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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA, *Plaintiffs*, vs. SCOTT FORREST COLLINS, *Defendant.*	Case No. LA009810 **APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN OPPOSITION TO RESENTENCING; AMICUS CURIAE BRIEF BY CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION AND CRIMINAL JUSTICE LEGAL FOUNDATION**

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Although no rule of court specifically authorizes amicus briefs in trial courts, such briefs are permitted with leave of the court. (See, e.g., *In re Veteran's Industries* (1970) 8 Cal.App.3d 902, 924-925.) Applicants California District Attorneys Association and Criminal Justice Legal Foundation respectfully request permission to file the attached Amicus Brief in Opposition to Resentencing under Penal Code section 1170.03.

STATEMENT OF AMICI CURIAE'S INTEREST

The California District Attorneys Association (CDAA) is the statewide organization of California prosecutors. It is a professional organization that has been in existence for more than 90 years, and was incorporated as a nonprofit public benefit corporation in 1974. CDAA has over 2,500 members, with membership open to all elected and appointed district attorneys, the Attorney General of California, city attorneys principally engaged in the prosecution of criminal cases, and attorneys employed by these officials. CDAA offers seminars, publications, legislative advocacy, and extensive online tools. It serves as a forum for the exchange of information and innovation in the field of criminal justice. CDAA also presents its views to the courts by way of amicus curiae briefs in cases which affect the work of prosecutors and their pursuit of justice. The case at bar, which affects the ongoing validity of criminal convictions and judgments properly entered under California law, is such a case.

The Criminal Justice Legal Foundation (CJLF) is a nonprofit California corporation organized to participate in litigation relating to the criminal justice system as it affects the public interest. CJLF seeks to bring the legal protections of the accused into balance with the rights of the victim and of society to rapid, efficient, and reliable determination of guilt and swift execution of punishment. The current policy of the Los Angeles District Attorney to seek vacation of validly imposed sentences of death in every capital case is contrary to the interests CJLF was formed to protect.

ARGUMENT

Amicus curiae briefs are useful when they "assist the court in deciding the matter." (See Cal. Rules of Court, rule 8.520.) Such assistance may take the form of bringing to the court's attention relevant matter not already submitted by the parties. (See U.S. Supreme Court Rules, rule 37.1.) This kind of assistance is particularly necessary when one party to a controversy abandons or seeks to undermine a court decision it once sought, so that the needed adversity in fully exploring the issues is no longer present. In such circumstances, it

is not unusual for courts to invite or appoint an amicus to defend the decision under attack. (See, e.g., *Ellis v. Harrison* (9th Cir. 2020) 947 F.3d 555, 568 (dis. opn. of Callahan, J.))

The greatest necessity for amicus participation arises when both parties urge a court to take an action that raises a substantial issue of subject-matter jurisdiction. Courts "have an independent obligation ... in every matter to confirm whether jurisdiction exists." (*California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 252.) While it would be possible to discharge this obligation through the court's own research, genuinely adversarial briefing is the better approach.

The court has received a brief supplemental submission from counsel for the victims in this matter, with an alternative request to consider it as an amicus brief. (See Victims' Supplemental Submission Regarding P.C. 1170.03 Motion, March 9, 2022.) However, CDAA and CJLF believe that additional briefing would assist the court, particularly with regard to the question of whether the court has jurisdiction under section 1170.03 at all. The reasons are more fully explained in the brief itself, which is attached to this application.

DISCLOSURES

California Rules of Court, rule 8.520(f)(4) requires an *amicus* applicant to make certain disclosures with the application in appellate cases, and we deem it appropriate to make them here as well. No person or entity other than the *amici* has made any financial contribution for the preparation of this application and amicus curiae brief. No party or counsel for a party authored the brief in whole or in part.

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CONCLUSION

Accordingly, applicants California District Attorneys Association and Criminal Justice Legal Foundation respectfully request that this court grant this Application for Leave and consider the attached Amicus Curiae Brief in connection with the upcoming hearing on resentencing under section 1170.03.

Dated: July 7, 2022

Respectfully submitted,

By: 

KENT SCHEIDEGGER
Attorney for Amici Curiae

BRIEF FOR THE CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION AND THE CRIMINAL JUSTICE LEGAL FOUNDATION AS AMICI CURIAE

THE SUPERIOR COURT HAS NO JURISDICTION TO RECALL A DEATH OR LIFE-WITHOUT-PAROLE SENTENCE UNDER P.C. § 1170.03.

A. The General Rule.

This case involves an exception to a general jurisdictional rule. Analysis is best begun with the general rule before considering the exception. The general rule is that once the court has completed the case and committed the defendant to the custody of the prison authorities, it loses jurisdiction to reconsider its judgment. (See *In re Black* (1967) 66 Cal.2d 881, 889, 891; *Dix v. Superior Court* (1991) 53 Cal.3d 442, 455.) "Where the trial court relinquishes custody of a defendant, it also loses jurisdiction over that defendant." (*People v. Karaman* (1992) 4 Cal.4th 335, 344.)

Dix discusses the relation of this rule to motions to recall sentences under predecessor of the statute now at issue. "Section 1170(d) was enacted in 1976 as part of the Determinate Sentencing Act." (53 Cal.3d at p. 455.) That provision authorized recall on recommendation of the Director of Corrections or the Board of Prison Terms or, within 120 days, on the court's own motion. (*Ibid*.) "Section 1170(d) is an exception to the common law rule that the court loses resentencing jurisdiction once execution of the sentence has begun." (*Ibid*.)

From the nature of the statute as an exception to the general rule, it follows that the general rule applies when the terms of the statutory exception are not met. For example, if the 120-day time limit has lapsed, "the court loses 'own-motion' jurisdiction" to recall a sentence. (*Dix*, 53 Cal.3d at p. 464.) Cases since *Dix* have continued to recognize the jurisdictional basis of the general rule. For example, *People v. Antolin* (2017) 9 Cal.App.5th 1176, 1180 held "that the common law rule regarding jurisdiction to modify sentences applies to state prison sentences imposed pursuant to this statutory scheme, except to the extent that a statute specifically provides otherwise," citing *Dix.*

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B. Section 1170(d) in the DSL.

The Determinate Sentencing Law was enacted in 1976 and extensively amended in 1977 before it took effect. Section 1170 of the Penal Code, as it first took effect, contained two provisions relevant to this case. Although amended since in other ways, as noted below, the essence of them for this case is unchanged. Subdivision (d) provided authority for recall in cases "[w]hen a defendant subject to this section [i.e., determinate sentencing] or subdivision (b) of Section 1168 has been sentenced to be imprisoned in the state prison ...." (Stats. 1977, ch. 165, § 15, p. 648.) However, subdivision (a)(2) of the same section provided, "Nothing in this article shall affect any provision of law which imposes the death penalty, which authorizes or restricts the granting or probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life." "This article" is part 2, title 7, chapter 4.5, article 1 of the Penal Code, sections 1170 and following.

The principles of interpretation are summarized in *People v. Rodriguez* (2012) 55 Cal.4th 1125, 1131 (citations, internal quotation marks, and brackets omitted):

> "When interpreting statutes, we begin with the plain, commonsense meaning of the language used by the Legislature.... If the language is unambiguous, the plain meaning controls....Whenever possible, significance must be given to every word in a statute in pursuing the legislative purpose, and the court should avoid a construction that makes some words surplusage. We may reject a literal construction that is contrary to the legislative intent apparent in the statute or that would lead to absurd results …."

The People would, in essence, have this court believe that "nothing" in this provision means "some things but not others," contrary to the plain, commonsense meaning. (See People's Response to Victim Submission 8-10 (Mar. 30, 2022) ("DA Response").) The Legislature intentionally chose the sweeping word "nothing" and applied it to the entire article. A powerful indication of contrary intent would be needed to give the word "nothing" an interpretation contrary to its plain meaning. None is apparent, and the parties have not shown any. Subdivision (d) was obviously "in this article," so it did not affect death sentences or life sentences by the express terms of the statute.

The limitation of the scope of the article, excluding these sentences, is not inconsistent with the inclusion of section 1168(b) sentences in subdivision (d). The DSL did not convert all less-than-life sentences to determinate sentencing. A few low-end felonies remained under section 1168(b), which expressly includes state prison sentences "not exceeding one year and a day." (See *In re D.* (1980) 28 Cal.3d 210, 220, fn. 11; see, e.g., Pen. Code, § 270 (failure to provide support).)

The rule against rendering any language surplusage is therefore not involved here. The 1168(b) language in subdivision (d) had operative effect without applying to death or life sentences when the language in subdivision (a)(2) is given its plain meaning. Taking the two provisions together, subdivision (d) applied to determinate sentences and to indeterminate sentences not excluded from the scope of article 1, i.e. those less than life.

C. Subsequent Amendments.

This understanding of the original relation between the two provisions is reinforced by later amendments. Twice since then, amendments indicate the Legislature's understanding that the (a)(2) language (since renumbered (a)(3)) applied to the original recall authority and its intent that it still should.

In 2012, the Legislature amended both provisions in the same bill. (See Stats. 2012, ch. 828, § 1 [SB 9].) The pre-existing subdivision (d) was renumbered (d)(1), and a new paragraph (2) was added regarding recall of life-without-parole (LWOP) sentences for murderers under 18. The bill also amended the "nothing in this article" sentence of subdivision (a)(3) to add "except as provided in paragraph (2) of subdivision (d)."

This precise and carefully chosen language leaves no doubt. The Legislature deemed it *necessary* to provide an exception to the (a)(3) language in order to give its new LWOP recall operative force. There would be no reason to amend that sentence if it would not otherwise block LWOP sentence recalls. Further, the Legislature deemed it *appropriate* to limit its new exception to paragraph (2), thereby leaving the main sentence operative as to the original subdivision (d), redesignated paragraph (1) by SB 9. There is no other reason for the "paragraph (2) of" qualifier to be there. The Legislature could have just as

easily exempted the revised subdivision (d) in its entirety, the old paragraph along with the new one, but it chose to limit the exemption to paragraph (2).

The People observe that paragraph (2) applies to LWOP sentences to support the argument that the 1168(b) reference brings in all indeterminate sentences "notwithstanding any prior language in Section 1170." (DA Response 9 & fn. 2.) The bill enacting those provisions demonstrates exactly the opposite. An exception to the prior language was needed and added because it otherwise would have excluded those sentences.

This brings us to the enactment of section 1170.03 of the Penal Code. Although this is a new section number, it is not an entirely new law. The Senate Public Safety Committee report describes the then-existing law and then says, "This bill recasts the above provision [§1170(d)(1)] and makes clarifying changes." (Sen. Pub. Saf. Com. Report on AB 1540 (July 6, 2021) p. 2, italics omitted.)

According to the bill's author, the main purpose was to address the existing provision's lack of structure and address procedural problems and due process concerns. (Assem. Pub. Saf. Com. Report on AB 1540 (April 24, 2021) pp. 3-4.) To this end, the new provision is much longer than the prior one. The Legislature chose to move this long provision out of the already overlong and complex section 1170 and make it a separate section. The People attempt to make something substantive out of this desirable bit of code maintenance (DA Response 10 ["stand alone statute"]), but are unable to cite anything in the legislative history that such an effect was intended. The Assembly Public Safety Committee Report, on pages 1-2, gives a long list of specific changes that the bill makes to the prior sentence recall provision. Expanding it to cover murderers previously excluded by the unmistakable wording of prior legislation is conspicuously absent.

Again, the text of the bill leaves no doubt. Like SB 9 in 2012, AB 1540 in 2021 also amended the (a)(3) language. After removing paragraph (1) of section 1170(d) to a new section, the bill designated former paragraph (2) as the whole subdivision (d). To conform, the bill deleted the words "paragraph (2) of" from the "nothing in this article"

sentence of subdivision (a)(3).[1] Again, the Legislature did not see fit to expand the exception to include the "recast" new section, even while it was amending the specific sentence to preserve the existing exception.

Against the clear import of text of the amended code section, the People offer ambiguous language from the findings and declarations section of the bill. (DA Response 10-11.) Subdivision (f) of section 1 describes the existing law: "Under existing law, any person incarcerated in a state prison or county jail can only be referred for resentencing by a law enforcement agency, such as the Secretary of the Department of Corrections and Rehabilitation, a district attorney, or the Board of Parole Hearings." The combination of "any" and "only" in this sentence introduces an ambiguity. To say that a given path is the only one available to any person in prison does not necessarily mean it is available to every person in prison. If it meant every person, it would be a manifestly incorrect statement of existing law, as SB 9's carefully crafted exception for paragraph (2) and not (1) of the pre-existing statute makes clear. See *supra*.

There is also little force on point in subdivision (h) of that section (italics added):

> "(h) It is the intent of the Legislature for judges to recognize the scrutiny that has already been brought to these referrals by the referring entity, and to ensure that each referral be granted the court's consideration by setting an initial status conference, recalling the sentence, and providing the opportunity for resentencing for *every* felony conviction *referred* by one of these entities."

Yes, the Legislature wants every referral considered, but that says nothing about which sentences the entities are authorized to refer. Surely this refers to authorized referrals, not those excluded from the process by statute.

In the text of section 1170.03 itself, we see no indication of any intent in this "recast" to expand the scope of recallable sentences beyond the scope of the prior version. Before AB 1540, section 1170(d)(1) applied "[w]hen a defendant subject to this section [1170] or subdivision (b) of Section 1168 has been sentenced to be imprisoned in the state prison or a county jail pursuant to subdivision (h) and has been committed to the custody of

1. An apparent drafting error in a later statute re-introduced a spurious "of" here. (See Stats. 2021, ch. 731, § 1.3 [SB 567].)

the secretary or the county correctional administrator." Those commitments are, by definition, felony sentences. (See Pen. Code, § 17, subd. (a).) The recast provision applies "[w]hen a defendant, upon conviction for a felony offense, has been committed to the custody of the Secretary of the Department of Corrections and Rehabilitation or to the custody of the county correctional administrator pursuant to subdivision (h) of Section 1170."

This is rewording with no substantive change. Both provisions, on their face, could be read to apply to prison and section 1170(h) commitments for either (1) all felonies or (2) all felonies not excluded by the section 1170(a)(3) article scope limitation. The choice between these two interpretations is not altered by the minor change in language.

Whenever possible, courts should harmonize statutes, reading them together to form a coherent whole, giving effect to all their provisions. (See *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 805.) There is a strong presumption against implied repeal. One should be found "only when there is no rational basis for harmonizing the two potentially conflicting statutes, and the statutes are irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation." (*Ibid*., internal quotation marks omitted.)

If two statutes, on their faces, have overlapping scope and point to conflicting results within the overlap, " 'one must be interpreted as providing an exception to the other.' " (See *Tellez v. Superior Court* (2020) 56 Cal.App.5th 439, 444, quoting *State Dept. of Public Health v. Superior Court* (2015) 60 Cal.4th 940, 956.) Either section 1170(a)(3) makes an exception to section 1170.03, or section 1170.03 implicitly repeals section 1170(a)(3) in part by making an exception without saying so. On its face, section 1170(a)(3) is an exception any provision in article 1 that would otherwise apply to life or death sentences, and that is the sole purpose of the sentence in question. In contrast, section 1170.03 contains no express indication of making an exception to 1170(a)(3).

In *Tellez*, two new statutes on diversion potentially conflicted with an earlier ban on diversion for DUI defendants. The fact that the Legislature made an exception to the DUI

ban for one and said nothing about it for the other indicated that no exception was intended for the latter. (See 56 Cal.App.5th at pp. 445-448.) The earlier statute was an implicit exception to the later one, and the canon of later statutes prevailing over earlier ones was too weak to overcome the inference of legislative intent. (See *id*. at pp. 448-449.)

The inference in this case is even stronger than in *Tellez*. Not only did the Legislature make an explicit exception for another recall provision in an another statute, SB 9, as in *Tellez*, but it modified that exception *in the same bill* that enacted section 1170.03 to conform to the renumbering of that other provision *without* extending it to cover section 1170.03. The parties are asking the court to rewrite AB 1540 to include language that the Legislature chose not to include even while it was specifically addressing the provision in question. *Amici* respectfully suggest that the court decline to do so.

D. Section 1170.95.

The People suggest that the court use section 1170.95 of the Penal Code as guidance. (DA Response 13.) The Defendant makes a similar argument. (Defendant's Response to Victim's Supplemental Submission 7 (Mar. 30, 2022).) *Amici* agree that the section is instructive; it provides an informative contrast.

As noted above, the presumption against repeal by implication is steep (see *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles*, 55 Cal.4th at p. 805), but it is not insurmountable. A later enactment may be found to have implicitly repealed an earlier one when "the two cannot have concurrent operation." (*Ibid*.) As originally enacted, subdivision (a)(2) of section 1170.95 limited that section's application to persons convicted of first or second degree murder. (See Stats. 2018, ch. 1015, § 4 [SB 1437].) These crimes are punished only by death or life in prison. (Pen. Code, § 190, subd. (a).) If the original section 1170.95 did not apply to these sentences, it would have no operation. This is the rare case that fits the *Pacific Palisades* definition to a tee.

Why did the Legislature not make an express exception to section 1170(a)(3) for section 1170.95 the way it did for section 1170(d)(2)? It was probably just an oversight.

Not all statutes are carefully researched by their authors, and the author of section 1170.95 may have simply been unaware of the (a)(3) limitation.

In contrast, section 1170.03 is not directed entirely, mostly, or even largely at sentences subject to the (a)(3) exclusion from article 1's coverage. Application of the (a)(3) exclusion will affect only a small subset of the cases that would be within the section's scope otherwise. The Assembly Public Safety Committee's comments include a discussion of determinate sentencing with no mention of life sentences. (Assem. Pub. Saf. Com. Report on AB 1540 (April 24, 2021) p. 4.) This bill was focused on determinate sentences, not life sentences. Most importantly, the bill's amendment of the sentence of section 1170(a)(3) at issue demonstrates that the omission of an exception to it was not an oversight. There is no possibility of unawareness here.

The premise of the parties' arguments on this point is that the (a)(3) exclusion language must either apply to both sections 1170.03 and 1170.95 or to neither. The premise is not correct. Whether a later statute makes an implied exception to an earlier one, i.e., partial repeal by implication, is a determination made statute by statute. Section 1170.95 meets the *Pacific Palisades* criteria in full. Section 1170.03 does not even come close.

CONCLUSION

The motion should be dismissed for lack of jurisdiction.

Dated: July 7, 2022

Respectfully submitted,

By: 
KENT SCHEIDEGGER
Attorney for Amici Curiae

PROOF OF SERVICE

1. I am over the age of 18 and not a party to this cause. I am employed in the county where the mailing occurred. The following facts are within my personal knowledge.

2. My business address is 2131 L Street, Sacramento, CA 95816.

On July 7, 2022, I served the foregoing document entitled:

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN OPPOSITION TO RESENTENCING; AMICUS CURIAE BRIEF BY CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION AND CRIMINAL JUSTICE LEGAL FOUNDATION

on each person named below by sending a digital copy in PDF format via electronic mail to the email address indicated:

3. Name and address of each person served:

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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. Executed on July 7, 2022, at Sacramento, California.

Kent S. Scheidegger
KENT S. SCHEIDEGGER