IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. RAMON PATTON, Defendant and Appellant.	No. S279670 Second District Court of Appeal No. B320352 Los Angeles County Superior Court No. TA144611

AMICUS CURIAE BRIEF OF THE OFFICE OF THE STATE PUBLIC DEFENDER IN SUPPORT OF APPELLANT RAMON PATTON

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INTEREST OF AMICUS

The Office of the State Public Defender (OSPD) represents indigent people in their appeals from criminal convictions in both capital and non-capital cases. The Legislature has instructed OSPD to "engage in related efforts for the purpose of improving the quality of indigent defense." (Gov. Code, § 15420, subd. (b).) It has also "authorized [OSPD] to appear as a friend of the court[.]" (Gov. Code, § 15423.) OSPD has a longstanding interest in the fair and uniform administration of California criminal law, especially regarding prosecutions for murder and attempted murder, and more generally in the protection of the constitutional and statutory rights of those convicted of crimes.

OSPD has represented and currently represents many petitioners appealing superior court decisions in Penal Code section 1172.6 proceedings.[1] Since the Legislature passed Senate Bill No. 1437 (Stats. 2018, ch. 1015) ("SB 1437"), OSPD has given amicus input and briefing in several cases in this Court involving section 1172.6, including *People v. Gentile* (2020) 10 Cal.5th 830; *People v. Lopez* (2021) 286 Cal.Rptr.3d 246; *People v. Strong* (2022) 13 Cal.5th 698 (*Strong*); *People v. Delgadillo* (2022), 14 Cal.5th 216; *People v. Reyes* (2023) 14 Cal.5th 981 (*Reyes*); *People v. Curiel* (2023) 15 Cal.5th 433 (*Curiel*); *People v. Arellano*, review granted Mar. 15, 2023, S277962; and *People v. Antonelli*, review granted Oct. 18, 2023, S281599.

SUMMARY OF ARGUMENT

The Attorney General's brief opens with a concession that should settle the case: "Dismissal of a section 1172.6 petition at the prima facie stage is appropriate if the court determines, *without resolving any factual conflicts or credibility questions,* that the record of conviction *conclusively* shows that relief is unavailable." (Answer Brief on the Merits (ABOM) at 22, italics added.) From this clearly articulated point of agreement, however, the Attorney General immediately attempts to avoid the implications of his concession. Although Mr. Patton made the factual allegation that he was not the actual killer, the Attorney

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[1] Further statutory references are to the Penal Code.

General believes the credibility of this allegation can be resolved at the prima facie stage by resorting to facts alleged in the preliminary hearing. The Attorney General claims that the preliminary hearing – a judicial proceeding devoid of reasonable doubt burden of proof and, in many cases, any incentive to contest the particular facts presented therein – nonetheless "reliably reflects *the facts* of the offense" such that it can "establish conclusively that the defendant is ineligible for relief." (ABOM at 23-24, citing *Strong*, *supra*, 13 Cal.5th at p. 708, italics added.) This flatly contradicts the manner in which this Court has characterized the use of preliminary hearing transcripts to determine facts. (*People v. Gallardo* (2017) 4 Cal.5th 120, 137 (*Gallardo*) ["A sentencing court reviewing [a] preliminary transcript has *no way of knowing* whether a jury *would have credited* the victim's testimony had the case gone to trial. And at least in the absence of any pertinent admissions, the sentencing court *can only guess* at whether, by pleading guilty . . . [the] defendant was also acknowledging the truth of the testimony[.]"].) Furthermore, the Attorney General's contention that information ascertained in a preliminary hearing can demonstrate the existence of "facts" – without the need for any "factfinding" – rests on a logical contradiction.

This seeming contradiction is permissible, according to the Attorney General, because "[p]reliminary hearing evidence is comparable to trial evidence for this purpose." (ABOM at 28 [analogizing use of preliminary hearing "facts" to facts found by a jury after trial considered in *People v. Delgadillo*, *supra*,14

Cal.5th at p. 233.) But facts necessarily found beyond a reasonable doubt by a jury after a trial and facts (not even necessarily found) by a judge based on probable cause after a preliminary hearing bear no resemblance.

Nor does or should the calculus hinge on whether defendants stipulated to the preliminary hearing as the basis for their plea, as some courts have suggested. (Compare *People v. Davenport* (2021) 71 Cal.App.5th 476, 483 [because defendant "did not stipulate that the preliminary hearing transcript provided the factual basis for his no contest plea, the transcript does not *conclusively* 'refute' his allegations"]; with *People v. Flores* (2022) 76 Cal.App.5th 974, 991 (*Flores*) [stipulation that preliminary hearing transcript provided factual basis for plea did not establish ineligibility for section 1172.6 relief as a matter of law because petitioner did not admit truth of preliminary hearing testimony]; *People v. Rivera* (2021) 62 Cal.App.5th 217, 224 (*Rivera*) [defendants who stipulate to grand jury transcript as factual basis of plea may make prima facie showing by identifying scenario under which they were guilty of murder under a now-invalid theory, even if record of conviction does not prove indictment rested on that scenario].)

A guilty plea based on a preliminary hearing transcript represents only an admission that the elements of the crime have been met and does not constitute an admission to any particular facts alleged by witnesses at the hearing. A contrary reading would not only allow judicial factfinding in violation of the text and structure of section 1172.6, it would lead to a morass. Trial

courts would be forced to analyze threadbare preliminary hearings to resolve a host of complicated and subtle distinctions based on testimony that was never intended to conclusively resolve the factual questions now at issue in 1172.6 petitions.

The simpler course is to require courts to resolve factual questions at a hearing under 1172.6, subdivision (d)(3). To be sure, preliminary hearing evidence would be relevant in such a hearing. But this evidence would not be entitled to conclusive weight and petitioners would—rightly—have the full opportunity to contest allegations made at the prior preliminary hearing that may have been inaccurate. If they are innocent of murder under current law, they should have the opportunity to present evidence on this point. Resolving factual questions about eligibility at an evidentiary hearing will not impose an undue burden on trial courts and will honor the legislative intent behind section 1172.6. For these reasons, the Court of Appeal decision should be reversed.

I.
THE USE OF PRELIMINARY HEARING TESTIMONY TO RESOLVE FACTS, INCLUDING WHETHER A DEFENDANT WAS THE ACTUAL KILLER AND THEREFORE THAT MALICE COULD NOT HAVE BEEN IMPUTED, IS FACTFINDING

The Attorney General's entire argument hinges on the proposition that a court considering a prima facie determination under section 1172.6 may properly consult "the facts in the record of conviction" – in this case, the preliminary hearing transcript – "without resolving any evidentiary conflicts or credibility

questions, to determine whether any legal theory that could support section 1172.6 relief was a possible basis for the conviction." (ABOM at 9, see also *id.* at 22, 32.) The Attorney General's concession that no resolution of contested factual issues is permissible at the prima facie stage is well-taken: it derives from this Court's directive, set forth in *People v. Lewis* (2021) 11 Cal.5th 952 (*Lewis*), that a court "'should not reject the petitioner's factual allegations on credibility grounds without first conducting an evidentiary hearing.' [citation.]." (*Id.* at p. 971.)

The Attorney General's supposition that reliance on facts adduced at a preliminary hearing does not involve *factfinding*, however, flatly contradicts this Court's description of how preliminary hearing transcripts are used when determining factual questions. In *Gallardo*, this Court confronted a very similar question to that presented here: whether factfinding based on preliminary hearing transcripts was permissible – in that case because factfinding regarding the nature of a prior conviction increased the permissible punishment under the three strikes law and thus violated the principles of *Apprendi v. New Jersey* (2000) 530 U.S. 466, 490 and *Descamps v. United States* (2013) 570 U.S. 254 (*Descamps*). (*Gallardo*, *supra*, 4 Cal.5th at p. 123.)

This Court, although recognizing that the preliminary hearing is indeed part of the "record of conviction," explained that indictments and jury instructions "differ from the preliminary hearing transcript here in a meaningful way." (*Gallardo*, *supra*, 4

Cal.5th at p. 137.) While indictments or jury instructions help identify "what facts a jury necessarily found in the prior proceeding" a "preliminary hearing transcript *can reveal no such thing*." (*Ibid.*, italics added.) This is so because a court subsequently reviewing that preliminary hearing transcript "has no way of knowing whether a jury would have credited the victim's testimony [at the preliminary hearing] had the case gone to trial." (*Ibid.*) Thus, "in the absence of any pertinent admissions" a sentencing court "can only guess at whether, by pleading guilty to a violation of Penal Code section 245, subd. (a)(1), [the] defendant was also acknowledging the truth of the testimony indicating that she had committed the assault with a knife." (*Ibid.*) In other words, resolving factual issues to preclude relief by looking at facts alleged at a preliminary hearing necessarily requires that which is forbidden by *Lewis*: judicial factfinding at the prima facie stage.

The Attorney General attempts to avoid the straightforward logic of *Gallardo* in two footnotes. Both are unpersuasive. First, the Attorney General claims that "*Gallardo's* analysis focused on the scope of the rule that, under the Sixth Amendment, all punishment-increasing facts must be proved to a jury beyond a reasonable doubt." (ABOM at 27, fn. 11.) Thus, the Attorney General claims, because the issue here concerns "section 1172.6's prima facie inquiry, to which the constitutional authority addressed in *Gallardo* does not apply," the logic of that case is irrelevant. (*Ibid.*)

This argument does not withstand scrutiny. To be sure, *Gallardo* addressed the realm of factfinding encompassed by the Sixth Amendment. But the showing required to demonstrate a Sixth Amendment violation is *more demanding* than the showing required to demonstrate a violation of 1172.6 – a statute which *on its face* reserves factfinding to the evidentiary hearing. To prove a Sixth Amendment violation, there need not only be judicial factfinding, but also a showing that 1) the Sixth Amendment's restrictions apply to the particular proceeding[2] and 2) that the "disputed fact [is] essential to increase the ceiling of a potential sentence." (*Gallardo*, *supra*, 4 Cal.5th at p. 131.)

Here, Mr. Patton need not separately establish a constitutional violation under the Sixth Amendment to demonstrate that it is impermissible to rely on preliminary hearing testimony to foreclose relief as a matter of law under section 1172.6.[3] He need only show that the trial court has

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[2] Clearly, this is not always the case. (E.g., *People v. Stanphill* (2009) 170 Cal.App.4th 61, 78 [Sixth Amendment does not apply to probation revocation proceedings]; *People v. Angulo* (2005) 129 Cal.App.4th 1349, 1368 [Sixth Amendment does not apply to civil commitment proceedings].)

[3] As such, this brief will not address the question of whether, under any circumstances, the Sixth Amendment can apply when judicial factfinding under section 1172.6 results in imprisoning a defendant who may be factual innocent under current law. Suffice it to say, amicus disagrees with Court of Appeal decisions cited by the Attorney General which broadly suggest that 1172.6 proceedings can never implicate the Sixth Amendment.

engaged in factfinding based on "credibility determinations" – a procedure which the Attorney General has already conceded, and which this Court has already held, violates the statute. (ABOM at 9; *Lewis*, *supra*, 11 Cal.5th at p., 971.) But *Gallardo*'s logic answers this question: relying on any *particular* facts adduced by any witness at the preliminary hearing involves "*credit[ing]* the [witness's] testimony." (*Gallardo*, *supra*, 4 Cal.5th at p. 137, italics added.)

The Attorney General's second claim is that whether the defendant is the actual killer is a special type of fact that escapes the realm of factfinding. (ABOM at 32, fn. 13.) The Attorney General accepts that *Gallardo*'s logic compels the conclusion that a judicial finding that the defendant used a knife would be forbidden. (*Ibid.*) But the brief argues that testimony shedding light on whether the defendant was the actual killer (in this case, a conclusion turning the number of assailants referenced at the preliminary hearing) is different. The latter, in its telling, is merely an "examination of the record to determine whether any impermissible legal theory was possible under the facts." (*Ibid.*)

This argument fares no better than the first. Relying on the number of assailants seen by any particular witness, just like the weapon used by a particular assailant, depends on crediting testimony regarding whether the defendant was the actual killer. A recent decision by the Court of Appeal, *People v. Estrada* (2024) 101 Cal.App.5th 328; 319 Cal.Rptr.3d 915 (*Estrada*), demonstrates that facts pertinent to whether the defendant is the

actual killer do not escape *Lewis*'s prohibition on resolving factual disputes.

In *Estrada*, the defendant was charged with the murder of Martin Corio and the attempted murder of Carlos Zuniga Flores; a co-defendant, Maria Elena Adame, was also charged with an assault on Zuniga Flores. (*Estrada*, *supra*, 319 Cal.Rptr.3d at p. 918.) At a preliminary hearing, Officer Juan Garcia testified that he arrived at the scene of the crime and was directed by a woman, "Rosa" to a man whom she said had been stabbed; the man, later identified as Zuniga Flores, was lying in the fetal position and covered in blood. (*Ibid.*) Garcia's partner subsequently discovered the dead body of Corio. (*Ibid.*) Rosa told Garcia that "those guys were involved," referencing two men at the scene, Gonzalo and Perez, who had blood on their shirts and shoes. (*Id.* at p. 919.) Perez also had cuts on his hands and dropped a box cutter on a nearby bench. A third, as-yet-unknown individual, was identified by video surveillance as present at the scene. (*Ibid.*)

There was, however, substantial evidence that Estrada was the actual killer. Detective Christian Mayes testified that both Adame and Estrada later confessed to him that Estrada was the perpetrator, in separate statements that did not implicate any other perpetrators. Adame confessed that there had been a prior altercation with Zuniga Flores in which she had been injured. Estrada got angry and obtained a knife. Later she and Estrada had participated in the assault on Flores, and Estrada had stabbed and killed Corio. (*Estrada*, *supra*, 319 Cal.Rptr.3d at p.

918.) Mayes also testified that Estrada separately confessed to him that, after the prior altercation involving Corio, Estrada and Adame later assaulted Zuniga Flores and, after finding Corrio "asleep or passed out," Estrada had stabbed Corio "two or three times." (*Id.* at p. 919.)

The Court of Appeal held that the trial court, in denying the petition at the prima facie stage, had engaged in impermissible factfinding. (*Estrada*, *supra*, 319 Cal.Rptr.3d at pp. 924-925.) It cited the evidence of the two other men at the scene who had blood on their clothing, one of whom had dropped a box cutter. (*Ibid.*) This evidence made it impossible to say that ineligibility for relief had been "conclusively established" on the theory that Estrada was the actual killer. (*Ibid.*)

Estrada, of course, did not resolve the issue here: it expressly noted the split in the Courts of Appeal regarding the use of preliminary hearing testimony when there was *no* evidence of alternate perpetrators and did not attempt to resolve it. (*Estrada*, *supra*, 319 Cal.Rptr.3d at p. 924.) *Estrada* limited its holding to an instance in which the preliminary hearing *itself* suggested some evidence that another individual may have been the actual killer – notwithstanding the confessions by Adame and Estrada and the fact that Estrada was later charged as the sole perpetrator of the murder. (*Id.* at pp. 924-925.)

But *Estrada* nonetheless *did* refute the Attorney General's argument: it recognized that evidence regarding the identity of the actual killer is not somehow exempt from a factfinding process simply because only one person was ultimately charged

with the murder. As the Court of Appeal explained, although the charging document "does establish that Estrada was charged alone" a charging decision "does not establish any facts as a matter of law." (319 Cal.Rptr.3d at p. 923.) And even in the face of extremely strong evidence that Estrada was the actual killer – a confession by the defendant corroborated by the confession of the co-defendant – such facts do not "conclusively" establish ineligibility under section 1172.6.

This logic inexorably leads to the conclusion that the preliminary hearing should not, as here, be used at the prima facie stage to identify the section 1172.6 petitioner as the actual killer, despite his sworn allegations in the petition to the contrary. Changing just one fact in the *Estrada* scenario illustrates the flaw in the Attorney General's logic. If the facts of the crime and the law enforcement investigation in *Estrada* were *exactly the same* (i.e. police identifying alternate suspects who may have played a direct role as the actual killer(s), but later obtaining evidence that Mr. Estrada was the actual killer), but if the law enforcement officials testifying at the preliminary hearing simply failed to mention these alternate suspects during their testimony, the outcome could change. Under the Attorney General's theory, the petitioner in such a case would be categorically ineligible for relief merely because police officers focused exclusively on the prosecution theory and did not identify alternate suspects at the preliminary hearing. There is no reason to conclude that such minor procedural differences change the pleading process or the reality that defendants nonetheless plead

guilty under the threat of imputed malice theories, regardless of the content of the preliminary hearing testimony.

There are additional, sound reasons not to allow trial courts to rely on preliminary hearing testimony to "conclusively resolve" factual disputes. Indeed, a preliminary hearing is not even intended to definitively resolve factual questions. A defendant may have no reason to challenge any particulars of testimony at a preliminary hearing. (*Descamps*, *supra*, 570 U.S. at p. 270.) This is especially true in cases resolved by guilty plea, where defendants often hope from the start to avoid trial and have no intention of ever contesting *any* prosecution theory, particularly theories of imputed liability which they could not possibly have refuted. Further, as Mr. Patton explained, defendants often lack incentive to contest evidence at the preliminary hearing due to the "modest chances of success" and a desire not to give away trial strategy. (Opening Brief on the Merits (OBM) at 24.)

In response to this argument, the Attorney General expends significant effort to claim that preliminary hearing transcripts "reliably reflect the facts of the offense" – a phrase which it uses or paraphrases no less than three times in its briefing (See ABOM at 9, 23, 26, 39) This is true, in the Attorney General's telling, because the *factfinding procedures* (the "the right to confront and cross-examine witnesses, requirement that witnesses testify under oath, and the accuracy afforded by the court reporter's verbatim reporting of the proceedings") tend to ensure that preliminary hearing testimony is (relatively)

accurate, at least for the purpose of establishing the extremely relaxed burden of probable or sufficient cause. (ABOM at 27; *People v. Abelino* (2021) 62 Cal.App.5th 563, 573 ["It is well settled that 'the showing required at a preliminary hearing is exceedingly low.'[citation]."].) Of course, as the Attorney General is forced to concede, the most critical of these protections – namely the right to confront and cross-examine witnesses – is often absent at preliminary hearings because law enforcement hearsay testimony is permitted under section 872, subdivision (b), as it was in this case. (See ABOM at 44, fn. 18 [explaining that law enforcement hearsay – on the critical issue of witness identification – was part of the preliminary hearing testimony].) More importantly, the preliminary hearing is not, and is not intended, to reliably reflect facts found or admitted by the defendant beyond a reasonable doubt. Any use of particular facts adduced at the preliminary hearing constitutes impermissible judicial factfinding at the prima facie stage.

II.
WHETHER OR NOT A DEFENDANT STIPULATES TO THE PRELIMINARY HEARING AS THE BASIS FOR A LATER PLEA, RELIANCE ON PARTICULAR FACTS ALLEGED AT THE PRELIMINARY HEARING CONSTITUTES IMPERMISSIBLE JUDICIAL FACTFINDING AT THE PRIMA FACIE STAGE

As noted in Mr. Patton's briefing, he did not stipulate to the preliminary hearing as the basis of his plea. (OBM at 25, fn.4.) But even if Mr. Patton *had* stipulated to the preliminary hearing transcript as the factual basis for his plea, he would not have

been precluded from section 1172.6 relief because a stipulation to a factual basis is not an admission of the truth of any facts.

The purpose of a factual basis statement is to "ensure[] that the defendant actually committed a crime at least as serious as the one to which he is willing to plead." (*People v. French* (2008) 43 Cal.4th 36, 50 (*French*), quoting *People v. Watts* (1977) 67 Cal.App.3d 173, 178.) The factual determination required for a plea is no more than sufficiency of evidence. (*Ibid.*) This is so because a stipulation to a factual basis does not admit the *truth* of the facts. (*Rivera*, *supra*, 62 Cal.App.5th at p. 235 ["absent an indication that a defendant admitted the truth of particular facts, the stipulation to a factual basis for the plea does not 'constitute[] a binding admission for all purposes'"].) Rather, a defendant's plea of guilty or no contest constitutes an admission to the *elements* of the charged offense only. (*French*, *supra*, 43 Cal.4th at p. 50.) As the Attorney General expressly acknowledges, "California law does not require any specific subsidiary admissions of fact as part of a plea." (ABOM at 37, citing *People v. Holmes* (2004) 32 Cal.4th 432, 440- 443, *People v. Watts, supra,* 67 Cal.App.3d 173, 182 and *People v. West* (1970) 3 Cal.3d 595, 608.)

The limited import of an admission to a factual basis makes good sense for the very reasons detailed above. "A defendant, after all, often has little incentive to contest facts that are not elements of the charged offense—and may have good reason not to . . . . during plea hearings, [as] the defendant may not wish to irk the prosecutor or court by squabbling about superfluous

factual allegations." (*Descamps*, *supra*, 570 U.S. at p. 270.) Similarly, as counsel for Mr. Patton points out in his briefing, defendants have little reason to challenge evidence at a preliminary hearing since such a challenge typically has minimal chances of success and may give away a defendant's trial strategy. (OBM at 24; see also *In re Milton* (2022) 13 Cal.5th 893, 917 [noting that because of defendants' "lack of incentive to challenge [particular] fact[s] during the original [preliminary] proceedings" defendants have been permitted to challenge the reliability of such facts when used to enhance their sentence "in the course of arguing the beyond-a-reasonable-doubt standard was not satisfied"].)

Defendants are also not advised by the court or counsel of potential future punitive purposes of their admissions to plea-superfluous facts, or for their decision not to challenge evidence at their preliminary hearing. Defendants – like Mr. Patton – who pleaded prior to the enactment of SB 1437, would have had no way of knowing that a stipulation to a preliminary hearing transcript as a factual basis for a plea might be used against them years later when the law on murder changed. (See *Descamps*, *supra*, 570 U.S. at p. 270.) Thus, in the Sixth Amendment context, the Supreme Court has instructed that "when a defendant pleads guilty to a crime, he waives his right to a jury determination of only that offense's elements; whatever he says, or fails to say, about superfluous facts cannot license a later… [further punishment]." (*Ibid.*, citing *Shepard v. United States* (2005) 544 U.S. 13, 24–26.)

Courts have adhered to the limited import of a factual basis for a plea, including in the section 1172.6 context. "Courts have consistently differentiated between an admission that a document or recitation contains a factual basis for a plea and an admission that statements in that document or recitation are true." (*People v. Hiller* (2023) 91 Cal.App.5th 335, 349].) In *People v. Saez* (2015) 237 Cal.App.4th 1177 (*Saez*), the First Appellate District, Division One held that a defendant's guilty plea and stipulation to a factual basis did not constitute an admission to additional facts necessary to render his prior conviction a strike. The defendant had entered his plea under Wisconsin law, where, as in California, a sentencing court accepting a guilty plea must "[m]ake such inquiry as satisfies it that the defendant in fact committed the crime charged." (*Id.* at p. 1206.) There, as in California, "the purpose of [this] inquiry is to [e]nsure the accuracy of the plea by determining whether the facts, *if proved*, constitute the offense charged and whether the defendant's conduct does not amount to a defense." (*Ibid.*) "This standard does not require that the evidence establishing the plea's factual basis 'be admissible at trial or that it be sufficient to convict beyond a reasonable doubt.' Nor is a defendant required to admit the truth of the facts supporting the plea." (*Ibid.*, citing *North Carolina v. Alford* (1970) 400 U.S. 25 [permitting no contest pleas even if defendants maintain their innocence].)

The Court of Appeal in *Saez* explained that while the defendant admitted to the elements of false imprisonment while

armed and of reckless use of a dangerous weapon by pleading guilty to those crimes, he did not admit or waive his Sixth Amendment rights regarding the additional facts on which the strike finding was contingent: that he personally used a firearm and that the reckless use of a firearm occurred in the course of the false imprisonment. (*Saez*, *supra*, 237 Cal.App.4th at pp. 1206–1207.) Accordingly, the court held: "we cannot conclusively say that [the defendant] admitted to personally using a firearm or to pointing a firearm at the victim to effect the false imprisonment," and reversed the strike finding. (*Id.* at p. 1207.)

Likewise, in *Rivera*, *supra*, 62 Cal.App.5th 217, a section 1172.6 case, the First Appellate District, Division One held that a defendant's "stipulation to [a] grand jury transcript as the factual basis for [a] plea does not establish" an "admission[] related to the murder other than pleading no contest to the count as charged." (*Id.* at pp. 234–235.) Because the defendant does not "admit to the truth of any of the evidence presented to the grand jury, . . . that evidence therefore cannot be used to demonstrate that he admitted to acting with actual malice." (*Id.* at p. 235.) As such, the defendant's no contest plea to murder with malice aforethought and stipulation to the grand jury transcript as a factual basis for the plea did not categorically bar his prima facie showing of eligibility for section 1172.6 relief. (*Id.* at p. 217; accord, *Flores*, *supra*, 76 Cal.App.5th at p. 991 [stipulation that preliminary hearing transcript provided factual basis for plea did not establish ineligibility for section 1172.6 relief as a matter of

law because petitioner did not admit truth of testimony in transcript].)

Thus, as explained by *French*, *Saez*, *Rivera*, and *Flores*, a stipulation to the preliminary hearing transcript as a factual basis for a no contest or guilty plea does not admit the truth of the facts in the transcript. Rather, the stipulation serves as sufficient evidence for the purpose of the plea; it does not serve to admit additional conduct or any specific evidentiary facts suggested by the preliminary hearing. Absent some further admission or stipulation, the preliminary hearing testimony does not conclusively establish as a matter of law that a petitioner was the actual killer, acted with intent to kill or actual malice, or was a major participant in an underlying crime who acted with reckless indifference to human life. Preliminary hearing testimony therefore cannot exclude the possibility that a petitioner was, or could have been, convicted under the imputed malice theories SB 1437 eliminated. Denying a section 1172.6 petition on the basis of such testimony is thus inappropriate.

III.
PROHIBITING TRIAL COURTS FROM MAKING USE OF PRELIMINARY HEARING TESTIMONY TO RESOLVE FACTUAL QUESTIONS PRIOR TO THE SUBDIVISION (D)(3) HEARING WILL HAVE ONLY MODEST IMPACT

The Attorney General complains that barring trial courts from engaging in judicial factfinding based on preliminary hearing testimony at the prima facie stage will allow most guilty plea cases to surmount the prima facie threshold. (ABOM at 37-

38.) But the reality is that a rule permitting resolution of contested eligibility issues based on the number of assailants only at the 1172.6, subsection (d)(3) hearing – instead of the prima facie stage – will have little impact other than changing the nomenclature of the proceeding at which a judge denies relief. And to the extent that requiring decisions at the (d)(3) hearing changes outcomes it will be in cases where the defendant – contrary to the limited facts adduced at the preliminary hearing – is in fact eligible for relief.

The Attorney General submits that the prima facie inquiry under section 1172.6, subdivision (c), is a "device for identifying and dismissing clearly meritless petitions" without the "additional judicial burden that an evidentiary hearing would entail." (ABOM at 38.) But the Attorney General fails to clearly detail what "judicial burden" is added by not permitting so-called "meritless" petitions (as ascertained by factfinding based on the preliminary hearing) to be resolved at the prima facie stage. If the petitioner has no evidence that they were not the actual killer and plead guilty as a result of an imputed malice theory, then defense counsel would either not proceed with the petition or, at most, the petition would be swiftly denied at an evidentiary hearing.

Even the cases cited by the Attorney General *supporting* the possible use of the preliminary hearing to resolve section 1172.6 eligibility at the prima facie stage envision an opportunity for petitioners to make some sort of evidentiary showing that might overcome the "facts" adduced at the preliminary hearing

that render them ineligible for relief. (See *People v. Mares* (2024) 99 Cal.App.5th 1158 ["Mares could replace his conclusory assertion with a declaration creating a factual issue . . ."]; *People v. Pickett* (2023) 93 Cal.App.5th 982, 990, review granted, Oct. 11, 2023, S281643]. ["under these circumstances where the defendant alleges no facts concerning the murder to which he pleaded guilty, the People introduce without objection uncontroverted evidence from the preliminary hearing transcript showing that the defendant acted alone in killing the victim, and the defendant does not put forth, by way of briefing or oral argument, any factual or legal theory in support of his petition, the defendant has failed to make a prima facie showing for relief under section 1172.6."].) Even the court below suggests that things might have been different had Mr. Patton alleged different facts at some point in the process. (*People v. Patton*, 89 Cal.App.5th 649, 657 ["In the trial court, Patton never offered any theory to support his implicit contention now that he was an accomplice and not the person who actually shot Jackson. Nor, on appeal, has Patton even suggested what facts he has to demonstrate that someone else shot Jackson and he was merely an accomplice"].)

Of course, the problem with these suggestions, as a textual matter, is that the statute makes no provision for how exactly the trial court might resolve the undefined evidentiary showings these cases suggest could be made at the prima facie stage. Moreover, factual disputes surrounding eligibility do not begin and end with (seemingly) simple issues like the number of

perpetrators involved in the crime. Numerous questions – which this Court has already been forced to resolve repeatedly – revolve around subtle questions such as mental state. (See, e.g., *Strong*, *supra*, 13 Cal.5th at p. 698 [resolving whether jury's prior finding on special circumstance render petitioner ineligible based on its implicit mental state finding], *Reyes*, *supra*, 14 Cal.5th 981 [same]; *Curiel, supra*, 15 Cal.5th 433 [same].) Allowing trial courts to use preliminary hearing transcripts to resolve such complicated questions at the prima facie stage – based on a threadbare preliminary hearing transcripts – will result in a morass of conflicting approaches and will undermine the legislative intent behind section 1172.6: to provide relief to defendants convicted to extremely harsh sentences based on unfair theories of imputed malice.

This atextual approach is also hard to square with the statute itself. As Mr. Patton persuasively argues, there is no provision in section 1172.6 for rebuttable presumptions at the prima facie stage, as cases such as *Mares* and *Pickett* suggest. (Reply Brief on the Merits (RBOM) at 17-18 [discussing rebuttable presumptions "built into the approach" of cases such as *Patton*, *Pickett*, and *Mares*, which lack "any basis in the statute"].) Instead, the statute clearly envisions that *all* factual disputes be resolved at the subdivision (d)(3) hearing.

The Attorney General's solution to this conundrum is to take the extreme position that petitioners in Mr. Patton's position – even if they have evidence that contradicts the "facts" at the preliminary hearing that render them ineligible – are simply out

of luck. A petitioner "is not required—and indeed is not permitted—to make an offer of proof because the prima facie inquiry is limited to the record of conviction." (ABOM at 35; see also RBOM at 16 [discussing the illogic of requiring petitioners to present evidence of alternate perpetrators without a statutory provision allowing them to present evidence].)

This approach cannot be squared with the legislative concern voiced in the passage of SB 775, namely that defendants frequently pleaded guilty to charges under the coercive pressure of imputed-malice theories. The Attorney General provides no explanation for why the Legislature would have intended petitioners who in fact plead guilty under the force of imputed malice theories to be categorically ineligible for relief simply because the preliminary hearing did not include crucial details explaining petitioners' basis for relief. (Cf. Assem. Floor Analyses, 3d reading analysis of Sen. Bill No. 775 (2021-2022 Reg. Sess.) as amended Sept. 1, 2021 [noting views of sponsor that, as a general matter, many defendants pled guilty where the district attorneys had already determined they were not culpable for traditional murder].) Instead, the Attorney General largely complains about the difficulty inherent in applying the petition process to cases resolved by guilty plea. These complaints were aired by opponents of the bill (and rejected by the Legislature) when it was passed. (See *id.* at p. 4 [noting arguments of opponent of SB 775, CDAA, that "[t]he application of this bill to convictions that resulted from negotiated pleas that contain no

admissible record of conviction for an evidentiary hearing is problematic"].)

Notwithstanding the challenges of ascertaining eligibility for relief in cases in which petitioners pled guilty, the Legislature saw fit to provide a pathway to relief. (Assem. Com. on Public Safety, Analysis of Sen. Bill No. 775 (2021–2022 Reg. Sess.) as amended July 6, 2021, p. 7 [a petitioner may have pled guilty or no contest "in order to forego the risk of being convicted of murder or attempted murder under one of these subsequently abrogated theories of liability"].)

Whether or not the preliminary hearing divulges the precise basis under which petitioners may be entitled to relief, petitioners should have the opportunity to demonstrate eligibility.

CONCLUSION

For the reasons discussed above, the Court of Appeal should be reversed.

Dated: June 3, 2024

Respectfully submitted,

GALIT LIPA
State Public Defender

/s/
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Director of Amicus Litigation

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CERTIFICATE OF COUNSEL

I, Elias Batchelder, have conducted a word count of this brief using our office's computer software. On the basis of the computer-generated word count, I certify that this brief is 5,793 words in length, excluding the tables and this certificate.

Dated: June 3, 2024 Respectfully submitted,

/s/

ELIAS BATCHELDER
Supervising Deputy State Public Defender
Director of Amicus Litigation

DECLARATION OF SERVICE

Case Name: *People v. Ramon Patton*
Case Number: Supreme Court Case No. S279670
Second Appellate District Court Case No. B320352
Los Angeles Superior Court Case No. TA144611

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AMICUS CURIAE BRIEF OF THE OFFICE OF THE STATE PUBLIC DEFENDER IN SUPPORT OF APPELLANT RAMON PATTON

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Ann-Marie Doersch Digitally signed by Ann-Marie Doersch
Date: 2024.06.03 10:43:21 -07'00'

ANN-MARIE DOERSCH

STATE OF CALIFORNIA
Supreme Court of California

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Supreme Court of California

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Date

/s/Ann-Marie Doersch
Signature

Batchelder, Elias (253386)
Last Name, First Name (PNum)