Supreme Court of California
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Supreme Court of California
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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE,	)
	)
Plaintiff and Respondent,	)
	) No. S260598
vs.	)
	)
VINCE LEWIS,	)
	)
Defendant and Appellant.	)
	)

LOS ANGELES COUNTY SUPERIOR COURT NO. B295998
The Honorable Ricardo R. Ocampo, Judge

APPLICATION OF CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE TO APPEAR AS *AMICUS CURIAE* ON BEHALF OF PETITIONER VINCE LEWIS AND BRIEF IN SUPPORT OF PETITIONER PURSUANT TO RULE OF COURT 8.520

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TO: THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE PRESIDING, AND HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

California Attorneys for Criminal Justice ("CACJ") applies for permission to appear as *amicus curiae* counsel on behalf of Petitioner Vince Lewis pursuant to California Rules of Court, Rule 8.520(f)(5). This application complies with Rule 8.520(f)(1) and (5), as well as this Court's order on October 21, 2020, granting *amicus* an extension to file the application and briefing by November 16, 2020.

APPLICATION OF *AMICUS* CACJ TO APPEAR ON BEHALF OF PETITIONER VINCE LEWIS

Identification of CACJ

CACJ is a non-profit California corporation and statewide organization of criminal defense lawyers. CACJ is the California affiliate of the National Association of Criminal Defense Lawyers, the largest organization of defense lawyers in the country. CACJ has approximately 1,300 criminal defense lawyer members who practice before Federal and state courts throughout California. Our members are employed in both the public and private sectors.

CACJ is administered by a Board of Directors, and its by-laws include the specific purpose of "defend[ing] the rights of persons as guaranteed by the United States Constitution, the Constitution of the State of California, and other applicable law," as well as the improvement of "the quality of the administration of criminal law." (Article IV, CACJ By-Laws.) For more than 45 years, CACJ has appeared before this Court, the United States Supreme Court, and the Courts of Appeal in California on matters of vital importance to the administration of justice.

Statement of Interest

The issues presented in this petition for review are of significance to CACJ and its members. Many CACJ members are actively involved in litigation on 1170.95 petitions throughout California at both the trial court and appellate levels. In addition, CACJ has sought to provide significant training and guidance at conferences, as well as through written materials and legal updates, to defense lawyers across the state on Senate Bill 1437. In addition, CACJ has a specific interest in this law because CACJ was one of the first organizations to recommend revision of the felony murder and natural

probable consequences doctrines. Finally, CACJ believes it will be useful for this Court to consider its *amicus* briefing as a counterbalance to the *amicus* brief filed in this case by the California District Attorney's Association on October 21, 2020.

CACJ has previously appeared before this Court to urge it to protect individuals' right to counsel where that right appeared to be eroded or denied. In this matter, CACJ has reviewed the briefing offered by the parties and believes it can provide additional guidance and support to the Court to assist it in its decision on these matters. In particular, CACJ is requesting the opportunity to provide support to this Court for the proposition that individuals who submit facially valid petitions should be appointed counsel to assist them with Section 1170.95 litigation. CACJ is gravely concerned that individuals who are now legally and factually innocent of murder have had their 1170.95 petitions denied without having counsel appointed. CACJ fears that even more factually innocent individuals will have their petitions incorrectly denied without the benefit of counsel if this process is permitted to continue.

As such, CACJ respectfully requests that this Court grant CACJ permission to appear as *amicus curiae* on behalf of Petitioner Lewis. This brief is submitted in compliance with the Court's order of October 21, 2020.[1]

[1] Pursuant to California Rules of Court, Rule 8.520(f)(4), undersigned counsel certifies that no party or counsel for a party in the pending petition authored any part of this amicus brief. The undersigned further certifies that no party or person has contributed any monies, services, or other form of consideration to assist in the preparation or submission of this brief.

POINTS, AUTHORITIES, AND ARGUMENT

Introduction

The passage of Senate Bill 1437, codified as Section[2] 1170.95, restricts the circumstances for which a person can be found guilty of certain types of murder. The passage of Section 1170.95 initiated a sea change of how murder can be defined and what actions can make a person culpable for murder. However, this revolutionary new law also brought with it significant confusion and challenges to its implementation. Thus, in the past two years alone, Section 1170.95 has triggered a flurry of case law attempting to interpret the new definitions of murder now codified in this state. Likewise, judges at the trial court level have very clearly struggled in their understanding and interpretation of this new law.[3]

Despite this marked confusion and unsettled nature of the law, the Second District, Division One, Court of Appeal's opinion in *People v. Lewis* (2020) 43 Cal.App.5th 1128 wrongly holds that a trial court can deny a facially sufficient petition without appointing counsel. *Lewis* suggests instead that a trial court can review the defendant's record of conviction and case file and make its own analysis as to eligibility from its own interpretation of the law. (*Ibid*.) As such, the *Lewis* holding only serves to exacerbate the problem of trial courts wrestling with how to interpret and apply Section 1170.95.

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[2] All references are to the Penal Code unless otherwise noted.

[3] As Petitioner noted in his opening brief on the merits, trial judges have made a number of errors in their application of this law, to the detriment of individuals who may very well be innocent of their murder charges as the law is applied today. (Petn. Opening Brief, pp. 32-35.) *Amicus* explores additional cases, both published and unpublished, later in this brief for purposes of factual illustration only.

Thus, it is the position of *amicus* CACJ that a court's first determination when in receipt of a Section 1170.95 petition should be to consider whether the petition itself is facially valid. That determination should be made without consultation of the record of conviction or appellate opinion from the case. Furthermore, in consideration of the massive liberty issues at stake here and the confusing, often murky nature of the law, the court should appoint counsel upon receipt of a facially sufficient petition. Certainly, these two issues are inexorably intertwined, and as such, there is considerable overlap in the following analysis.

I. IT IS IMPROPER FOR COURTS TO CONSIDER THE RECORD OF CONVICTION TO DENY RELIEF TO DEFENDANTS WHO HAVE FILED FACIALLY SUFFICIENT PETITIONS

The plain reading of Section 1170.95 undermines the notion that trial courts should review records of conviction or appellate opinions to deny resentencing relief under Section 1170.95. Indeed, there is nothing in the statute that permits courts to look behind the petition into the record of conviction to determine if resentencing is supported. Instead, the statute specifically outlines what is required for a defendant to be eligible for resentencing and what a petitioner must include for the petition to be facially sufficient. (Pen. Code, § 1170.95(a)(b).)

Moreover, to underscore that the petition need only be facially sufficient at this stage, the Legislature also included the ability of the court to "deny the petition without prejudice to the filing of another petition" when it determines that "any of the information required by this subdivision is missing from the petition and cannot be readily ascertained by the court…" (Pen. Code, § 1170.95(b)(2).) The specific information the court can consider in this context includes "a declaration by the petitioner that he or she is eligible for relief

under this section…"; "[t]he superior court case number and year of the petitioner's conviction"; and "[w]hether the petitioner requests the appointment of counsel." (Pen. Code, § 1170.95(b)(1)). Quite clearly, the statute is describing the court's initial review when it first receives a petition; the very same review a court must undergo to determine if the petition is facially sufficient. A petition would not be facially sufficient if it was missing, for instance, any of the information listed in Section 1170.95(b)(1). And, in those circumstances, courts have the option to deny the petition – because it is not facially valid – and permit a petitioner to refile a petition to seek resentencing. However, once a court determines that each of those requirements in subdivision (b)(1) have been met, the law is clear that the petition is facially sufficient and counsel should be appointed.

There is nothing present in the statute to suggest that a court may look at a record of conviction or appellate opinion to determine that a petition for resentencing should be denied. And, of course, courts must construe statutes as they are written, not search for reasons which are not expressed or intended to be expressed by the statute. (See, for example, *People v. Cornett* (2012) 53 Cal.4th 1261, 1265 ["We begin with the plain language of the statute, affording the words of the provision their ordinary and usual meaning and viewing them in their statutory context, because the language employed in the [drafter's] enactment generally is the most reliable indicator of intent. The plain meaning controls if there is no ambiguity in the statutory language."].)

Furthermore, there are significant policy reasons which militate against permitting a trial court to rely upon a record of conviction to unilaterally deny a defendant's Section 1170.95 petition. First, from a practical standpoint, relying upon a record of conviction that may be incomplete presents a significant risk of error. CACJ is aware that the courtroom reality is that many

Section 1170.95 petitions seek resentencing on convictions that occurred more than two, three, and sometimes even four, decades ago. Unfortunately, not all courthouses or clerk's offices are created equally or function in the same manner; indeed, particularly in smaller counties, there may be less of a focus on maintaining records, causing some to be lost, damaged, or just plain illegible. Permitting a court to rely upon a record of conviction in these circumstances would undoubtedly endanger defendants' rights to due process.

Moreover, as discussed in more detail below in this briefing, a trial court's reliance upon appellate opinions to deny relief to defendants who have filed facially sufficient petitions is also fraught with problems. Indeed, appellate opinions are necessarily skewed towards the prosecution. "In reviewing the evidence on appeal, the applicable test is not whether guilt has been proven beyond a reasonable doubt, but rather whether substantial evidence supports the conclusion of the trier of fact." (*People v. Culver* (1973) 10 Cal.3d 542, 548.) Further, the reviewing court "must draw all inferences in support of the verdict that can reasonably be deduced from the evidence." (*Id.*) Finally, defendants are entitled "only to an appellate record adequate to permit him or her to argue the points raised in the appeal." (*People v. Rogers* (2006) 39 Cal.4th 826, 857.) Accordingly, a trial court which utilizes an appellate opinion to deny a facially sufficient petition is necessarily limited to the facts provided in the appellate record that the defendant chose to present at the time of the appeal. The analysis is even further restricted by the very nature of an appeal, wherein an appellate court must draw inferences in favor of maintaining the verdict. This is obviously in direct opposition to the prima facie requirements of the statute. It most certainly flies in the face of the 1170.95 hearing, which puts the burden of proof squarely on the prosecutor,

beyond a reasonable doubt, to prove that the defendant is ineligible for resentencing. (Pen. Code, § 1170.95(d)(3).)

II. THE COURT SHOULD APPOINT COUNSEL ONCE IT DETERMINES THE PETITION IS FACIALLY VALID

Once the court receives a facially valid petition which does not require any corrections under Section 1170.95(b)(1), the court should then appoint counsel to assist the defendant. Indeed, there are strong constitutional requirements, policy considerations, and practical reasons to support the appointment of counsel once a court determines the petition is facially valid.

Federal Constitutional Analysis

The Sixth Amendment to the United States Constitution affords criminal defendants the right to representation by counsel. (*Gideon v. Wainwright* (1963) 372 U.S. 335, 342-343.) Our High Court has repeatedly articulated the central role of representation to the legitimacy of American jurisprudence: "An accused's right to be represented by counsel is a fundamental component of our criminal justice system . . . Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have." (*U.S. v. Cronic* (1984) 466 U.S. 648, 653-54; *See also, Powell v. Alabama* (1932) 287 U.S. 45, 68. ["The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel."])

Our Supreme Court has held that the right to counsel attaches "at all critical stages of the criminal process." (*Marshall v. Rogers* (2013) 569 U.S. 58, 62.) A critical stage of the proceedings is one in which "the presence of his [or her] counsel is necessary to preserve the defendant's right to a fair trial." (*U.S. v. Wade* (1967) 388 U.S. 218, 227.) In the decades since *Gideon*, the Court has

had the opportunity to further refine and flesh out what constitutes a "critical stage" of the proceedings for Constitutional purposes. As a threshold matter, the Court has not limited "critical stages" to solely those occurring coextensively with trial; indeed, there are a wide variety of circumstances, both before and after trial, that courts have determined to be critical stages for purposes of this analysis. For instance, courts have recognized that counsel is critical in sentencings (*Mempha v. Rhay* (1967) 389 U.S. 128, 134-37); arraignments (*Hamilton v. Alabama* (1961) 368 U.S. 52-54); preliminary hearings (*Coleman v. Alabama* (1970) 399 U.S. 1, 10); postindictment lineups (*U.S. v. Wade*, *supra*, 388 U.S. 227); postindictment interrogations (*Massiah v. U.S.* (1964) 377 U.S. 201, 206); plea negotiations (*Missouri v. Frye* (2012) 566 U.S. 134, 143.); and appeals (*Lafler v. Cooper* (2012) 566 U.S. 156, 165 [holding "defendants have a right to effective assistance of counsel on appeal, even though that cannot in any way be characterized as part of the trial."].)[4]

The Supreme Court has utilized a specific framework for analyzing what amounts to a critical stage, finding it encompasses "those events or proceedings in which the accused is brought in confrontation with the state, where potential substantial prejudice to the accused's rights inheres in the confrontation, and where counsel's assistance can help avoid that prejudice." (*Gardner v. Appellate Division of Superior Court* (2019) 6 Cal.5th 998, 1004-05.) As restated by the 9th Circuit, "the essence of a critical stage is . . . the adversary nature of the proceeding, combined with the possibility that a defendant will

[4] The Court has also found that certain stages are not considered "critical" to the proceedings for purposes of the appointment of counsel. (See, for example, *Pennsylvania v. Finley* (1987) 481 U.S. 551, 555 [some postconviction proceedings exempted]; *U.S. v. Webb* (11th Cir. 2009) 565 F.3d 789, 794-795 [sentence reduction motions exempted.].)

be prejudiced in some significant way by the absence of counsel." (*U.S. v. Yamashiro* (9th Cir. 2015) 788 F.3d 1231, 1235.)

It is true that the Court has found that the right to counsel does not attach at some sentence modification proceedings. For instance, in *Dillon v. U.S.* (2010) 560 U.S. 817, an incarcerated defendant sought a sentencing reduction based on intervening amendments to the federal sentencing guidelines. The Court held the sentencing adjustments did not implicate the Sixth Amendment, reasoning that the right to counsel did not attach because sentencing adjustments were "a congressional act of lenity" that did not disturb the underlying conclusions of guilt or innocence. (*Id.* at p. 828.) This analytical framework has been applied by California courts to state resentencing provisions, such as Penal Code sections 1170.126 and 1170.18 (emerging from Propositions 36 and 47 respectively), which have been held to also constitute "acts of lenity" that do not necessitate representation of counsel at the *eligibility* stage. (*People v. Rouse* (2016) 245 Cal.App.4th 292, 298-300.)[5]

While Section 1170.95 is a product of the legislature, and in that way bears some similarity to both Propositions 36 and 47 and the federal resentencing guidelines, Section 1170.95 does not involve a simple act of sentence modification. Unlike the "acts of lenity" concept utilized in those other contexts, it is not simply the defendant's sentence which he is seeking to modify

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[5] Even in *Rouse*, a Prop 47 case, the court did conclude that the defendant (who had cleared the eligibility stage) "should have had the assistance of counsel to protect his rights as the court exercised its discretion in imposing a new sentence . . . [The resentencing hearing] is therefore properly characterized as a 'critical stage' in the criminal process to which the right to counsel attaches." (*Id.* at p. 300.) Further, the court did not rule out the possibility of the right to counsel attaching even earlier: "[w]hether the right to counsel attaches at an earlier stage of the petition, *including the eligibility phase*, was not before us and we therefore express no opinion on the issue." (*Id.* at p. 301, emphasis added.)

but rather the very criteria for evaluating his guilt or innocence. This undercuts the rationale for curtailing the right to counsel, as the defendant is not merely seeking to avail himself or herself of legislative grace or lenity, but rather that he or she may now be classified as a person incarcerated under a theory of guilt which is no longer valid –an innocent person behind bars.

Moreover, the difference between an "eligibility" stage in the 1170.95 context and in either a Proposition 47 or 36 context is vast. For instance, in order to establish eligibility under Proposition 47, the trial court would simply need to identify the "wobbler" charge of which the defendant has been convicted and determine if it will modify the sentence based on the new criteria put forward by the legislature. (*Rouse*, *supra*, 245 Cal.App.4th at pp. 295-96.) Similarly, for a Proposition 36 sentence modification, a court would need to evaluate the "life charge" conviction and determine if the defendant would be eligible for Proposition 36 relief according to the terms put forth by the statute. Critically, at no point of these eligibility proceedings is the defendant's guilt considered. There is no examination as to his involvement in the commission of the underlying offense. Instead, findings of fact and of law have been settled; the eligibility phase of these "acts of lenity" is thus a black-and-white matter of categorization, where one would insert variables into a mechanical formula.

In contrast, a section 1170.95 claim is of a fundamentally different character. By changing the bases upon which guilt can be premised, section 1170.95 introduces significantly more complex concepts of law and retroactively alters the significance and meaning of facts contained in the underlying matter. As Mr. Lewis's counsel argues in his opening brief, *Lewis* represents just such a complex matter: an argument has made its way to the California Supreme Court based on a difference of interpretation of both the new theories of aiding and abetting; there is even a dispute regarding what

theory of liability the initial conviction was even premised on. Even if one were to give credence to the trial and appellate courts' interpretation that section 1170.95 does not apply to Mr. Lewis, it is clearly an inquiry of a fundamentally different nature than the classification of "wobbler" offenses, "life" charges, or the determination of eligibility under federal resentencing guidelines. The elevated complexity of the entire inquiry, including the initial eligibility stage, effectively distinguishes Section 1170.95 petitions from precedent barring the applicability of the Sixth Amendment to resentencing claims.

State Constitutional Analysis

In California, the right to counsel springs not only from the federal Constitution, but additionally from Article I, section 15, of the state constitution. Furthermore, California courts have interpreted Article I, section 15, as expanding the limits set at the federal level. For instance, while the U.S. Supreme Court declined to extend the right to counsel in preindictment lineups in *Kirby v. Illinois* (1972) 406 U.S. 682, 690, this Supreme Court of California recognized such a right in *People v. Bustamante* (1981) 30 Cal.3d 88, 102. Another example of this phenomenon involves the "actual imprisonment" standard in the Federal line of cases. (*Gardner*, *supra*, 6 Cal.5th 998, 1009 citing *Alabama v. Shelton* (2002) 535 U.S. 654, 662 ["In defining the scope of the federal right to counsel in nonfelony cases, the high court's Sixth Amendment jurisprudence draws the line at cases involving 'actual imprisonment.'"].) Here, again in contrast, California courts have held (and the constitution has subsequently been modified to explicitly state) that the state constitution imposes the right to counsel: "in *all* felony and misdemeanor proceedings whether actual imprisonment is to follow or not." (*Mills v. Municipal Court* (1973) 10 Cal.3d 288, 301.)

Indeed, as this Court itself stated in *Gardner*, "California ranks among the many states that provide a right to appointed counsel that is more expansive than that afforded by the federal Constitution." (*Gardner*, *supra*, 6 Cal.5th at p. 1011, fn. 9.) Therefore, it is consistent with California's traditional view of the constitutional right to counsel, and its most recent interpretations by this Court, to construe the right broadly here and to recognize the section 1170.95 eligibility determination as a "critical stage" of the proceedings within the meaning of the 6th Amendment to the U.S. Constitution and Article I, Section 15, of the California Constitution.

Policy Considerations

Though distinct from the constitutional "critical stage" analysis, there are important policy objectives that would be best served by recognizing a right to counsel for facially sufficient petitions filed pursuant to Section 1170.95. Indeed, it is rather absurd that section 1170.95 claimants are denied appointed counsel once they file petitions, but they are later entitled to receive appellate counsel if their petitions are denied. As such, it seems possible, if not likely, that the expenditure of many of these resources on appeals may be avoided if petitioners were given the opportunity for advice of counsel from the outset.

Moreover, "the Sixth Amendment does not require that counsel do what is impossible or unethical. If there is no bona fide defense to the charge, counsel cannot create one and may disserve the interests of his client by attempting a useless charade." (*Cronic*, *supra*, 466 U.S. at p. 657, fn. 19.) Therefore, concerns about judicial resources are actually not served by denying Section 1170.95 petitioners the right to counsel, and in fact, these interests may well be injured and worsened by relying on the appellate mechanisms – a result that is more burdensome on the system than merely appointing counsel on petitions. Even more worrisome, refusing to appoint counsel further risks denying the benefits

of Section 1170.95 to defendants who may be deserving of its provisions but lack the literacy in legal vernacular and reasoning to express it. And, as will be discussed with the illustrations provided below, trial courts have made a number of errors with respect to this law and petition process.

Errors Made by Trial Courts

Clearly, it is not just defendants who find themselves overwhelmed with the task of understanding the complexity of homicide law. In fact, the new statute has posed significant challenges for trial judges, resulting in a number of righteous reversals for defendants who did not have counsel appointed at the facially valid petition stage. In his opening brief, Mr. Lewis described a few published cases where trial courts were reversed for improperly denying a petition pursuant to Section 1170.95.[6] (See, for example, *People v. Torres* (2020) 46 Cal.App.5th 1168; *People v. Offley* (2020) 48 Cal.App.5th 588; and *People v. Garcia* (2020) 46 Cal.App.5th 123.)

However, the cases in Mr. Lewis's opening brief were really just the tip of the iceberg. For instance, in another recently published opinion, *People v. Cooper* (2020) 54 Cal.App.5th 106, rev. granted November 10, 2020,[7] the Court of Appeal held that the trial court erred in denying the defendant's petition and his request for appointment of counsel. (*Ibid.*) The Court of Appeal held that the trial court erroneously relied upon the record of conviction and engaged in "impermissible factfinding that accepted the truth of the preliminary hearing testimony without giving Cooper the opportunity to challenge that testimony." (*Id.* at p. 112.)

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[6] See Petitioner's Brief, pp. 32-35.

[7] This Court granted review on November 10, 2020, and deferred further action pending disposition of related issues in this case.

Moreover, in addition to these published opinions, there are a number of unpublished[8] cases where trial courts wrongly denied relief for defendants who filed facially valid petitions and sought appointment of counsel. By way of example, the Court of Appeal (and the Attorney General) agreed that Carl Caldwell had his petition improperly denied by a trial court and should have had counsel appointed because he was not actually ineligible for resentencing as a matter of law. (*People v. Caldwell* (B298006) 2020 WL 1547370.) Similarly, in Quincy Hankey's case, the Court of Appeal found that a trial court refused to appoint counsel and wrongly denied Mr. Hankey's petition because the trial court incorrectly believed Mr. Hankey was ineligible for resentencing as a matter of law. (*People v. Hankey* (A643463) 2020 WL 1649065.) This was just like Michael Duran's case, where the trial court wrongly denied the petition and request to appoint counsel because it believed Mr. Duran was ineligible for sentencing as a matter of law. (*People v. Duran* (B297673) 2020 WL 2214188.) The same thing happened to Michael Thomas, where the Court of Appeal found the trial court erred in finding him ineligible for resentencing as a matter of law. (*People v. Thomas* (B297168) 2020 WL 2610141.)

Examples of trial court mistakes in this area abound. Trial courts have even been reversed for misapprehension of the procedural requirements of Section 1170.95. In fact, one trial court denied a defendant's petition – and failed to appoint counsel – after wrongly concluding that his petition failed to meet procedural requirements because he did not sign the petition under penalty of perjury. (*People v. Hogue* (E073803) 2020 WL 2517307.) The Attorney General conceded the trial court's error in this case, as well. (*Ibid.*)

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[8] Counsel does not cite to these cases for precedential value or because they are directly relevant to Petitioner's case. These cases are provided merely for factual support and illustrative purposes and no other purpose is intended.

In addition to the clear lack of comprehension of the meaning of prima facie and misconception regarding procedural requirements, additional cases demonstrate that some trial courts are simply failing to grasp some of the nuances in this area of law. For instance, several trial courts have mistakenly refused to appoint counsel and denied petitions for defendants who had been convicted of a felony murder special circumstance when their cases predated *Banks*[9] and *Clark*[10] and no *Banks*/*Clark* findings were ever made on the case. (See, for example, *People v. Jefferson* (No. B296822) 2020 WL 2121663 and *People v. McCraw* (B297254) 2020 WL 1969381.)

However, the trial court's egregious error in the matter of Sivea Logoleo is particularly chilling. (*People v. Logoleo* (G057658) 2020 WL 878808.) In *Logoleo*, the trial court refused to appoint counsel and denied Mr. Logoleo's petition despite the fact that it was facially valid. (*Ibid*.) The trial court issued a "boilerplate minute order" with two generic bases for denial: either Mr. Logoleo did not stand convicted of murder or his murder was not based upon a felony murder or natural and probable consequences theory. (*Id*. at p.*2.) The trial court did not state what records it reviewed to arrive at this conclusion. (*Id*.) In fact, a review of Mr. Logoleo's guilty plea form revealed that he pled guilty to felony murder but was not the actual killer. (*Ibid*.) After receiving the denial, Mr. Logoleo filed a notice of appeal. (*Ibid*.)[11] The Attorney General subsequently conceded that Mr. Logoleo was wrongly denied relief, and the Court of Appeal reversed and remanded Mr. Logoleo's case back to the trial court. (*Ibid*.) On October 23, 2020, the Orange County District Attorney's Office

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[9] *People v. Banks* (2015) 61 Cal.4th 788

[10] *People v. Clark* (2016) 63 Cal.4th 522

[11] Undersigned counsel is an Orange County Assistant Public Defender, and aware of the issue. Although the Public Defender was not appointed as counsel, undersigned counsel mailed Mr. Logoleo a notice of appeal after learning his petition was denied.

conceded Mr. Logoleo's resentencing petition. Mr. Logoleo was resentenced to robbery, and he was released from prison after serving 22 years.

Conclusion

The solution is not to allow trial courts to keep wrongly denying petitions and hope defendants figure it out on appeal. Such a procedure denies justice to defendants and places an inordinate amount of stress on an already overburdened appellate court system. It delays justice even for those pro per defendants savvy enough to realize they must file a notice of appeal after the denial of their petition. There are doubtless far more cases where unrepresented litigants were unaware of their appellate rights and remain wrongly incarcerated.

CACJ submits that this Court should not countenance a procedure which fails to provide justice to all defendants. Accordingly, the appointment of counsel for facially sufficient Section 1170.95 petitions is appropriate--for the reasons argued in detail above--precisely because the cases at issue present the sort of complex questions in which the right to counsel not only acts a prophylactic for the defendant, who is forced to navigate a completely unfamiliar procedural and conceptual landscape in order to articulate a defense to a legal theory of murder liability, but also serves the overall interests of fair adjudication of the criminal justice system as well as the integrity of the process.

CONCLUSION

Counsel's assistance at this stage of the criminal proceedings is crucial. Accordingly, amicus counsel urges this Court to extend the appointment of counsel to facially sufficient Section 1170.95 petitions.

Respectfully submitted,
STEPHEN K. DUNKLE, Chair
JOHN T. PHILIPSBORN, Vice Chair
SARA ROSS, Counsel for CACJ

By: Sara Ross, SBN 234587
Counsel for California Attorneys for Criminal Justice (CACJ)

WORD COUNT

California Rules of Court, Rule 8.520

I certify that the attached amicus curiae brief contains 5,872 words including title page, tables, word count, and signature blocks.

SARA ROSS
Counsel for CACJ *Amicus Curiae*

DECLARATION OF SERVICE

People v. Vince Lewis – Case No. S260598 (B295998/TA117431)

I, Stephen K. Dunkle, declare that I am a citizen of the United States, over the age of 18 years, not a party to the above-entitled action and has a business address at 222 E. Carrillo St., Ste. 300, Santa Barbara, CA 93101.

That on November 16, 2020, I personally served a copy of the **Brief of *Amicus Curiae* California Attorneys of Criminal Justice on Behalf of Petitioner Vince Lewis** in the above-entitled action by depositing a copy thereof in a sealed envelope, postage fully prepaid, in the United States Mail at Santa Barbara, California, addressed as follows:

Vince Lewis #AL6235
Substance Abuse Treatment Facility
P.O. Box 5248
Corcoran, CA 93212

Deputy County Clerk
Attn: Hon. Ricardo Ocampo
Los Angeles County Superior Court
200 W. Compton Blvd
Compton, CA 90220

On the same day, I also served the same document on each of the persons named below by electronic service via Truefiling:

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 16, 2020, at Santa Barbara, California.

s/ Stephen K. Dunkle
Stephen K. Dunkle

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 11/17/2020 by Celia Wong, Deputy Clerk

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PEOPLE v. LEWIS**
Case Number: **S260598**
Lower Court Case Number: **B295998**

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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.

11/16/2020

Date

/s/Stephen Dunkle

Signature

Dunkle, Stephen (227136)

Last Name, First Name (PNum)

Sanger Swysen & Dunkle

Law Firm