

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE)	S165998
OF CALIFORNIA,)	
)	Orange County Case No.
Respondent,)	01HF0193
)	
v.)	
)	
NOEL JESSE PLATA)	
AND RONALD TRI TRAN,)	
)	
Appellant.)	
_____)	

APPELLANT'S SUPPLEMENTAL OPENING BRIEF

Appeal From The Judgment Of The Superior Court
Of The State Of California, Orange County

Honorable William R. Froeberg, Judge

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ARGUMENT

I. MR. TRAN JOINS PLATA’S ARGUMENT THAT THERE WAS INSUFFICIENT EVIDENCE THAT THE CRIME WAS COMMITTED FOR THE BENEFIT OF, AT THE DIRECTION OF, OR IN ASSOCIATION WITH A “CRIMINAL STREET GANG,” AS DEFINED BY SECTION 186.22.

Pursuant to Rule 8.200 of the California Rules of Court, Mr. Tran hereby joins in Argument VIII of co-appellant Plata’s supplemental opening brief. (*See* Plata’s Appellant’s Supplemental Opening Brief (“PSAOB”) 23-35.) In the brief, Plata argues that the phrase “criminal street gang” in the first prong of section 186.22, subdivision (b)(1), has a different meaning than the phrase “gang members” in the second prong of section 186.22, subdivision (b)(1). (PSAOB 26-31.) Plata goes on to argue “there was no evidence other than the expert’s unsupported generalized conclusions that Mr. Plata or Tran relied on their gang membership and the apparatus of the VFL in committing the robbery and murder of Linda Park.” (PSAOB 31-35.) The facts and law underlying the argument apply equally to Mr. Tran.

II. MR. TRAN JOINS PLATA’S ARGUMENT THAT THE IMPOSITION OF THE DEATH PENALTY FOR CRIMES COMMITTED BY 20 YEAR OLDS VIOLATES DUE PROCESS AND THE EIGHTH AMENDMENT PROHIBITION AGAINST CRUEL AND UNUSUAL PUNISHMENT.

Pursuant to Rule 8.200 of the California Rules of Court, Mr. Tran hereby joins in Argument IX of co-appellant Plata’s supplemental opening brief. (PSAOB 36-74.) In the brief, Plata contends that the imposition of the death penalty for crimes committed by 18 to 20 year olds violates the Eighth Amendment’s prohibition against cruel and unusual punishment, principally relying on *Roper v. Simmons* (2005) 543 U.S. 551. (PSOB 36-74.) In *Roper*, the United States Supreme Court banned the execution of persons under 18 years old at the time of their crimes. (543 U.S. at pp. 578-579.)

Plata argues that there is now a national consensus that 18 to 20 year olds should be categorically excluded from the death penalty. (PSAOB 38-53.) According to Plata, since the Supreme Court’s decision in *Roper*, the national trend is towards not executing individuals between the ages of 18 and 21 (PSAOB 39-43) and statutory provisions concerning matters other than the death penalty reflect a national consensus that individuals under the age of 21 are less mature than fully developed adults and thus, should be considered less culpable. (PSAOB 43-53.) Plata further argues that the death penalty for crimes committed by 18 to 20 year olds is disproportionate and excessive punishment. (PSAOB 53-66.) Finally, Plata argues that execution of individuals between the ages of 18 and 21 is forbidden by the Eighth Amendment’s prohibition against cruel and unusual punishment and by the due process clause of the federal Constitution and

under California Constitution article 1, section 7, because of the severe risk youth presents to the reliability of a death sentence. (PSAOB 66-74.)¹

Mr. Tran was born on June 18, 1975, and was 20 years old at the time the crimes took place on November 9, 1995. (10 RT 1971-1972.) For the same reasons cited by Plata, Mr. Tran should be categorically excluded from the death penalty.

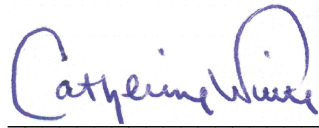
¹ Plata recognizes that his contention was rejected in *People v. Gamache* (2010) 48 Cal.4th 347, 404-405, but argues that there have been changes in the national consensus and a new body of science which did not exist at the time *Gamache* was decided, and thus, the issue should be revisited. (PSAOB 36, n.5) Mr. Tran joins Plata's contention.

CONCLUSION

For all these reasons, and for the reasons stated in Mr. Tran's opening brief, and the briefing of his co-appellant in which Mr. Tran joined pursuant to California Rule of Court 8.200, reversal and/or remand is required.

DATED: June 14, 2019

Respectfully submitted,

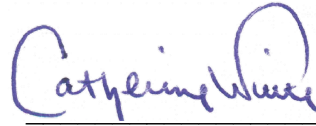


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CERTIFICATE OF COMPLIANCE

I certify that the accompanying non-redacted brief is double spaced, that a 13-point proportional font was used, and that there are 614 words in the brief.

Dated: June 14, 2019



Catherine White

CERTIFICATE OF SERVICE

I, the undersigned, declare as follows:

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APPELLANT'S SUPPLEMENTAL OPENING BRIEF, S165998

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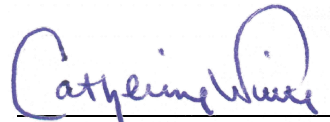
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Supreme Court of CaliforniaCase Name: **PEOPLE v. PLATA (NOEL) & TRAN
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

6/14/2019

Date

/s/Catherine White

Signature

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