under the conclusion reached by the Court of Appeal, the procedural

mandate set forth by the voters in section 1170.18, subdivisions (a) and (f), would be rendered a nullity for any person whose probation has been transferred. As this Court has repeatedly held, legislation must not be interpreted in a manner that would render it "a nullity." (*People v. Conley* (2016) 63 Cal.4th 646, 663, citing *California Teachers Assn. v. Governing Bd. Of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 634.)

In *Curry*, the Court of Appeal accurately summarized the plain language of section 1170.18 as follows:

> [I]t may seem odd in a case presenting a novel issue under Proposition 47 to invoke the canon of statutory construction that "Words used in a statute or constitutional provision should be given the meaning they bear in ordinary use. . . . [And] [i]f the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature (in the case of a statute) or of the voters (in the case of a provision adopted by the voters)." (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735, 248 Cal.Rptr. 115, 755 P.2d 299.) Yet this is one of the rare Proposition 47 cases when all we need is the plain statutory language, specifically, the language in the proposition that a "petition for a recall of sentence" by a probationer, or a former probationer, is to be filed with the "trial court that entered the judgment of conviction." (Pen. Code, § 1170.18, subds. (a), (f).)

(*People v. Curry, supra,* 1 Cal.App.5th at p. 1076.)

In the present case, the Court of Appeal did not expressly disagree with the reasoning of *Curry*, but rather attempted to distinguish *Curry*. Specifically, the court was under the misimpression that *Curry* involved a transfer of Post Release Community Supervision (PRCS) under section

3460, not a transfer of probation under section 1203.9. (Slip opn. at p. 6 ["*Curry* does not apply here because it involved section 3460, not section 1203.9, which provides for the transfer of the 'entire jurisdiction' of a case."].)

The Court of Appeal was incorrect in its belief that *Curry* involved a transfer of PRCS under 3460 rather than a transfer of probation under 1203.9. As discussed above, and contrary to the Court of Appeal's belief, *Curry* involved a transfer of probation under section 1203.9. (*People v. Curry, supra,* 1 Cal.App.5th at p. 1076 ["For this reason, and because defendant was a resident of Alameda County, the Napa probation officer moved to have supervision of her probation transferred to Alameda County in accordance with section 1203.9. The Napa County Superior Court granted the motion . . . and Alameda County accepted the transfer . . ."].) The Court of Appeal's confusion in this regard appears due to the defendant in *Curry* having been on PRCS in Alameda County (from a previous, unrelated case) at the time her probation was transferred under section 1203.9. (*People v. Curry, supra,* 1 Cal.App.5th at p. 1076.) In fact, at the time the defendant in *Curry* filed her Proposition 47 petition, she was no longer on PRCS, but was only on probation. (*Id.* at pp. 1076-1077.) Accordingly, the Court of Appeal in the present case was incorrect when it stated that *Curry* involved a transfer of PRCS under section 3460 rather than a transfer of probation under section 1203.9.

Furthermore, as the *Curry* court noted, a number of other courts have indicated in dicta that the plain language of section 1170.18 requires a defendant seeking relief under that section to initiate the proceedings in the court that entered the judgment of conviction. (See *People v. Marks* (2015) 243 Cal.App.4th 331, 335 [defendant sentenced in Los Angeles County not entitled to relief in Riverside County; "defendant was *required* to file his

petition 'before the trial court that entered the judgment of conviction,' the Superior Court of Los Angeles County," italics added]; *People v. Shabazz* (2015) 237 Cal.App.4th 303, 314 ["Defendant is limited to the statutory remedy set forth in section 1170.18. . . . He *must* file an application in the trial court," italics added].)

A common thread in each of these cases is a well-established principle repeatedly reiterated by this Court: the plain language of a statute governs. (E.g., *Robert L. v. Superior Court, supra,* 30 Cal.4th at p. 900; *People v. Birkett, supra,* 21 Cal.4th at p. 231.) Because the plain language of section 1170.18, subdivisions (a) and (f), sets forth a clear mandate requiring where the proceedings must be initiated, respondent's argument to the contrary is without merit.

D. To The Extent Section 1170.18 Created A Conflict With Section 1203.9, Section 1170.18 Controls Because It Is More Recent And More Specific

Notwithstanding the plain language of section 1170.18, subdivisions (a) and (f), the Court of Appeal invoked section 1203.9, subdivision (b), in ruling that respondent properly filed his petition in a court other than the court that entered his judgment of conviction. (Slip opn. at pp. 4-6.) Section 1203.9, subdivision (a), sets forth the requirements for transferring a criminal defendant's probation from the county of conviction to another county where the probationer permanently resides. (§ 1203.9, subd. (a).) As relevant here, section 1203.9, subdivision (b), states that "[t]he court of the receiving county shall accept the entire jurisdiction over the case effective the date that the transferring court orders the transfer." (§ 1203.9, subd. (b).)

To the extent the procedural mandate contained within section 1170.18 created a conflict with section 1203.9, subdivision (b), the requirements of section 1170.18 control because it is a more recent and more specific statute.

The rules that must be applied when faced with two irreconcilable statutes are well established. (*State Dept. of Public Health v. Superior Court* (2015) 60 Cal.4th 940, 960.) "If conflicting statutes cannot be reconciled, later enactments supersede earlier ones [citation], and more specific provisions take precedence over more general ones [citation]." (*Collection Bureau of San Jose v. Rumsey* (2000) 24 Cal.4th 301, 310.) And if those two rules are ever in conflict, the rule that specific provisions take precedence over more general ones trumps the rule that later-enacted statutes have precedence. (See *People v. Gilbert* (1969) 1 Cal.3d 475, 479 ["'It is the general rule that where the general statute standing alone would include the same matter as the special act, and thus conflict with it, the special act will be considered as an exception to the general statute whether it was passed before or after such general enactment.'"]; see *Nunes Turfgrass, Inc. v. Vaughan–Jacklin Seed Co.* (1988) 200 Cal.App.3d 1518, 1539 [same].)

Here, initially, section 1170.18 is more recent than section 1203.9. Section 1203.9 was first enacted in 1935. (§ 1203.9, added by Stats. 1935, c. 604, p. 1714, § 10.) The earliest available legislative history available for section 1203.9 indicates that, in 1991, subdivision (b) stated: "If the court of the receiving county finds that the person does permanently reside in or has permanently moved to such county, it may, in its discretion, either accept the entire jurisdiction over the case, or assume supervision of the probationer on a courtesy basis." (§ 1203.9, subd. (b); Stats. 1991, c. 1202 (Sen. Bill No. 377), § 6.) In 2009, subdivision (b) of section 1203.9 was

amended to become more categorical, similar to its current construction: "The court of the receiving county shall accept the entire jurisdiction over the case." (§ 1203.9, subd. (b); Stats. 2009, c. 588 (Sen. Bill No. 431), § 1.) In 2016, subdivision (b) of section 1203.9 was amended to its current form when the Legislature added language aimed at clarifying the law's effective date: "The court of the receiving county shall accept entire jurisdiction over the case *effective the date that the transferring court orders the transfer*." (§ 1203.9, subd. (b); Stats. 2015, c. 251 (Assem. Bill No. 673), § 1, effective Jan. 1, 2016 [emphasis indicates added language].)

Conversely, section 1170.18 was enacted in 2014, nearly 80 years after section 1203.9 was enacted. (§ 1170.18; added by initiative measure (Prop. 47, § 14, approved Nov. 4, 2014, effective Nov. 5, 2014.) As stated, where conflicting statutes cannot be reconciled, later enactments supersede earlier ones. (*State Dept. of Public Health v. Superior Court, supra,* 60 Cal.4th at p. 960, citing *Collection Bureau of San Jose v. Rumsey, supra,* 24 Cal.4th at p. 310.) Because section 1170.18 is the more recent enactment, it controls.

Furthermore, section 1170.18 is more specific than the general application of section 1203.9. As stated, a specific statute will always control over a general statute. (*People v. Gilbert, supra,* 1 Cal.3d at p. 479 [when a general statute conflicts with a specific statute the specific statute controls the general one]; *In re Williamson* (1954) 43 Cal.2d 651, 654 [same]; Code Civ. Proc., § 1859 ["when a general and particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it."]; see also, e.g., *In re Michael G.* (1988) 44 Cal.3d 283.)

Section 1203.9 applies generally to *any person* who is serving a term of probation stemming from *any conviction*. (§ 1203.9.) Conversely,

section 1170.18 applies specifically to a narrow class of persons who have been convicted of one of the nine enumerated offenses—only those offenses directly altered by Proposition 47—and who otherwise meet the eligibility requirements of having their conviction reduced. (§ 1170.18.) This disparity in application requires that section 1170.18 controls. (*People v. Gilbert, supra,* 1 Cal.3d at p. 479.)

The reason for such a rule is apparent. The electorate is presumed to have been aware not only of section 1203.9, but also of the general rule that specific statutes control over general ones. (*Peters v. Superior Court* (2000) 79 Cal.App.4th 845, 850 [the legislative body is presumed to be aware of existing law at the time new laws are enacted]; *People v. Superior Court (Ramirez)* (1999) 70 Cal.App.4th 1384, 1391 [same]; *People v. Weidert* (1985) 39 Cal.3d 836, 844 [the enacting body is deemed to be aware of existing laws and judicial constructions in effect at the time legislation is enacted, and this principle applies equally to legislation enacted by initiative].) As such, the electorate who enacted section 1170.18 would have rightly believed that, absent language to the contrary, the specific procedural mandate set forth in section 1170.18 would not be exempted by the general rule set forth in section 1203.9. That intent is manifest not only in the plain language of the statute itself, but also in the lack of language specifically exempting the newer, more specific law from the previously-enacted, general law. The electorate's intent in this regard cannot be overlooked. (E.g., *People v. Jones, supra,* 5 Cal.4th at p. 1146 [the electorate's intent controls].)

Circumventing these well-established rules of statutory construction, the Court of Appeal concluded that sections 1170.18 and 1203.9 were not in "actual conflict," but rather could be harmonized in a manner that permits their "concurrent operation." (Slip opn. at p. 9.) Specifically, the

Court of Appeal concluded that a probationary defendant can "waive his right" to file the petition in the court that entered the judgment of conviction by simply filing the petition in the court that received his or her probation. (Slip opn. at p. 9.) Following from this, the Court of Appeal reasoned, the two statutes can operate concurrently and therefore are not in direct conflict with one another. (Slip opn. at p. 9.)

There are multiple problems with the Court of Appeal's conclusion in this regard. First, section 1170.18 contains specific language mandating the court in which a defendant must file his or her petition. If the Court of Appeal's reasoning were adopted, the language "before the trial court that entered the judgment of conviction in his or her case"—language specifically included in both subdivision (a) and subdivision (f)—would be rendered entirely meaningless. As stated, legislation must not be interpreted in a manner that renders portions of its language a nullity. (See *People v. Conley, supra,* 63 Cal.4th at p. 663.)

Second, as the Court of Appeal noted, in order to harmonize the two statutes, they must be capable of "concurrent operation." (Slip opn. at p. 9, citing *People v. Chenze* (2002) 97 Cal.App.4th 521, 526.) But there is no way for the procedural mandate contained in section 1170.18 to be given full effect if it can simply be disregarded by any person whose probation has been transferred. Stated another way, in order to actually harmonize the two statutes, section 1170.18 would need to be given full effect—requiring the petition be filed in the court that entered the judgment of conviction—and section 1203.9 would need to concurrently be given full effect—requiring transfer of jurisdiction over the entire case. If the ultimate outcome is for the procedural mandate required by section 1170.18 to be set aside in favor of the language of section 1203.9, the statues are not being harmonized because the requirements of 1170.18 are being trumped