

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

SUPREME COURT
FILED

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PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Appellant,

v.

STEVEN ANDREW ADELMANN,

Defendant and Respondent.

S237602

Court of Appeal
Case No. E064099

(Riverside
County Superior
Court Case No.
SWF1208202)

RESPONDENT'S ANSWERING BRIEF ON THE MERITS

After Decision by the Court of Appeal
Fourth Appellate District, Division Two
Filed August 31, 2016

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Issue Presented for Review

If a case is transferred from one county to another for purposes of probation (Pen. Code, § 1203.9), must a Proposition 47 petition to recall sentence be filed in the court that entered the judgment of conviction or in the superior court of the receiving county?

Introduction

The issue before the Court is whether a statutory requirement that any request for Proposition 47 relief must be filed in the court that entered the judgment of conviction can be reasonably harmonized with Penal Code section 1203.9's command that any transfer under this statute deposits the entire jurisdiction of the case to the receiving court.¹

The Court of Appeal correctly held that sections 1170.18 and 1203.9 can be reasonably read together to give the receiving court authority to rule on a request for relief under Proposition 47 if the defendant files in that county (thereby waiving his right to have the original sentencing judge rule on the request. (*People v. Adelman* (2016) 2 Cal.App.5th 1188, review granted November 9, 2016, S237602.)

Because the plain language of section 1170.18 does not resolve the issue, it was proper for the appellate court to rely on extrinsic aids to interpret the statute. The Court of Appeal's harmonized reading of sections 1170.18 and 1203.9 gives effect to both statutes

¹ All further unassigned statutory references are to the Penal Code.

and is consistent with the voters' intent in enacting Proposition 47 to generate money savings and to direct those savings into victim services and rehabilitation programs.

The Court of Appeal's construction of the two statutes is also the most practical. The People argue that section 1170.80 must be inflexibly interpreted to require the filing of any request for Proposition 47 relief in the original court of conviction even in cases where the entire jurisdiction has been transferred under section 1203.9.

However, the People's proposed reading of the statutes would require *in each case and regardless of circumstances*, the following three-step process: (1) filing of a petition to transfer the case from the receiving court back to the original court conviction; (2) filing of a request for Proposition 47 relief in the original court of conviction and litigating it away from the probationer's county of residence; (3) once Proposition 47 issues are resolved, a separate petition to transfer the case back to the receiving court (i.e., to the county where the probationer continues to live). This process would impose

unnecessary and burdensome requirements on the courts, public agencies, and defendants alike. The Court of Appeal was right in holding that in light of the voters' intent in enacting Proposition 47, the People's proposed reading of the statutes "seems wholly unfeasible and not an economical or practical use of judicial resources." (*Adelmann, supra*, 2 Cal.App.5th at pp. 1195-1196.)

Summary of Argument

The People argue that plain language of section 1170.80 mandates filing of any request for Proposition 47 relief in the original court of conviction even when the entire jurisdiction over the case had been transferred pursuant to section 1203.9. However, as two Courts of Appeal and a leading practice guide on Proposition 47 have concluded, the People's reading of the statutory language is erroneous. (*Adelmann, supra*, 2 Cal.App.5th at pp. 1195-1196; *accord In re I.S.* (2016) 6 Cal.App.5th 517, 523; see also Richard Couzens, Tricia A. Bigelow, and Gregg L. Prickett, *Sentencing California Crimes, Cases Transferred to a Different County*, p. 86 <<http://www.courts.ca.gov/documents/Prop-47-Information.pdf>> (as

of March 6, 2017); but see *People v. Curry* (2016) 1 Cal.App.5th 1073, review granted Nov. 9, 2016, S237037.) There is nothing in section 1170.18 that explicitly addresses whether section 1203.9's transfer of entire jurisdiction over the case does or does not allow the receiving court to rule on a Proposition 47 request for relief. If anything, there are significant arguments in favor of the Court of Appeal's reading. But at minimum, the People's reliance on the plain language of section 1170.18 to support their reading of the statutes in question is misplaced.

The People fare no better with their argument that their reading of the statutes is required under the canons of statutory interpretation of repeal by implication or a more specific statute prevailing over a more general one. For either of these interpretive aides to apply, sections 1170.18 and 1203.9 must be in irreconcilable conflict. California law contains a strong presumption against finding such statutory conflict.

There is no irreconcilability. In a typical scenario (i.e., where a probationer continues to reside in the county that originally

imposed his or her conviction), any request for Proposition 47 relief must be filed in the original county of conviction. (§ 1170.18, subds. (a) and (f).) Similarly, if a person is on informal probation (or on formal probation with permission to live in another county), but the court had not ordered a section 1203.9 transfer, that person is still required to initiate any request for Proposition 47 relief in the original county of conviction. There is no opportunity to forum shop by filing the request in any other county.

But when a section 1203.9 transfer has been ordered, the entire jurisdiction now resides in the receiving county; the receiving county is the *only* proper place in which to at least initiate the request for Proposition 47 relief. In other words, the defendant in this situation is filing in another county *not* to “circumvent the procedural mandate of section 1170.18” (as the People repeatedly label it). Rather, the receiving court becomes the only proper place to file the request because due to a properly ordered section 1203.9 transfer, the receiving court has complete jurisdiction over the case; the receiving court stands in the shoes of the original court of

conviction.² Thus, the Court of Appeal correctly held that both statutes are capable of operating together.

Finally, there is no merit in the People's argument that the Court of Appeal's harmonized reading of sections 1170.18 and 1203.9 will create havoc in the determination of dangerousness.

First, as the Judicial Council report regarding the number for requests for Proposition 47 relief filed statewide since the enactment of Proposition 47 shows, in the last year and a half, most requests for Proposition 47 relief have been applications to designate a prior felony conviction a misdemeanor.³ (§ 1170.18, subd. (f).) In light of these numbers, and the fact that sentencing in new cases occurs with

² In 1980, section 1203.9 was amended to provide the receiving county with an option: "it may, in its discretion, either accept the entire jurisdiction over the case, or assume supervision of the probationer on a courtesy basis." (Stats.1980, c. 343, § 1.) But an amendment in 2009, effective 2010, eliminated the option to accept less than the entire jurisdiction over the case (Stats. 2009, c. 588 (S.B.431), § 1), provided, of course, the probationer met the qualifications for transfer.

³ This report was prepared by the Judicial Council of California on December 8, 2016. Respondent will discuss the contents of this report on page 39 of the brief, *post*. Respondent will also file a separate request to take judicial notice of existence and contents of said report.

Proposition 47 in effect, the Court can expect the same trend to continue.

As for section 1170.18, subdivision (f), applications, the court does not make a determination of dangerousness in order to grant relief. (§§ 1170.18, subd. (f).) Since the receiving court has the court file (Cal. Rules of Court, rule 4.530 (g)(5)), the court will likely have all the documents necessary to rule on the application (such as charging instruments, probation reports, or section 969b packets) to determine eligibility.⁴ In the unlikely event that a hearing is necessary to address those eligibility issues, only the defendant can request it. (§ 1170.18, subd. (h).)

Also, for those individuals petitioning for resentencing pursuant to section 1170.18, subdivision (a), very few of them would be truly “currently dangerous” within the meaning of section 1170.18, subdivision (b) (i.e., would create an unreasonable risk of committing a “super strike” within the meaning of section 667,

⁴ Pursuant to section 969b, records of the defendant’s prior incarceration may be admitted to establish that he had suffered a prior conviction and / or served a prior term in state prison.

subdivision (e)(2)(C)(iv)). The fact that these individuals were found to be suitable probation candidates greatly reduces such a risk.

More to the point, in the few cases where there is truly a need for a contested dangerousness hearing, section 1203.9, subdivision (c), gives the receiving court authority to request another transfer when it seems proper. The district attorney's ability to request such a transfer on a case-by-case basis upon showing of good cause completely addresses all of the People's concerns outlined on pages 27 through 31 of their opening brief on the merits.

In light of the receiving court's ability to transfer the case back to the original county, it would be *completely impractical* to force every section 1203.9 transferee seeking Proposition 47 relief (including those individuals who are applying to designate a prior conviction under § 1170.18, subd. (f)) to engage in a prolonged and cumbersome process of first transferring the case back under section 1203.9, then litigating Proposition 47 issues in a county far away from their current residence, and then transferring the case back again to the county of residence. The voters enacting this

proposition to generate money savings could not have rationally intended such cumbersome and wasteful procedure to accomplish their goal.

Accordingly, this Court should affirm the Court of Appeal's holding that under sections 1170.18 and 1203.9, a receiving court under section 1203.9 has the authority to rule on a request for relief under Proposition 47 if the defendant elects to file the request in that court.

Statement of the Case

A. Trial Court Proceedings

In 2012, in the San Diego County Superior Court, defendant and respondent Steven Andrew Adelman pled guilty to one count of felony possession of cocaine (Health & Saf. Code, § 11350, subd. (a)), and one count of misdemeanor driving under the influence of a controlled substance (Veh. Code, § 23540, subd. (a)). The trial court placed respondent on probation for three years. (RT 2; CT 28.)

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Later that same year, pursuant to section 1203.9 and California Rules of Court, rule 4.530, respondent's probation was transferred to Riverside County.⁵ (CT 31, 35, 37.)

After the passage of Proposition 47, respondent attempted to file his resentencing application in the San Diego County Superior Court. However, that court refused to entertain the application, stating that it no longer had his court file after the section 1203.9 transfer. Respondent then re-filed his application in Riverside County Superior Court. That court granted it over the prosecution's jurisdictional objection.⁶ (*Adelmann, supra*, 2 Cal.App.5th at p. 1192.)

B. Proceedings in the Court of Appeal

The People appealed, arguing that the plain language of Proposition 47 mandates that any resentencing petition or application must be filed only in the original county of conviction, notwithstanding the section 1203.9, subdivision (b), transfer of the entire jurisdiction over the case to Riverside County Superior Court. The People further claimed that this reading of the two statutes was

⁵ Respondent has successfully completed probation in 2015.

⁶ There is no dispute that respondent is entitled to Proposition 47 relief. (RT 5.)

required by statutory canons of repeal by implication, and the rule of a more specific statute controlling over a more general one.

In a published opinion, the Court of Appeal affirmed the trial court's order granting Proposition 47 relief. (*Adelmann, supra*, 2 Cal.App.4th 1188.) First, the appellate court held that the right to have the original sentencing court rule on the petition is something the petitioner can waive by filing the petition in the receiving court. (*Id.* at p. 1194, citing *People v. Superior Court (Kaulick)* (2013) 255 Cal.App.4th 1279, 1301 [defendant in Proposition 36 case can waive his right to have his petition considered by the original sentencing judge].) In this case, respondent waived his right to have the San Diego Superior Court decide the petition by re-filing his request in Riverside County Superior Court (the receiving court that had the entire jurisdiction over his case). (*Adelmann, supra*, 2 Cal.App.5th at p. 1194.)

Second, regarding the statutory construction issue, the Court of Appeal held that the plain language of section 1170.18 does not resolve the issue in question because the statute did not address

whether Proposition 47 resentencing petition must be filed in the original county of conviction even when the *entire jurisdiction* over the case had been transferred to another court. (*Adelmann, supra*, 2 Cal.App.5th. at p. 1195.)

Instead, opined the appellate court, section 1170.18 is subject to more than one reasonable interpretation. As a result, the court is required to read this statute in a way that best harmonizes it internally, and with related statutes. (*Adelmann, supra*, 2 Cal.App.5th at p. 1195.) The court must also interpret section 1170.18 consistently with the intent of the voters, and in a practical (rather than technical) manner that achieves wise policy and does not lead to absurd results. (*Ibid.*)

Applying those rules, the Court of Appeal held that the People's proposed interpretation of the two statutes – which would require the defendant to somehow force the county of original conviction to accept his Proposition 47 petition even though the entire jurisdiction was transferred to another county – is contrary to voters' intent behind Proposition 47. (*Adelmann, supra*, 2

Cal.App.5th at pp. 1195-1196.) Instead, allowing the court that currently has exclusive jurisdiction over the case to rule on any request for Proposition 47 relief is consistent with the voters' intent. (*Id.* at p. 1196.) It is also the reading of the relevant statutes that achieves the most practical result. (*Ibid.*)

The appellate court also held that its resolution of the statutory construction issue is fully consistent with well-settled California law regarding a more specific statute prevailing over a more general one and repeal by implication. (*Adelmann, supra*, 2 Cal.App.5th at p. 1196.) For these rules of statutory construction to apply, the statutes in question must be truly irreconcilable and completely incapable of concurrent operation. (*Ibid.*)

However, in the Court of Appeal's view, no such irreconcilable conflict exists between sections 1170.18 and 1203.9. These statutes can be reasonably read together by allowing the receiving court to consider the request for relief under Proposition 47 where the petitioner waives his right to have the court of original conviction to hear it by filing the request for relief in the receiving

county. (*Adelmann, supra*, 2 Cal.App.5th at pp. 1194, 1196, citing *People v. Superior Court (Kaulick), supra*, 255 Cal.App.4th at p. 1301.)

ARGUMENT

When a Case Is Transferred to Another County Pursuant to Penal Code Section 1203.9, the Receiving Court Has Jurisdiction to Hear Proposition 47 Request for Relief

A. Sections 1170.18 and 1203.9

Section 1170.18, subdivisions (a) and (f), require a petition for resentencing (for someone currently serving a felony sentence) or an application to designate a prior felony offense as a misdemeanor (for individuals who have already completed their sentence) to be filed “before the trial court that entered the judgment of conviction in his or her case.” Subdivision (h) of the statute provides that “[u]nless requested by the applicant, no hearing is necessary to grant or deny an application filed under subsection (f).” Also, subdivision (l) states that if the original sentencing judge is not available, the presiding judge shall designate another judge to rule on the petition or application.

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Section 1203.9 creates a process for a jurisdictional transfer of a case, where, following the grant of probation, a probationer moves to another county. This statute delineates a “detailed process for the transfer of jurisdiction” and “jurisdiction rests exclusively in the county in which probation is granted until it is transferred.”⁷ (*People v. Klockman* (1997) 59 Cal.App.4th 621, 627.) Section 1203.9, subdivision (b), provides that, when a probationer’s case is transferred to another county, “[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.”

As previously noted, following a 2009 amendment, the receiving court under section 1203.9 has no option, but to accept transfer of the entire jurisdiction over the case if the probationer qualifies for transfer. (Stats. 2009, c. 588 (S.B. 431), § 1; §§ 1203.9, subds. (b) and (c).)

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⁷ The procedures and criteria for the transfer request are set forth in the California Rule of Court, rule 4.530.

Conversely, once a case is transferred, the original court no longer has jurisdiction. (*Klockman, supra*, 59 Cal.App.4th at p. 627 [jurisdiction over probation rests exclusively in the county in which probation is granted until the case is transferred under section 1203.9].) Consistently with that command, California Rules of Court, rule 4.530 (g)(5), requires the transferring court to transmit the entire court file to the receiving court.

But a transfer under section 1203.9 is not a one-way street. Pursuant to section 1203.9, subdivision (c), when the receiving court accepts jurisdiction over the entire case, it also has “the like power to again request transfer of the case whenever it seems proper.”

B. The Plain Language of Penal Code Section 1170.18 Does Not Resolve the Issue Presented for Review

1. General legal principles

In the opening brief, the People mistakenly describe the Court of Appeal’s decision harmonizing sections 1170.18 and 1203.9 as being based on the “plain language of section 1203.9.” (Opening Brief on the Merits (“OBM”) at p. 10.) But as previously explained, the appellate court’s opinion explicitly states that the plain language

of section 1170.18 does not resolve this issue, and that the statutory language in question is subject to different reasonable interpretations. (*Adelmann, supra*, 2 Cal.App.5th at p. 1195.) For that reason, the Court of Appeal's decision was based on harmonization of both statutes, in light of the voter's intent and concerns of judicial economy. (*Id.* at p. 1196.)

The Court of Appeal was right. Under California law, penal statutes are not strictly construed and the major consideration in interpreting a statute is its legislative purpose.⁸ (*Bailon v. Appellate Div.* (2002) 98 Cal.App.4th 1331, 1344; 1 Cal. Crim. Law (3d 1997), *Introduction to Crimes*, § 118, pp. 41-42.) Of course, in determining the voters' intent in passing Proposition 47, this Court must first examine the language of the initiative, giving the words their usual and ordinary meaning. (*In re Derrick B.* (2006) 39 Cal.4th 535, 539, citing *Trope v. Katz* (1995) 11 Cal.4th 274, 280.) "When the statutory

⁸ In interpreting a voter initiative, the Court applies the same principles that govern statutory construction. (*People v. Rizo* (2000) 22 Cal.4th 681, 685.)

language is clear, [this Court] need[s to] go no further.” (*Derrick B., supra*, 39 Cal.4th at p. 539.)

However, if the statutory language in question supports more than one reasonable interpretation, this Court would look to a variety of extrinsic aids, “including the objects to be achieved, the evils to be remedied, the legislative history, the statutory scheme of which the statute is a part, and contemporaneous administrative construction, as well as questions of public policy. [Citations.]” (*Derrick B., supra*, 39 Cal.4th at pp. 539-540.)

In addition, the Court examines the relevant statutory language not in isolation, “but in the context of the statutory framework as a whole in order to determine [the statute’s] scope and purpose and to harmonize the various parts of the enactment.” (*Ailanto Properties v. City of Half Moon Bay* (2006) 142 Cal.App.4th 572, 582.)

2. Plain language of section 1170.18 does not resolve the issue before this Court

Here, the plain language of section 1170.18 does not address the statutory interpretation question before this Court. Nothing in

the plain language of section 1170.18 addresses the issue of whether the defendant must file a request for Proposition 47 relief in the county of conviction even when the entire jurisdiction over the defendant's case has been transferred to another county pursuant to section 1203.9. Two Courts of Appeal agreed that plain language of section 1170.18 does not resolve this issue. (*Adelmann, supra*, 2 Cal.App.5th at pp. 1195-1196; *see also In re I.S.* (2016) 6 Cal.App.5th 517, 523 [interplay between Proposition 47 and jurisdictional transfer of a juvenile delinquency matter under Welf. & Inst. Code, § 750].)⁹

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⁹ Welfare and Institution section 750 provides in pertinent part, with emphasis added:

Whenever . . . subsequent to the filing of a petition in the juvenile court of the county where such minor resides, the residence of the person who would be legally entitled to the custody of such minor were it not for the existence of a court order issued pursuant to this chapter is changed to another county, the entire case may be transferred to the juvenile court of the county wherein such person then resides at any time after the court has made a finding of the facts upon which it has exercised its jurisdiction over such minor, and *the juvenile court of the county wherein such person then resides shall take jurisdiction of the case upon the receipt and filing with it of such finding of the facts and an order transferring the case.*

To be sure, there are significant arguments that the plain language of the statute, when viewed in the context of the entire statute and in light of the voters' intent in enacting Proposition 47, supports the Court of Appeal's harmonized reading of sections 1170.18 and 1203.9. First, the People err in arguing that the section 1170.18's failure to expressly address section 1203.9's transfers means the voters intended to read the former to the exclusion of the latter. Voters are generally presumed to be aware of existing laws. (*Santos v. Brown* (2015) 238 Cal.App.4th 398, 410.) The fact that section 1170.18 does not contain any language, such as "notwithstanding any other provision of law," creates a reasonable inference that voters enacted Proposition 47 with knowledge of the jurisdictional transfer under section 1203.9 and intended both statutes to be read together. This fact alone puts a significant dent in the People's "plain language" argument.

Second, the People's reliance on plain language of section 1170.18 is contrary to the well-established rule that statutory provisions are interpreted as a whole, rather than in isolation.

(*Ailanto Properties, supra*, 142 Cal.App.4th at p. 582.) When the original sentencing judge is unavailable, the presiding judge shall reassign the request to another judge. (§ 1170.18, subd. (l).)

Couzens and Bigelow, the leading publication on the implementation of Proposition 47, analogizes section 1203.9 transfer to a situation where the original sentencing judge becomes unavailable under subdivision (l):

When a case is transferred, “[t]he court of the receiving county shall accept the entire jurisdiction over the case.” (§ 1203.9(b).) Because the receiving county has exclusive jurisdiction over the case, the original sentencing judge is no longer available as a matter of law. The request for relief may be handled by any judge appointed by the presiding judge. (§ 1170.18(l)).

(Couzens and Bigelow, *Cases Transferred to a Different County*, p. 86.)

While this Court could reasonably rely on these grounds to uphold the Court of Appeal’s harmonized reading of the statutes in question, at minimum, the People are mistaken in claiming the issue before the Court is resolved by plain language of Proposition 1170.18.

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Therefore, since the plain language of section 1170.18 does not resolve the issue before the Court, it is proper and necessary to rely on extrinsic aids to determine whether allowing the section 1203.9 receiving court to hear a request for Proposition 47 relief is consistent with the voters' intent.

C. Rules of Statutory Construction Regarding Repeal by Implication and More Specific Statute Prevailing Over More General One Do Not Apply Because There Is No Irreconcilable Conflict Between Sections 1170.18 and 1203.9

- 1. The Court of Appeal correctly held that sections 1170.18 and 1203.9 can be reasonably read together as permitting the receiving court to decide a request for Proposition 47 relief**

The People's alternative contention is that if the plain language of section 1170.18 does not resolve the issue, and there is a conflict between this statute and section 1203.9, the former controls because it is a more recent and more specific statute. (OBM at pp. 17-18.) The People are incorrect. Neither the rule of repeal-by-implication nor the canon regarding the more specific statute prevailing over a more general one apply in a situation like the one

at bench, i.e., in the *absence* of an *irreconcilable conflict* between the statutes.

This Court has long held that “[t]he principle that a specific statute prevails over a general one applies *only* when the two sections *cannot* be reconciled. [Citations.]” (*People v. Wheeler* (1992) 4 Cal.4th 284, 293 (emphasis added); see also 1 Witkin and Epstein, *California Criminal Law* (4th ed. 2012) § 75.)

The rationale for this rule was aptly described in *People v. Chenze* (2002) 97 Cal.App.4th 521, at page 526. The rule grounded in the constitutional doctrine of separation of powers. (*Chenze, supra*, 97 Cal.App.4th at p. 526.) Since the courts’ constitutional role is to interpret, rather than rewrite, statutes, all presumptions are *against* a finding of repeal by implication. (*Ibid.*) The court’s duty is “harmonize statutes on the same subject, giving effect to all parts of all statutes if possible.” (*Ibid.*) Canons of repeal by implication or more specific statute prevailing over a more general one apply only when the statutes at issue “are irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operations.”