

SUPREME COURT
FILED

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

MAY 26 2015

Frank A. McGuire Clerk

Deputy

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

TYRIS LAMAR FRANKLIN,

Defendant and Appellant.

S217699

Court of Appeal

No. A135607

(Contra Costa
County Superior

Court No.

51103019)

**MOTION FOR CONSIDERATION AND / OR JUDICIAL
NOTICE OF AMICUS BRIEFING IN ~~RE~~ ~~THE~~ ~~CASE~~ ~~NO.~~ ~~13~~ ~~CV~~ ~~00012~~ ~~TO~~
~~SUSPEND OR EXTEND THE DEADLINE TO FILE AMICUS~~
BRIEFING (CAL. R. OF COURT 8.520, Subd. (f)(2)).**

GENE D. VOROBYOV, California Bar No. 200193

LAW OFFICE OF GENE VOROBYOV

450 Taraval Street, # 112

San Francisco, CA 94116

Telephone: (415) 425-2693; gene.law@gmail.com

Attorney for Appellant

TYRIS LAMAR FRANKLIN

SUPREME COURT
FILED

MAY 26 2015

Frank A. McGuire Clerk

Deputy

INTRODUCTION

Pursuant to Evidence Code sections 452(d) and 459(a), and Rules of 8.54(a) and 8.252(a) of the California Rules of Court, appellant Tyris Franklin respectfully moves this Court for an order (1) deeming filed in the instant case amicus briefs filed in related cases (*In re Alatraste*, S214652, and *In re Bonilla*, S214960), or (2) taking judicial notice of those amicus briefs.

The specific amicus briefs at issue in this motion are, as follows:

- Amicus Brief of Pacific Juvenile Defender Center and Youth Law Center, filed in support of appellant Bonilla on May 18, 2015;
- Amicus Brief of the Juvenile Law Center filed in support of appellant Bonilla on May 20, 2015;
- Amicus Brief filed by Post-Conviction Justice Project in support of appellant Alatraste on May 20, 2015;
- Amicus Brief filed by Human Rights Watch in support of appellant Alatraste on May 20, 2015.

Granting the motion would advance the interest of judicial economy and benefit parties and counsel. Since this case is closely

related to *Alatriste* and *Bonilla* (see this Court's orders of January 22, and February 18, 2015), deeming those amicus briefs filed in this case (or taking judicial notice of those briefs) would remove the need for counsel to file and for this Court to process a separate set of identical briefs in this case.

Finally, since the reply brief was filed May 11, 2015, and the Rule 8.520, subdivision (f)(2), 30-day deadline to file an amicus brief is fast approaching, appellant respectfully request a stay of that deadline until the ruling on this motion, or an extension of time to a date 30 days from the date of filing of the ruling on the motion.

ARGUMENT

A. Amicus Briefs Filed in *Alatriste* and *Bonilla* Are a Proper Subject of Judicial Notice

Evidence Code section 459 provides that "a reviewing court may take judicial notice of any matter specified in Section 452." In turn, section 452 allows taking judicial notice of the records of any court in the state. (Evid. Code, § 452, subd. (d).) Accordingly, it is proper for this Court to take judicial notice of amicus briefs in its

own files for the *Alatraste* and *Bonilla* matters.

B. The Subject Amicus Briefs Are Relevant In This Case

The amicus briefs referenced in this motion are relevant to the instant case. (*People v. Rowland* (1992) 4 Cal.4th 238, 268, fn. 6.) As this Court's orders of January 22, 2015, and February 18, 2015, indicate, the issues in this case are closely related to the issues in *Alatraste* and *Bonilla*. Indeed, the two issues, on which this Court granted review and subsequently ordered merits briefing – whether appellant's 50 years to life sentence violates the Eighth Amendment, and whether the claim was mooted by enactment of Penal Code section 3051 – are identical to issues (1) and (3) in the *Bonilla* and *Alatraste* matters.

Given the closeness of the relationship between all three cases, it would advance the interest of judicial economy and be convenient for parties and counsel to either deem the subject amicus briefs deemed filed in all three cases, or to take judicial notice of the briefs in this case. This would avoid the need for counsel to file and for this Court to process a separate set of briefs in this case.

REQUEST FOR EXTENSION OF TIME

The reply brief in this case was filed May 11, 2015, and the current deadline to file amicus briefing in this case is June 10, 2015. (Cal. R. of Court 8.520, subd. (f)(2).) In order to allow for an orderly disposition of this motion and filing of separate amicus briefing in this case (if necessary), this Court should either suspend this deadline, or extend it to a day 30 days from the date of filing of the ruling on this motion.

CONCLUSION

For the foregoing reasons, this Court should deem filed in this case, or take judicial notice of, the following amicus briefs filed in S214960 (*In re Bonilla*) and S214652 (*In re Alatraste*):

- Amicus Brief of Pacific Juvenile Defender Center and Youth Law Center, filed in support of appellant Bonilla on May 18, 2015;
- Amicus Brief of the Juvenile Law Center filed in support of appellant Bonilla on May 20, 2015;
- Amicus Brief filed by Post-Conviction Justice Project in support of appellant Alatraste on May 20, 2015;

- Amicus Brief filed by Human Rights Watch in support of appellant Alatrisme on May 20, 2015.

The Court should also suspend the Rule 8.520, subdivision (f)(2), deadline to file amicus briefs in this case, or to extend it to a date 30 days from the date of ruling on this motion.

DATE: May 22, 2015

By: _____
Gene D. Vorobyov
Attorney for Appellant
TYRIS L. FRANKLIN

[proposed] ORDER GRANTING MOTION FOR JUDICIAL
NOTICE

BY THE COURT:

Good cause appearing, this Court hereby deems filed in this case and / or takes judicial notice of the following amicus briefs filed in S214960 (*In re Bonilla*) and S214652 (*In re Alatrisme*):

- Amicus Brief of Pacific Juvenile Defender Center and Youth Law Center, filed in support of appellant Bonilla on May 18, 2015;
- Amicus Brief of the Juvenile Law Center filed in support of appellant Bonilla on May 20, 2015;
- Amicus Brief filed by Post-Conviction Justice Project in support of appellant Alatrisme on May 20, 2015;
- Amicus Brief filed by Human Rights Watch in support of appellant Alatrisme on May 20, 2015.

The Court also extends the deadline to file any amicus brief in this case (Cal. R. of Court 8.520, subd. (f)), to a date 30 days from the date of ruling on this motion.

It is so ordered.

CHIEF JUSTICE

PROOF OF SERVICE

I declare that I am over the age of 18, not a party to this action and my business address is 450 Taraval Street, # 112, San Francisco, CA 94116. Pursuant to California Rule of Court 8.71, on the date shown below, I transmitted a PDF version of APPELLANT'S MOTION FOR CONSIDERATION / JUDICIAL NOTICE OF AMICUS BRIEFS FILED IN CLOSELY RELATED CASES; REQUEST TO EXTEND THE DEADLINE TO FILE AMICUS BRIEFING to the following e-mail addresses:

Juliet B. Haley, Deputy Attorney General
SFAG.Docketing@doj.ca.gov

Brad O'Connell, Assistant Project Director @ FDAP
eservice@fdap.org

I declare under penalty of perjury the foregoing is true and correct. Executed on May 22, 2015, at San Francisco, California.

/s/ Gene D. Vorobyov