

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF
CALIFORNIA

v.

THE SUPERIOR COURT OF THE
COUNTY OF SAN BERNARDINO,
Respondent

PHILLIP JONES

Real Party in Interest

No. S289184

Court of Appeal Case
No. E085239

San Bernardino
County Superior
Court Case Nos.:
WHCSB2400033 &
FSB16842

Petition for Review

Of the decision of the Fourth District Court of Appeal, Div. Two
Denying the petition for writ of mandate and request for stay
directed to the Superior Court of San Bernardino County, the
Honorable Gregory S. Tavill, Judge

ANSWER TO PETITION FOR REVIEW

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February 28, 2025

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INTRODUCTION

Mr. Jones is a Black man who has served more than 27 years of a 40-year sentence imposed after his first adult conviction for an alleged armed bank robbery. The robbery lasted about 3 minutes, and no one was injured. That forty-year sentence is more than four times longer than the *harshest* sentence imposed on other “similarly-situated” white men in San Bernardino County. At sentencing, the trial court judge told Mr. Jones and his Black co-defendant that their crime was “evil, heinous, and societally unforgiveable.” Such language echoes Justice Evans’ summary of the “super-predator” myth prevalent during the years in which Mr. Jones was tried, which dehumanized young Black men and labelled them as “predatory, remorseless and irredeemable.” (*People v. Hardin* (2024) 15 Cal.5th 834, 907.)

The Racial Justice Act (“RJA”) sought to fix a criminal justice system that was procedurally ineffective at addressing a plague of racial bias. This case is a perfect example of the harm of implicit bias that prior precedent simply conceded was “an inevitable part of our criminal justice system,” but which the Act seeks to redress. (A.B. 2542, Stats. 2020, Chap. 317, § 2, subd. (f), citing *McCleskey v. Kemp* (1987) 481 U.S. 279, 295-99, 312 (*McCleskey*).)

In his petition, Mr. Jones also presented evidence of preemptory challenges used by the prosecutor to strike Black jurors for stated reasons that are now considered presumptively

invalid. He detailed how he was forced to wear an orange jail jumpsuit throughout the trial after his trial attorney provided wholly inappropriate and ill-fitting court clothes. Furthermore, he provided evidence of disparate charging and sentencing in San Bernardino County, including data from the California Department of Corrections and Rehabilitation to show that nearly half of all people imprisoned out of our county for robbery are Black.

The superior court carefully and conservatively weighed Mr. Jones' RJA habeas claims. Indeed, in a decision Mr. Jones may challenge later, the court found that he had failed to meet his burden on most of the claims he pleaded. However, using the standard defined in Penal Code¹ section 745, the court found that Mr. Jones had established a prima facie showing that the sentencing court, and his trial counsel, had exhibited bias.

The San Bernardino District Attorney now prematurely asks this Court to step in and overturn the lower court's decision before Mr. Jones has pled his entire case.

The District Attorney wants this Court to disregard the plain language of subdivision (h)(2) and to apply the "heavy burden" declared in *Duvall*. Such an approach would erect the same procedural barriers the Legislature sought to eliminate under the RJA and leave previously convicted defendants subject

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

to racial bias while trial court defendants enjoy the lower prima facie standard announced in section 745.

Such a reading is abhorrent to the plain language of the statute and the Legislative intent of the RJA. This Court should decline review and allow Mr. Jones to return to the trial court to seek the relief he has long deserved.

ISSUE PRESENTED FOR REVIEW

Whether the plain language of section 745, subdivision (h), which defines “prima facie” showing for purposes of an RJA violation, applies to those seeking post-conviction relief.

REASONS FOR DENYING REVIEW

This Court exists to resolve “issues of statewide importance.” (*So. Cal. Ch. of Associated Builders and Contractors, Inc., Joint Apprenticeship Com. v. Cal. Apprenticeship Council* (1992) 4 Cal.4th 422, 431 fn. 3, citation omitted.) Sometimes, this means taking up questions upon which the lower appellate courts cannot agree, offering “uniformity of decision;” other times, it is simply about answering the ‘big question’ of the day, an “important question of law.” (Cal. Rules of Court, rule 8.500(b)(1).) Either way, review is appropriate when the legal landscape requires this Court’s guiding hand.

The decision by the superior court in this case, supported by a summary denial of the District Attorney’s challenge in the Court of Appeal, offers nothing of the kind. The superior court followed the plain language of section 745. The ruling does *not* contradict any published caselaw, nor is there a ‘big question’ presented when a court follows the plain language of the statute, which clearly defines the prima facie standard in an RJA petition.

In this case, and in many of cases in which they have litigated RJA claims, the San Bernardino District Attorney’s Office refuses to acknowledge what the Legislature has declared – that racial bias has infected California’s criminal legal system for far too long. In their Petition for Review, the District Attorney asks this Court to join them in their “fear of too much justice.” (*McCleskey, supra*, 481 U.S. at p. 339 (J. Brennan, dis. opn.)) And

yet, the “fear of too much justice” is exactly what the RJA sought to eradicate. (*Young v. Superior Court* (2022) 79 Cal.App.5th 138, 153 [“In the Racial Justice Act, [the Legislature] enacted a statutory scheme . . . [that] appears to be a direct response to the result reached in *McCleskey*.”].) The RJA was passed to remedy not just the harm to defendants of color, but also to remedy the harm that has, for far too long, plagued our criminal justice system. (See AB 2542, Stats. 2020, Ch. 317, § 2, subd. (i); [“It is the intent of the Legislature ... to remedy the harm to the defendant’s case and to the integrity of the judicial system.”].)

With this in mind, this Court should decline the District Attorney’s invitation to erect new barriers for those seeking relief under the RJA and allow Mr. Jones’ claims to be litigated without further delay.

STATEMENT OF THE CASE

In 1997, the San Bernardino District Attorney’s Office charged Mr. Jones and a co-defendant, both Black men, with 4 counts of second-degree robbery under section 211 and three counts of false imprisonment under section 236 after an alleged armed bank robbery. (CT 36-42.) Each count included a firearm enhancement under section 12022.5, subd. (a). (*Ibid.*) The multiple counts were due to the number of employees working at the bank that day. (RT 57-58 .) No one was injured in the short incident, and one of the witnesses testified that Mr. Jones had not been armed. (RT 82, 94-95, 110-112, 115-116, 124.)

Prior to trial, the prosecution conveyed an offer of 20 years. (See Writ of Mandate, Exhibit 3: Amended Petition for Writ of Habeas Corpus, Declaration of Mr. Jones, p. 119-120. [Writ of Mandate, hereafter WM].) Trial counsel failed to inform Mr. Jones of the maximum exposure in the case. (*Ibid.*)

During the trial, Mr. Jones was forced to wear an orange jail jumpsuit after counsel failed to provide plain clothes. (RT 37-38; WM Exhibit 3: 119-120.) The jury convicted the two men on all counts. (CT 238-241, 316-345.) It was Mr. Jones' first adult criminal conviction at the age of 28. (RT 662.) At the sentencing hearing, the trial judge stated that he intended to sentence the two Black men to "the maximum terms allowable . . . based upon heinous, evil and societally unforgiveable crimes committed in this matter." (RT 669.) Furthermore, Mr. Jones remembers the judge calling the two of them "monsters" off the record. (See WM Exhibit 3: 119-120.)

On March 28, 2000, the Court of Appeal affirmed the judgment, and the decision was final on July 3, 2000. (See WM Exhibit 2: Court Orders at p. 16.) On January 26, 2024, Mr. Jones filed, pro per, a "Motion for Relief Due to Discrimination CRJA Penal Code 745(a)." (*Ibid.*) On February 22, 2024, the trial court ordered a hearing and appointed the Public Defender's office. (*Id.* at p. 26.) At the hearing on April 4, 2024, the trial court granted leave to the Public Defender to file an amended petition. (*Id.* at p. 28.)

In the Amended Petition, filed on June 11, 2024, Mr. Jones raised claims of ineffective assistance of counsel and several RJA claims.

He cited the trial judge's statements that the two Black defendants were "monsters" who had committed "heinous, evil and societally unforgiveable" crimes (WM Exhibit 3: 100-102) as evidence of implicit bias under section 745, subdivision (a)(1), given the fervent stereotypes about young Black men in the 1990s as "super-predators." (See, e.g. *People v. Hardin*, *supra*, 15 Cal. 5th at 904 (Evans, J., dissenting).) Mr. Jones also argued that trial counsel exhibited bias under subdivision (a)(1). (WM Exhibit 3: 102.) Mr. Jones' trial counsel – who was later disbarred and found ineffective in a murder trial– failed to regularly communicate with Mr. Jones, failed to diligently investigate the case, failed to convey the maximum exposure to Mr. Jones, told Mr. Jones that he was "just along for the ride," and, at the last minute, provided trial clothes to Mr. Jones that were too tight and looked like a "pimp' Halloween costume." (WM Exhibit 3: 110-114; 119-120.)

Mr. Jones further noted that the Deputy District Attorney in the case regularly struck Black people from the jury pool, and when challenged by co-defendant's counsel under *Batson-Wheeler*, gave reasons that are now considered presumptively invalid and biased under Code of Civil Procedure section 231.7. (WM Exhibit 3: 103-104.)

Finally, under section 745 subdivisions (a)(3) and (a)(4), Mr. Jones provided evidence showing that, despite a total

population of under 10 percent of San Bernardino, Black people nonetheless make up nearly half of the CDCR prisoners serving a robbery conviction out of this county. (WM Exhibit 3: 83, 105-110.) Mr. Jones also identified eight white male defendants from the 1990s -- all around the same age as Mr. Jones at the time of the crime; and accused of armed robbery, sometimes with much more serious allegations -- who were offered significantly lower plea deals than Mr. Jones ever was. (WM Exhibit 3: 106-108.) The longest sentence of any of these white men was 9 years. (*Ibid.*)

After considering Mr. Jones' writ and the informal briefing that followed, the superior court denied Mr. Jones' claims of ineffectiveness and several of his RJA claims. Using the prima facie standard announced in section 745, however, the superior court issued an Order to Show Cause for Mr. Jones' RJA claims regarding the sentencing judge's statements and the actions of Mr. Jones' trial attorney. (PFR Attachment 2; Attachment 3: 31-34; 18-19.) The court denied Mr. Jones' RJA disparity claims without prejudice. (PFR Attachment 3: 33.)

On December 23, 2024, the District Attorney filed a Writ of Mandate in the Fourth District Court of Appeal, Division Two, challenging the superior court's use of the prima facie standard defined in section 745, subdivision (h)(2). The Court of Appeal summarily denied the writ on January 31, 2024. (PFR Attachment 1.) The District Attorney submitted a timely Petition for Review, and Stay of Proceedings, to which Mr. Jones now

submits this timely answer. (Cal. Rules of Court, rule 8.500(e)(1) & (4).)

ARGUMENT

The District Attorney asks this Court to overrule the superior court's correct interpretation of the plain language of section 745 in favor of a reading of that statute that is convoluted, illogical, against the standard rules of statutory interpretation, and against legislative intent. Below, Mr. Jones discusses the error in this reasoning.

I. THE PRIMA FACIE STANDARD DEFINED IN SECTION 745 APPLIES TO ALL RACIAL JUSTICE ACT CLAIMS, REGARDLESS OF PROCEDURAL POSTURE.

The Legislature made clear that racial discrimination to any degree within our criminal justice system is intolerable (“Some toxins can be deadly in small doses”), and “undermines public confidence in the fairness of the state’s system of justice and deprives Californians of equal justice under the law.” (AB 2542, Stats 2020, Ch. 317, § 2, subd. (a).) Furthermore, the Legislature amended section 745 through AB 256 to ensure that past harms, as well as current ones, are remedied. Therefore, there is no doubt that the RJA is a “remedial” statute, that courts “should liberally construe . . . in favor of [its] protective purpose.” (*Pineda v. Williams-Sonoma Stores, Inc.* (2011) 51 Cal.4th 524, 532; accord *In re J.S.* (2024) 100 Cal.App.5th 246, 253; *People v. Zeigler* (2012) 211 Cal.App.4th 638, 658.) Given the importance of eliminating bias from the criminal justice system,

the RJA must be interpreted to effectuate “the Act’s structure and purpose.” (*Finley v. Superior Court* (2023) 95 Cal.App.5th 12, 22.) That purpose is to eliminate racial bias and remove procedural barriers to relief. (AB 2542, Stats. 2022, Ch. 739, § 2, subd. (d)-(j).) Here, the District Attorney asks this Court not to liberally construe the RJA and instead to explicitly roll it back – contrary to the plain language and legislative intent.

The District Attorney asks this Court to intercede and create new barriers for habeas petitioners seeking RJA relief. Specifically, the District Attorney asks this Court to supplant the Legislature’s plain language with standards announced in case law that contradict legislative intent. This Court should reject such an attempt to delay justice and allow Mr. Jones to continue his litigation in the trial court.

Section 745, subdivision (h)(2) plainly states:

As used in this section, the following definitions apply: ...

(2) ‘Prima facie showing’ means that the defendant produces facts, that, if true, establish that there is a substantial likelihood that a violation of subdivision (a) occurred.

And subdivision (j) applies the entirety of section 745 to petitioners like Mr. Jones:

(j) *This section* applies as follows: . . .

(3) Commencing January 1, 2024, *to all cases* in which, at the time of the filing of a petition . . . the petitioner is currently serving a sentence in state prison . . .

(Italics added.) Furthermore, section 1473, subdivision (e) incorporates the language of section 745 into the habeas procedure for a petition alleging RJA claims: “The court shall

review a petition raising a claim pursuant to Section 745 and shall determine if the petitioner has made a prima facie showing of entitlement to relief.” (§ 1473, subd. (e); WM Exhibit 5: 238-239 [trial court explains “this is where I got when we started – 1473(e) incorporates 745. It’s plain. It’s in there. If you go to 745, you’ve got the lower standard.”])

The District Attorney claims that the plain mandate of the statutes should be overlooked, and this Court should instead apply the prima facie showing announced in *Duvall*. They assert that the plain definition of a prima facie showing in the statute applies “only. . . to motions in the trial court on nonfinal cases.” (PFR 15.) They come to this conclusion despite the fact that the definition in section 745 subd. (h)(2) contains no such restriction, and despite the fact that subdivision (j) explicitly provides that section 745 applies “(1) To all cases in which judgement is not final,” *as well as* all petitioners filing under section 1473, subdivision (e). (§ 745, subds. (j)(1)-(5).) The District Attorney’s argument ignores the long-settled rule of statutory interpretation which gives the specific precedence over the general. (See, e.g. *Stone Street Capital, LLC v. California State Lottery Com.* (2008) 165 Cal.App.4th 109. 121 [“[T]he rule in California is that a specific statute controls over a general statute, regardless of which statute was passed earlier”], citation omitted.) And it is illogical in application.

The illogical nature of the District Attorney’s argument is highlighted when applied to the entirety of subdivision (h). Section 745, subdivision (h)’s definitions include a list of critical

terms for the RJA – “racially discriminatory language,” “similarly-situated,” etc. And yet, the District Attorney only singles out the prima facie showing as inapplicable to post-conviction proceedings. There is nothing in the statute or legislative intent that would extract subdivision (h)(2) from post-conviction proceedings while retaining all other relevant definitions for RJA proceedings.

Such “picking and choosing” as proposed by the District Attorney would also erode the very core of the Act’s purpose. For example, the District Attorney directs this Court’s attention to subdivision (c) in defense of its statutory argument. Subdivision (c) requires an evidentiary hearing after the filing of a motion in the trial court if “the defendant makes a prima facie showing of a violation[.]” The District Attorney inexplicably argues (c) thus supports that the prima facie definition is only applicable in trial court motions, not petitions. But subdivision (c)’s plain language has no bearing on whether the prima facie standard defined in subdivision (h)(2) applies only to motions made in the trial court. Furthermore, if subdivision (c) did not apply in post-conviction proceedings, then post-conviction defendants would not be entitled to the benefits of subdivision (c)(2)—namely that a “defendant does not need to prove intentional discrimination.” If this Court finds that subd. (c) parses out rights to defendants that it does not afford to petitioners, the next logical step would be that a petitioner *does* in fact need to prove intentional discrimination, while a trial court defendant does not.

Such a reading is an absurd result, given that the very core of the RJA is to target both intentional and unintentional bias:

Whatever may be uncertain about the Racial Justice Act, there are a few things that are abundantly clear. Perhaps most obvious is that the Racial Justice Act was enacted to address much more than purposeful discrimination based on race. Indeed, the primary motivation for the legislation was the failure of the judicial system to afford meaningful relief to victims of unintentional but *implicit* bias.

(*Bonds v. Superior Court* (2024) 99 Cal.App.5th 821, 828 [italics in original, citing AB 2542, Stats. 2020, ch. 317, § 2 subd. (i).])

That the Legislature sought to deviate from standard habeas procedure and provide easier access to relief for RJA petitioners is also clear from the language of California Penal Code section 1473, subdivision (e). The statute sets a unique standard for appointment of counsel on an RJA habeas petition; requires an evidentiary hearing upon the establishment of a prima facie showing; provides counsel leave to amend a pro per RJA petition after appointment of counsel; and allows a petitioner to appear remotely at all stages of the proceedings. (§ 1473, subd. (e).) That the Legislature intended the lower standard for a prima facie showing also apply is consistent with these actions.

Furthermore, the District Attorney's interpretation ignores subsection (b) which makes clear that the Legislature intended the procedures announced throughout section 745 to apply to both motions in the trial court, as well as habeas proceedings and postconviction section 1473.7 vacatur motions:

(b) A defendant may file a motion pursuant to this section, *or a petition for writ of habeas corpus or a motion under Section 1473.7*, in a court of competent jurisdiction, alleging a violation of subdivision (a). ... If the *motion* is based in whole or in part on conduct or statements by the judge, the judge shall disqualify themselves from any further proceedings under this section.

(Italics added.)

Of note is the use of the word “motion,” and that word alone, at the end of the paragraph. In this section, the Legislature clearly intended for the recusal of a judge to apply both in a trial context, as well as a postconviction context, and does not seek to create a different standard. There is no logical reason why a judge would be required to recuse themselves from a motion in the trial court, or a “motion” under PC § 1437.7 *but not* from a habeas proceeding in superior court.

The “picking and choosing” the District Attorney asks this Court to do is illogical and unworkable. The Legislature would have directed which definitions under subdivision (h) are applicable to post-conviction proceedings if it had intended to parse any of them out. Instead, the Legislature declared that section 745 – in its entirety – applies to post-conviction proceedings according to the retroactive application timelines detailed in (j). The District Attorney, though, argues to the contrary – asserting that erecting higher barriers to relief for habeas petitioners is “consistent with the RJA’s statutory scheme of treating final cases differently than nonfinal ones.” (PFR 16.) They cite to no authority for such a statement that is blatantly in opposition to the Legislature’s stated intent. (AB 256, Stats.

2022, Ch. 739, Section 1 .) As one Court of Appeal has held, “Nothing in the statute indicates the legislature intended to place a more onerous burden on defendant’s whose convictions are final and potentially more vulnerable to the very problems the Act aims to remedy.” (*People v. Serrano* (2024) 106 Cal.App.5th 276, 288.) Therefore, this Court should faithfully implement the RJA and decline the District Attorney’s invitation to erect new barriers to eliminating racial bias.

CONCLUSION

Mr. Jones has been incarcerated for almost three decades despite racial bias impacting his case. The comments of the sentencing judge and the behavior of the trial attorney are examples of how stereotypes about “irredeemable” young Black men plagued the system during the prosecution of Mr. Jones’ case. This is precisely the kind of harm the Legislature sought to remedy in passing AB 256, which made the RJA retroactive.

The trial court correctly applied the statute, and the Court of Appeal rightfully summarily denied the District Attorney’s petition. The District Attorney requests that this Court intervene and hold that the plain language of section 745 somehow does not apply to Mr. Jones simply because he faced discrimination in the past, rather than the present. Such a ruling would significantly curtail “equal access to justice” and stymie the Act’s purpose of remedying the pervasive harm to the system.

There is no conflict here requiring this Court to bring “uniformity of decision,” nor is there an “important question of

law” which needs resolution. (Cal. Rules of Court, rule 8.500(b)(1).) The Court should allow Mr. Jones to continue to seek a just remedy in the superior court without intervention.

Respectfully submitted,

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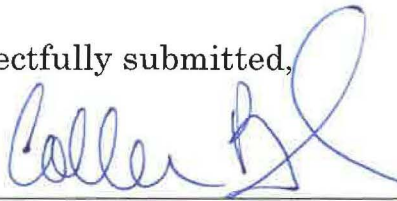
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CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, rule 8.504(d)(1), I hereby certify that this filing contains 3,634 words, including footnotes, based on the count provided by Microsoft Word immediately prior to printing of the document. Pursuant to California Rules of Court, rules 8.74(b)(1)-(2) and 8.204(b)(4)-(5), the document has been formatted in a minimum of one-and-a-half line spacing and at least a 13-point font size.

Respectfully submitted,

By: _____

A handwritten signature in blue ink, appearing to read 'Colleen Bazdarich', is written over a horizontal line.

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DECLARATION OF ELECTRONIC SERVICE

I, the undersigned, am a citizen of the United States, over 18 years of age, and not a party to this action. I hereby certify that, on or before this day, I caused a true and accurate copy of the foregoing APPELLANT'S ANSWER TO THE PETITION FOR REVIEW to be submitted electronically to the Court via TrueFiling and served upon each of the following by the method indicated:

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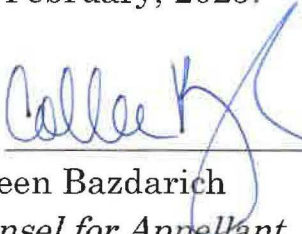
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Executed under penalty of perjury, pursuant to the laws of the State of California, this 28th day of February, 2025.

By: 

Colleen Bazdarich
Counsel for Appellant

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STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PEOPLE v. S.C.
(JONES)**

Case Number: **S289184**

Lower Court Case Number: **E085239**

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Bazdarich , Colleen (297880)

Last Name, First Name (PNum)

