Supreme Court of California
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Supreme Court of California
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S291105

IN THE SUPREME COURT OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent

v.

ARTHUR HENDERSON,
Defendant and Appellant.

Case No. S291105

Court of Appeal Case No. B330707
(Los Angeles Co. Sup. Ct.
Case No. A918235)

Review from
the Second District Court of Appeal, division 7

PETITIONER'S REPLY TO AMICUS CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION

Appeal from the judgment, on remand,
of the Los Angeles County Superior Court
The Honorable Nicole C. Bershon, Judge, Presiding

Mary Jo Strnad
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by Appointment of the Supreme Court

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IN THE SUPREME COURT OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,
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Introduction

This appeal is taken from a resentencing, pursuant to California Penal Code section 1172.6.[1] A jury convicted petitioner Arthur Henderson of first degree special circumstance murder, committed in the course of an attempted residential robbery, and attempted murder. (Henderson I 1CT 103.) The trial court imposed a sentence of life without the possibility of parole on the murder count. (§§ 664/211, 190.2, subd. (a)(17).)

When petitioner committed his crime, in 1986, section 1385 granted a trial court the discretion to strike a special circumstance finding, if in the interest of justice. (§ 1385; *People v. Williams* (1981) 30 Cal.3d 470.) Four years later, in June of 1990, the California electorate passed Proposition 115, which, among other measures, removed judicial discretion to strike a special circumstance finding, codified at section

1. All further statutory references are to the California Penal Code unless otherwise specified.

1385.1.[2] (See Proposition 115 ("Crime Victims Justice Reform Act"), approved by the electors on June 5, 1990, eff. June 6, 1990, § 26 (Prop. 115); see also § 1385.1.)

In May of 2023, pursuant to section 1172.6, the trial court vacated petitioner's attempted murder conviction and resentenced him on the remaining special circumstance murder conviction. Concluding that section 1385.1 deprived it of authority to strike the special circumstance finding, the trial court re-imposed the term of life without the possibility of parole. (1RT 2701.)

The issue on review is whether or not section 1385.1 deprives a section 1172.6 resentencing court of discretion to strike a special circumstance finding for crimes that, like here, were completed before the enactment of section 1385.1. Both parties agree that, when the Legislature enacted section 1172.6, it did not intend that section 1385.1 would be applied retroactively to crimes that predate its enactment. (OBM 32-33; RBM 22-25.) The parties further agree that an interpretation of section 1172.6 that would permit the application of section 1385.1 to crimes completed before its enactment would violate the *ex post facto* clause of the federal and California Constitutions. (AOB 33-37; RBM 24; U.S. Const., art. I, § 10, cl. 1; Cal. Const., art. I, § 9.)

On July 27, 2026, the California District Attorneys Association (CDAA) filed an amicus brief in the case. The CDAA steps past long-standing United States and California Supreme Court authority to argue

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2. The full text of section 1385.1 provides: "Notwithstanding Section 1385 or any other provision of law, a judge shall not strike or dismiss any special circumstance which is admitted by a plea of guilty or nolo contendere or is found by a jury or court as provided in Sections 190.1 to 190.5, inclusive."

that: (1) when the electorate enacted Prop. 115, it intended that section 1385.1 would apply retroactively to already-completed crimes; (2) the high court's decision in *Collins v. Youngblood* marked a shift in *ex post facto* jurisprudence and introduced a new measure of "punishment" that requires a quantifiable increase in a defendant's sentence; and (3) because petitioner already had an opportunity, in 1986, to ask the sentencing court to strike the special circumstance finding and because that judgment was final, petitioner is not now entitled to a second opportunity to request the same relief.

In Sections A through C below, petitioner Arthur Henderson replies to each of the CDAA's arguments in turn.[3]

ARGUMENT

AMICUS CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION ASKS THIS COURT TO RULE AGAINST ESTABLISHED, ON-POINT HIGH COURT PRECEDENT WITHOUT MAKING ANY ATTEMPT TO DISTINGUISH THIS CONTROLLING AUTHORITY.

A. When the California electorate passed Proposition 115, it intend that its ban on judicial discretion to strike a special circumstance finding would apply prospectively only and would not impact crimes already completed.

In June of 1990, the California electorate passed Proposition 115, which included a provision that removed judicial discretion to strike a special circumstance finding. (Prop. 115, pp. 32-35, 65-69, approved by the electors on June 5, 1990, eff. June 6, 1990 (Prop. 115); see also §§ 1385, 1385.1) CDAA argues that the voters intended that its provisions would apply as broadly as possible. (CDAA Brief, pp. 17-19, 20.) Specifically,

3. Petitioner addresses CDAA's most repeated claims; however, he does not conceded any of CDAA's arguments not addressed here.

CDAA points to the language of section 1385.1, which states that, "notwithstanding Section 1385 or any other provision of law …." to argue that, "as part of a comprehensive initiative designed to make major changes to the criminal justice system, voters selected the broadest possible language to implement their desire that a trial court shall not dismiss or strike a special circumstance." (CDAA Brief, pp. 17-19.) To be clear, the Legislature chose the quoted language, which did not appear in the Voter Information Guide.[4]

As this Court pointed out in *Tapia v. Superior Court*, lawyers drafted Proposition 115. (*Tapia v. Superior Court* (1991) 53 Cal.3d 282, 310 (*Tapia*).) As lawyers, the drafters would have known that, under California law, "the ordinary rule of construction [is] that new statutes are intended to operate prospectively." (*Id.* at p. 287.) Lawyers also would have known that section 3 of the California Penal Code mandates that new penal provisions apply prospectively only. (*Ibid.*; § 3 ["No part of it is retroactive, unless expressly so declared."].) In addition, the drafters also would have been aware of established U. S. Supreme Court precedent holding that a penal statute that increases the punishment of a crime committed before the measure's effective date would violate the rule against *ex post facto* legislation. (*Id.* at p. 288, citing *Weaver v. Graham* (1981) 450 U.S. 24, 31 (*Weaver)*; *Lindsey v. Washington* (1937) 301 U.S. 397 (*Lindsey*).) A reasonable inference is that the drafters deliberately chose prospective application of this provision in order to avoid the measure's being invalidated for violation the *ex post facto* Clause.

4. The exact wording from the Voter Information Guide is that, "This measure: . . Prohibits the dismissal of a special circumstance finding by a judge." (Voter Information Guide for 1990, Primary (1990), p. 32.)

Had the drafters instead intended that, contrary to section 3, the ban on judicial discretion to strike a special circumstance finding should apply retroactively, they could have included language to alter the measure's presumed prospective application. (*Tapia, supra,* 53 Cal.3d 282, 287.) They did not. As this Court has pointed out, "Both the text of Proposition 115 and the related ballot arguments are entirely silent on the question of retrospectivity." (*Id.* at p. 287.)

Thus, contrary to CDAA's assertion, the drafters of Prop. 115 knew and intended that its new penal measures, including section 1385.1, would apply prospectively only. Neither the drafters' of Prop. 115, nor the Legislature provided for retroactive application of section 1385.1.

B. Amicus CDAA argues, wrongly, that the high court's decision in *Collins* limited the reach of the *ex post facto* Clause to enactments that quantifiably increase the length of sentences. Both before and after *Collins*, the high court consistently has held that legislation that removes or burdens judicial discretion to impose a lesser sentence violates *ex post facto* Clause when applied to crimes completed before its enactment.

CDAA argues that, following the U. S. Supreme Court's decision in *Collins v. Youngblood*, the only legislative acts that can violate the *ex post facto* clause are those that increase a defendant's maximum punishment by a quantifiable number of years beyond that in place at the time of the offense. (CDAA Brief 30, 38-39; see *Collins v. Youngblood* (1990) 497 U.S. 37 (*Collins*).) According to CDAA, "it is well recognized that the ex post facto analysis was refocused in 1990 with the decision in *Collins v. Youngblood* (1990) 497 U.S. 37. *Collins* steered away from whether a defendant was 'disadvantaged' or suffered a loss of 'substantial protections' to the analysis on defendant's punishment as originally

stated in *Calder, supra*." (CDAA Brief 30.) CDAA stretches the holding of *Collins* beyond its intended reach.

CDAA is correct that *Collins* refocused the concept of "increased punishment," returning its meaning to the original formulation, as framed by *Calder*. (*Collins, supra,* 497 U.S. 37, 41-44, citing *Calder v. Bull* (1798) 3 U.S. (Dall.) 386, 391-392 (opinion of Chase, J.).) That said, *Collins* addressed an entirely different set of facts than those present here.

The issue before the Court in *Collins* was whether or not a new statute that reduced the frequency of appearances before the parole board for prisoners convicted of multiple murders increased their punishment for purposes of the *ex post facto* clause. (*Collins, supra,* 497 U.S. 37) The Court concluded that the causal line between the frequency of parole appearance, for this class of offenders, and their release on parole was too attenuated and too speculative to claim that the new law increased their punishment. (*Ibid.*; see also *California Dept. of Corrections v. Morales* (1995) 514 U.S. 499 (*Morales*) [following *Collins* to find no *ex post facto* violation in statutory amendment that deferred parole hearings for certain prisoners, even though their crimes were completed before the statutory amendment]; *Garner v. Jones* (2000) 529 U.S. 244 [same].) The Court in *Collins* did not upset existing precedent relied upon here.

1. *Collins* did not overrule the line of cases holding that legislation that diminishes judicial discretion to lessen a sentence constitutes an increase in punishment, regardless of the legislation's impact on the maximum term.

Before *Collins,* a line of U. S. Supreme Court cases had held that removing judicial discretion to lessen the defendant's punishment could violate the *ex post facto* clause. In *Lindsey*, the legislature amended a law

that provided for a term of "up to 15 years" to a mandatory term of 15 years. (*Lindsey, supra,* 301 U.S. 397.) The Court held that, even if the defendant received the same term under either sentencing scheme, by making the maximum term mandatory whereas it had previously been discretionary, the Legislature increased the measure of punishment, subjecting the new law to the *ex post facto* Clause. (*Ibid.*) The Court added that it need not decide whether the new law increased the "punishment annexed to the crime" because "[i]t is plainly to the substantial disadvantage of petitioners to be deprived of all opportunity to receive a sentence which would give them freedome from custody and control prior to the expiration of the fifteen-year term." (*Id.* at pp. 401-402.)

Years later in *Weaver*, the Supreme Court examined new legislation that reduced the rate at which an inmate earns "good time" credits against a term of imprisonment. (*Weaver, supra,* 450 U.S. 24.) The *Weaver* Court concluded that the new law violated *ex post facto* principles because the reduction in credits lengthened the inmate's time in prison and also "reduced [his] opportunity to shorten his time in prison simply through good conduct." (*Id.* at pp. 33-34, 36.) That law did not increase the maximum term of the defendant's sentence.

In *Miller v. Florida* the Court examined a new law under which the presumptive sentencing guideline range had changed after Miller's offense. (*Miller v. Florida* (1987) 482 U.S. 423 (*Miller*).) The new law provided for continuous review of the guidelines and permitted downward departures "on clear and convincing evidence." (*Ibid.*) Following *Weaver* and *Lindsey*, the Court found an *ex post facto* violation because, although the trial court retained discretion to impose a lesser term, the discretion could not be exercised freely. The sentencing court had "a high hurdle" to

overcome before it may exercise its discretion for a downward departure from the guideline range. (*Id.* at p. 435.)

CDAA argues that the *Collins* Court overruled this line of precedent in favor of a rule that required an increase in the maximum term of imprisonment before the *ex post facto* protections are triggered. (CDAA Brief 30.) Neither the *Collins* Court, nor the *Morales* Court that followed *Collins*, cast doubt on the validity of the high court's earlier decisions in *Lindsey*, *Weaver,* and *Miller*. (See *Williams v. Roe* (9th Cir. 2005) 421 F.3d 883, 886, fn. 1 ["*Morales*, however, did not overrule *Lindsey* and *Weaver,* but distinguished them by pointing out that the laws there at issue 'had the purpose and effect of enhancing the range of available prison terms."].) Applied here, cases decided since *Collins* uniformly have affirmed the holding of *Lindsey*.

2. Cases decided post-*Collins* have re-affirmed the holdings of *Weaver, Lindsey,* and *Miller*.

The high court decided *Collins* in 1990. Years later, in *Lynce v. Mathis*, the high court reaffirmed its holdings in *Weaver, Lindsey*, and *Miller*, distinguishing them from *Collins* and its progeny.

> In contrast to the laws at issue in *Lindsey* [citation], *Weaver*, and *Miller* (which had the purpose and effect of enhancing the range of available prison terms) . . . , the evident focus of the California amendment was merely 'to relieve the [Board] from the costly and time-consuming responsibility of scheduling parole hearings' for prisoners who have no reasonable chance of being released.

(*Lynce v. Mathis* (1997) 519 U.S. 433, 444, internal citations omitted, citing *Lindsey, supra,* 301 U.S. 397, *Weaver, supra,* 450 U.S. 24, and *Miller, supra,* 482 U.S. 423.) Notably, this Court issued its decision in *Tapia* after *Collins* and recognized that *Collins* had greatly simplified *ex*

post facto law. Nevertheless, and consistent with *Collins's* reformulation, this Court in *Tapia* concluded that the application of section 1385.1 to crimes completed before its enactment would violate the *ex post facto* clause. (*Tapia, supra*, 53 Cal,3d 282, 288.)

The Supreme Court examined the same issue raised in *Collins* in *Morales*. (*Morales, supra,* 514 U.S. 499.) In *Morales*, which followed *Collins* to find no *ex post facto* violation, the Court distinguished the speculative nature of the parole-frequency issue from the line of decisions in *Weaver, Lindsey,* and *Miller*. (*Morales, supra,* 514 U.S. 499, 506 ["the Ex Post Facto Clause forbids the States to enhance the measure of punishment by altering the substantive 'formula' used to calculate the applicable sentencing range"].) In *Weaver, Lindsey,* and *Miller*, the legislation removed judicial discretion to impose a lesser term, significantly risking a longer term. For cases like *Collins* and *Morales,* the "the risk of longer confinement was 'speculative and attenuated.'" (*People v. Delgado* (2006) 140 Cal.App.4th 1157, 1170.)

Finally, in one of the high court's more recent *ex post facto* decision, *Peugh v. United States,* the Court found that legislation that amended the federal sentencing guidelines violated the *ex post facto* Clause because, even though the sentencing court retained discretion to depart from the higher guidelines, any downward departure must be justified, adding a burden to the exercise of discretion. (*Peugh v. United States* (2013) 569 U.S. 530, 540 (*Peugh*); see also *Williams v. Roe, supra,* 421 F.3d 883, 886-887, and 886, fn. 1 [following *Lindsey, Weaver,* and *Miller* to find that California's amendments to section 654, which made the longest term mandatory, whereas the trial court previously had discretion to select a

term, violates the *ex post facto* clause if applied to crimes completed the enactment of the statutory amendment].)

CDAA's claim – that the high court's decision in *Collins* limited the application of the *ex post facto* Clause to cases where the new statute increased the maximum term of imprisonment – is mistaken. The high court plainly rejected that position. "[W]e have never accepted the proposition that a law must increase the maximum sentence for which a defendant is eligible in order to violate the Ex Post Facto Clause," (*Peugh v. United States, supra,* 569 U.S. 530, 539, citing *Lindsey, supra*, 301 U.S. 397.) Despite CDAA's attempt to broaden the reach of *Collins,* this Court is bound by the controlling decisions in *Weaver, Lindsey,* and *Miller* that consistently have found that legislation that removes or that burdens judicial discretion to impose a lesser term may not be applied retroactively without violating the *ex post facto* Clause.

C. Amicus CDAA argues that petitioner already had an opportunity at his original sentencing to request that the trial court exercise its discretion to strike the special circumstance finding. CDAA misapprehends both the nature of the *ex post facto* protection, as well as the California Legislature's remedial intent in enacting section 1172.6.

CDAA states throughout its briefing that petitioner already had an opportunity to request relief from the special circumstance finding, at his initial sentencing in 1986. (See CDAA Brief 10, 30, 31, 33, 37, and 40.) CDAA's contention displays a misapprehension of the *ex post facto* protections.

First, the *ex post facto* Clause acts as a check on state and federal legislators, not as a review of individual sentences. (*United States v. Marcus* (2010) 560 U.S. 258, 264.) The law is well-established that a party

claiming an *ex post facto* violation does not have to demonstrate that he would have been sentenced to a lesser term under the prior law. (See *Morales, supra*, 514 U.S. 499, 510, fn. 6; *Miller, supra,* 482 U.S. 423, 432.). CDAA implies that petitioner is not entitled to a second opportunity to reduce his term of life without the possibility of parole. CDAA's own authority explains the flaw in its reasoning:

> [O]ur cases have traditionally evaluated the effect of the change on the class subject to the new rule, rather than focusing solely on the individual challenging the change, . . . [citation] It can be difficult, if not impossible, for one person to prove that a change in penal policy has increased the quantum of punishment beyond what he would previously have received, since a sentencing decision is often a mix of rules and discretion.

(*Garner v. Jones, supra,* 529 U.S. 244, 260, fn. 1, citing *Weaver, supra*, 450 U.S. 24, 33 and *Lindsey, supra*, 301 U.S. 397, 401.) By the terms of section 1172.6, any prior failed attempt at relief is irrelevant. The issue before this Court is not the actual impact on petitioner's sentence, but the overall impact on inmates whose crimes were completed before June 6, 1990, the date of the enactment of section 1385.1.

Second, CDAA fails to address the Legislature's intent that, in enacting section 1172.6, the Legislature explicitly decided that the resentencing court would not to be bound by choices made at the petitioner's original sentencing. The Legislature explicitly called for the resentencing court, if it vacates a conviction, to conduct a completely new sentencing. (§ 1172.6, subd. (d)(1) [for a successful section 1172.6 petitioner, the prior final judgement is rendered nonfinal and he is

entitled to be resentenced "as if [he] had not previously been sentenced."].)

Finally, CDAA emphasizes that petitioner's judgment was long-ago final and states that the Legislature did not anticipate that a future enactment would resurrect the right to discretionary dismissal of the special circumstance finding. (CDAA Brief, p. 26, 37, 39, 41.) CDAA's argument is difficult to reconcile with its acknowledgement that, if the trial court vacates a conviction, the Legislature "then directs a resentencing, which the parties agree restores jurisdiction to apply current sentencing law under the full resentencing rule." (CDAA Brief, p. 40, citing *People v. Buycks* (2018) 5 Cal.5th 857, 893 (*Buycks*).) Recent law has clearly established that, once a part of a sentence has been vacated, the judgment becomes non-final, whether or not it had been final at some point in the past. (*People v. Padilla* (2022) 13 Cal.5th 152, 158.) In that event, the resentencing court is free to revisit and to modify every aspect of the sentence, which necessarily would include the special circumstance finding, unless prohibited. (See *Buycks, supra*, 5 Cal.5th 893.) CDAA's reliance on past finality of petitioner's sentence is, therefore, puzzling.

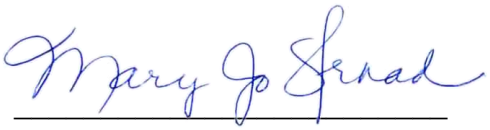
CONCLUSION

What is at issue in this case is the constitutionality of new legislation that permits a second sentencing for successful petitioners, those whose convictions rested on theories of guilt that the Legislature no longer views as valid. If the new legislation were to permit a more burdensome range of punishment than existed at the time of the crime, then established precedent holds that that would constitute a prohibited *ex post facto* application of the law. Nothing in CDAA's amicus brief

contradicts that well-established precedent.

DATED: August 26, 2026

Respectfully submitted,

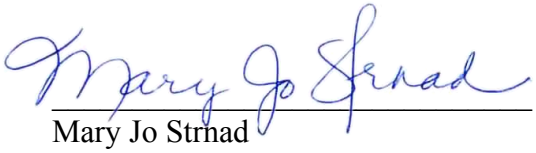


Mary Jo Strnad
for petitioner Arthur Henderson

CERTIFICATE OF WORD COUNT

Pursuant to rule 8.520(c)(1) of the California Rules of Court, I, Mary Jo Strnad, appointed counsel for appellant Arthur Henderson hereby certify that I prepared Mr. Henderson's reply to the amicus brief of the California District Attorneys Association on behalf of my client using Nisus Writer Pro and have generated a word count using Nisus Writer Pro's word count tool. I hereby certify that according to Nisus Writer Pro's word count tool, Mr. Henderson's brief contains 4,424 words, excluding tables, and is in compliance with California Rules of Court, rule 8.520(c)(1).

Executed this 26th day of August, 2026. I certify under penalty of perjury of the laws of the State of California that the foregoing is true and correct to the best of my knowledge.



Mary Jo Strnad
(State Bar No. 126175)

DECLARATION OF SERVICE BY ELECTRONIC TRANSMISSION (TrueFiling) AND BY MAIL

I, MARY JO STRNAD, declare that:

I am over eighteen years of age and am not a party to this action. I am a duly licensed attorney at law and member in good standing of the California Bar (No. 126175). My business address is 216-E Mount Herman Road, Scotts Valley, CA 95066. I am the attorney of record for Arthur Henderson who is the defendant and appellant in California Court of Appeal Case No. B330707 and this Court, Case No. B291105.

On August 26, 2026, I served a text-searchable, .pdf version of Mr. Henderson's:

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CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION

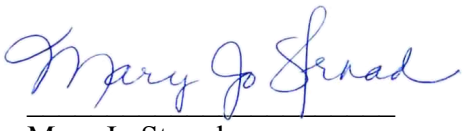
on the Second District Court of Appeal, the Attorney General, and the California Appellate Project by electronic transmission, using the Court of Appeal's Tuefiling website.

In addition, on August 26, 2026, I served the same document on the following:

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Mr. Arthur Henderson Mule Creek State Prison CDCR NO. D25201, P.O. BOX 409099 Ione, CA 95640	

Each envelope was placed in an envelope with postage pre-paid and deposited in the U. S. mail in the normal course of business from Scotts Valley, California.

Executed this 26th day of August, 2026. I declare under penalty of perjury under the laws of California that the foregoing is true and correct.



Mary Jo Strnad
CA State Bar No. 12617

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 8/26/2026 by Biying Jia, Deputy Clerk

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PEOPLE v. HENDERSON**
Case Number: **S291105**
Lower Court Case Number: **B330707**

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8/26/2026

Date

/s/Mary Jo Strnad

Signature

Strnad, Mary Jo (126175)

Last Name, First Name (PNum)

Law Office of Mary Jo Strnad

Law Firm