No. S285006

In the Supreme Court of the State of California

IN RE EUGENE THOMPSON,
ON HABEAS CORPUS.

Appellate District, Case No. YA045468
Los Angeles County Superior Court, Case No.
The Honorable Francis J. Hourigan, III, Judge

INFORMAL RESPONSE

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December 23, 2024

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INFORMAL RESPONSE

Respondent submits the following informal response to the Petition for Writ of Habeas Corpus ("petition"), pursuant to this Court's September 16, 2024, Order and California Rules of Court, rule 8.385(b).

This Court should summarily deny the petition without issuing an order to show cause. Petitioner's claims alleging trial counsel was ineffective for failing to present mitigating evidence, his sentence constituted cruel and unusual punishment based on a 2020 appellate decision, and that he is subject to disparate treatment in violation of the equal protection clause because he cannot be resentenced under Penal Code[1] section 1172.75 are all untimely. Also, his cruel and unusual punishment claim is barred because it was raised and rejected on appeal. Alternatively, the petition should be summarily denied because petitioner has failed to establish a prima facie case for relief as to any of his claims.

PROCEDURAL HISTORY

In 2001, a jury convicted petitioner of attempted carjacking (§§ 664/215, subd. (a); count 1) and second degree robbery (§ 211; count 2). The trial court found that petitioner had incurred three prior serious or violent strike convictions (§§ 667, subds. (b)-(i), 1170.12), three prior serious felony convictions (§ 667, subds. (a)), and had served three prior prison terms (§ 667.5). The court sentenced appellant to a total term of 40 years to life. As to count

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

2, the court imposed a term of 25 years to life pursuant to the Three Strikes law, plus three five-year terms for the prior serious felony convictions. The court struck the prior prison term enhancements and stayed punishment on count 1. (1CT 79-80; 102-104.)

Petitioner appealed. In 2002, the Court of Appeal affirmed the judgment, rejecting petitioner's claims that trial court abused its discretion in failing to strike two or more of strike convictions, and that his sentence constituted cruel and unusual punishment. (*People v. Thompson* (Jan. 15, 2002, B149398) [nonpub. opn.] ["Opn."].)

On July 8, 2010, petitioner filed a habeas petition in the Los Angeles County Superior Court. That petition was denied on November 16, 2010. The trial court denied petitioner's claim that trial counsel was ineffective for failing to hire a PCP expert and to interview witnesses who would have testified that they gave PCP to petitioner, finding petitioner failed to show deficient performance or resulting prejudice.[2]

On November 23, 2020, petitioner filed another habeas petition in the superior court. The superior court docket shows that in December 2020, the petition was forwarded to the "writs center." No additional information regarding that habeas petition is reflected in the docket.

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[2] This information regarding petitioner's habeas petitions filed in the superior court is reflected in the superior court's docket.

On May 5, 2023, petitioner, through current counsel (the Stanford Three Strike Project) filed a habeas petition in the superior court, asserting the first three claims raised in the instant petition. On June 2, 2023, the superior court denied the petition. The court explained its reasons, stating the petition was not on a required form and was incomplete, petitioner failed to establish a prima facie case for relief as to his claims, petitioner failed to explain his significant delay in seeking habeas relief, the court lacked jurisdiction to grant a resentencing hearing, petitioner presented claims that had been raised and rejected in a prior habeas petition, and petitioner had failed to present his claims in his prior habeas petitions.

On April 16, 2024, petitioner's current counsel filed a habeas petition in the California Court of Appeal, case number B336633, raising the same four claims he presents in the instant petition. On April 19, 2024, the Court of Appeal denied the petition, reasoning: (1) petitioner's claim that counsel was ineffective for failing to present mitigating evidence at his 2001 sentencing hearing regarding his severe mental illness and severe childhood trauma could have been, but was not raised on appeal; (2) the ineffective assistance of counsel claim was not supported by an adequate record for review; (3) petitioner failed to establish a prima facie case that his sentence constituted cruel or unusual punishment or that he had been denied equal protection of law; and (4) petitioner had no standing to seek relief pursuant to section 1172.1 on his own behalf.

Petitioner filed the instant petition for writ of habeas corpus on May 13, 2024. This Court directed respondent to file an informal response.

STATEMENT OF FACTS

On September 10, 2000, around 12:30 a.m., petitioner approached Marsha Matayoshi, who was putting gas into her car at a gas station and asked if she had money. She replied she did not. Petitioner sat in the driver's seat of Matayoshi's car and picked up her purse and wallet. Matayoshi grabbed her purse and struggled with petitioner for control of it. Petitioner asked Matayoshi where her car keys were. Matayoshi grabbed her keys from the console. Petitioner tried to grab the keys, and she began honking the car horn. (Opn. at 1-2.)

A man at the gas station yelled, "Hey" and walked toward the car. Petitioner stood up, punched Matayoshi in the face, and ran away. Police officers chased petitioner, who was carrying Matayoshi's purse, and arrested him. Petitioner's defense was that he had unknowingly smoked a cigarette laced with PCP, became confused, and believed Matayoshi's car and purse belonged to him. (Opn. at 2.)

ARGUMENT

I. GENERAL PRINCIPLES REGARDING INFORMAL RESPONSES

The purpose of an informal response is to assist the court in determining whether a habeas petition states a prima facie basis for relief and whether any of the claims are procedurally barred. (*People v. Romero* (1994) 8 Cal.4th 728, 737; *In re Player* (2007) 146 Cal.App.4th 813, 823.) A petition which does not state a

prima facie case for relief must be dismissed. (*In re Clark* (1993) 5 Cal.4th 750, 781.)

In order to plead a prima facie case for relief, a petitioner must "state fully and with particularity the facts on which relief is sought" and "include copies of reasonably available documentary evidence supporting the claim, including pertinent portions of trial transcripts and affidavits or declarations." (*People v. Duvall* (1995) 9 Cal.4th 464, 474.) A reviewing court, in determining whether a petition states a prima facie case for relief, must ask "whether, assuming the petition's factual allegations are true, the petitioner would be entitled to relief?" (*Id.* at pp. 474-475.) However, a court does not accept conclusory allegations. (*Id.* at p. 474.) In habeas proceedings, all presumptions favor the truth, accuracy, and fairness of the conviction and sentence, and the defendant bears the burden of overturning these presumptions. (*Ibid.*)

An informal response may be used to demonstrate that habeas claims are meritless and should be summarily rejected without requiring formal pleading. (*Romero, supra*, 9 Cal.4th at p. 742.) A court cannot grant habeas relief in response to the filing of an informal response. Before a court can grant habeas relief, it must issue an order to show cause and give the opposing party an opportunity to file a formal return to the petition. (*Id.* at pp. 740-742; *In re Olson* (2007) 149 Cal.App.4th 790, 800.)

II. PETITIONER'S CLAIMS SHOULD BE SUMMARILY DISMISSED BASED ON PROCEDURAL BARS

The petition should be summarily dismissed because three of petitioner's claims are procedurally barred.

A. Petitioner's claims of ineffective assistance of counsel for failing to investigate and present mitigating evidence, cruel and unusual punishment, and an equal protection violation are untimely

"A criminal defendant mounting a collateral attack on a final judgment of conviction must do so in a timely manner. 'It has long been required that a petitioner explain and justify any significant delay in seeking habeas corpus relief.'" (*In re Reno* (2012) 55 Cal.4th 428, 459, quoting *In re Clark*, *supra*, 5 Cal.4th at p. 765.) Untimely claims "are as a general matter barred from consideration." (*Id.* at p. 452.) Successive petitions "waste scarce judicial resources." (*Id.* at pp. 452-453.) Thus, the petitioner "'bears the initial burden of alleging the facts on which he relies to explain and justify delay and/or a successive petition.'" (*Id.* at p. 455, quoting *Clark*, *supra*, 5 Cal.4th at p. 798, fn. 35.)

Reno explained:

> Our rules establish a three-level analysis for assessing whether claims in a petition for a writ of habeas corpus have been timely filed. First, a claim must be presented without substantial delay. Second, if a petitioner raises a claim after a substantial delay, we will nevertheless consider it on its merits if the petitioner can demonstrate good cause for the delay. Third, we will consider the merits of a claim presented after a substantial delay without good cause if it falls under one of four narrow exceptions: "(i) that error of constitutional magnitude led to a trial that was so fundamentally unfair that absent the error no reasonable judge or jury would have convicted the petitioner; (ii) that the petitioner is actually innocent of the crime or crimes of which he or she was convicted; (iii) that the death penalty was imposed by a sentencing authority that had such a grossly misleading profile of the petitioner before it that, absent the trial error or

> omission, no reasonable judge or jury would have imposed a sentence of death; or (iv) that the petitioner was convicted or sentenced under an invalid statute." (*In re Robbins* [(1998)] 18 Cal.4th [770,] 780-781 [(*Robbins*)].) The petitioner bears the burden to plead and then prove all of the relevant allegations. (*Ibid.*)

(*Reno, supra,* 55 Cal.4th at p. 460.)

"Substantial delay is measured from the time the petitioner or his or her counsel knew, or reasonably should have known, of the information offered in support of the claim and the legal basis for the claim." (*Robbins, supra,* 18 Cal.4th at p. 780; see also *Reno, supra,* 55 Cal.4th at p. 461; *In re Sanders* (1999) 21 Cal.4th 697, 704.) "That time may be as early as the date of conviction." (*Clark, supra,* 5 Cal.4th at p. 765, fn. 5.) "A petitioner must allege, with specificity, facts showing when information offered in support of the claim was obtained." (*Reno, supra,* 55 Cal.4th at p. 461.) In California, a general "reasonableness" standard applies in determining whether a habeas petition is timely filed. (*Reno, supra,* 55 Cal.4th at p. 461.)

Petitioner was convicted on January 26, 2001. (1CT 79-80.) On March 22, 2001, the trial court found true that petitioner had three prior strike convictions. That day, the court denied petitioner's motion to dismiss his strike convictions and sentenced him. (1CT 18, 91, 101-104.)

Petitioner's claim that counsel was ineffective for failing to introduce mitigating evidence at his 2001 sentencing could have been raised shortly after that hearing. Petitioner claims that his sentence constitutes cruel and unusual punishment under *People v. Avila* (2020) 57 Cal.App.5th 1134, which was filed on

November 30, 2020. Petitioner's equal protection claim is based on the enactment of section 1172.75, which became effective on November 1, 2022.

Petitioner first presented these three claims in his habeas petition filed in the superior court on May 5, 2023. He delayed of over two decades in presenting his ineffective assistance of counsel claim, about two and a half years in presenting his cruel and unusual punishment claim based on *Avila*, and about six months before raising his equal protection claim. Petitioner has substantially delayed presenting these claims.

Petitioner asserts his mental illness, lack of education, lack of access to current legal materials, and ignorance of the law constitutes good cause for his delay in presenting these claims. (Pet. at 15-16.) These allegations fall short of meeting petitioner's burden of demonstrating good cause for delaying presenting his claims by alleging, with specificity, facts showing good cause. (*Reno*, *supra*, 55 Cal.4th at p. 460.)

Petitioner has simply made conclusory allegations of good cause, without providing specific factual allegations. For example, he simply asserts he had no regular access to legal materials. (Pet. at 16.) But he has not specified which legal materials were available to him, or how his access to those materials was limited. (Compare *In re Lucero* (2011) 200 Cal.App.4th 38, 44-45 [10 month delay not unreasonable considering petitioner's explanation that "he is a layperson with limited access to a prison law library that does not receive newly published cases for several months"].) Moreover, petitioner has

not specified what mental illness or illnesses he had, nor alleged how such illnesses caused him to be unable to timely raise his habeas claims.

Despite his allegations of good cause for delay, petitioner was able to file a habeas petition in the superior court in July 2010, raising a claim that trial counsel was ineffective for failing to present a PCP expert and witnesses to support his defense at trial that someone gave him a cigarette laced with PCP. Based on information in the superior court docket reflecting that an informal response was to be served on petitioner, it appears he filed that motion himself. So, as of July 2010, petitioner was clearly aware of how to raise an ineffective assistance of counsel claim, and at that time he was aware that counsel had not presented mitigating evidence at his sentencing hearing his childhood trauma and mental illness (since he was present at his 2001 sentencing).

Finally, petitioner has not asserted when it was that counsel who filed the instant petition (and related petitions in the superior court and Court of Appeal) started to represent him. That is, all of petitioner's claims of good cause for delay pertain to petitioner himself (his mental illness or lack of education or legal knowledge), and at most would constitute good cause for the period petitioner was not represented by counsel. None of these allegations of good cause apply to counsel. Thus, petitioner has not demonstrated any good cause for any delay during the time petitioner was represented by counsel.

Petitioner has not alleged nor demonstrated good cause for his delay in raising his claims of ineffective assistance of counsel, cruel and unusual punishment, or an equal protection violation. Petitioner also has not alleged that any of the applicable exceptions to the time bar set forth in *Reno* apply. As such, these claim should be summarily dismissed as untimely.

B. Additional procedural bar

Petitioner's cruel and unusual punishment claim is procedurally barred because he raised that claim on appeal. (Opn. at 4-7.) Issues raised on appeal cannot be revisited on habeas corpus. (*In re Waltreus* (1965) 62 Cal.2d 218, 225.) Though petitioner has re-raised this claim based on *Avila*, that case simply applied well-established precedent regarding cruel and unusual punishment, though it did add that recent changes in California's sentencing law added further support for its decision. (*Avila, supra,* 57 Cal.App.5th at p. 1151.)

III. PETITIONER'S CLAIMS SHOULD BE SUMMARILY DENIED BECAUSE HE DOES NOT ESTABLISH A PRIMA FACIE CASE FOR RELIEF

This Court should summarily deny all of petitioner's claims on the basis that petitioner did not state a prima facie case for relief. It is settled that "conclusory allegations without specific factual allegations do not warrant relief." (*Reno, supra,* 55 Cal.4th at p. 493; *Duvall, supra,* 9 Cal.4th at p. 474.) A petitioner must set forth specific facts which, if true, would require issuance of the writ. (*People v. Gonzalez* (1990) 51 Cal.3d 1179, 1258.)

"Because a petition for writ of habeas corpus seeks to collaterally attack a presumptively final criminal judgment, the

petitioner bears a heavy burden initially to plead sufficient grounds for relief, and then later to prove them. 'For purposes of collateral attack, all presumptions favor the truth, accuracy, and fairness of the conviction and sentence; defendant thus must undertake the burden of overturning them. Society's interest in the finality of criminal proceedings so demands, and due process is not thereby offended.' [Citation.]" (*Duvall, supra,* 9 Cal.4th at p. 474.) Accordingly, this Court has required that any factual allegations advanced by a petitioner as grounds for habeas relief "should also be supported by '[reasonably available] documentary evidence and/or affidavits.'" (*In re Harris* (1993) 5 Cal.4th 813, 827, citing *Clark, supra,* 5 Cal.4th at p. 781, fn. 16.)

If no prima facie case for relief is stated, this Court will summarily deny the petition without issuing an order to show cause. (*Clark, supra,* 5 Cal.4th at p. 781, fn. 16.)

A. Ineffective assistance of counsel claim

Petitioner asserts his trial counsel rendered ineffective assistance by failing to present, at his 2001 sentencing hearing, mitigating evidence regarding his lifelong mental illness and severe childhood trauma. (Pet. at 29-37.) But he has failed to establish a prima facie case for habeas relief based on this claim.

Petitioner must demonstrate *both* that trial counsel's performance was deficient in that it fell below an objective standard of reasonableness under professional norms and resulting prejudice, and a reasonable probability that, but for counsel's deficient performance, the result would have been more favorable to petitioner. (*Strickland v. Washington* (1984) 466

U.S. 668, 687-696.) Reviewing courts defer to counsel's reasonable tactical decisions in examining a claim of ineffective assistance of counsel (see *People v. Wright* (1990) 52 Cal.3d 367, 412), and there is a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance" (*Strickland v. Washington, supra*, 466 U.S. at p. 689).

A court need not address both the performance and prejudice components of the *Strickland* standard, and may reject an ineffective assistance of counsel claim where the defendant makes an insufficient showing on one prong. (*Strickland v. Washington, supra*, 466 U.S. at p. 697; *In re Cox* (2003) 30 Cal.4th 974, 1019-1020.)

1. Petitioner has not provided reasonably available documentary evidence to support this claim

A petitioner's ineffective assistance of counsel claim must be supported by something more than speculation. (*People v. Karis* (1988) 46 Cal.3d 612, 656.) A petitioner must demonstrate deficient performance by showing his or her counsel had no tactical reason for his or her actions. (See *People v. Zapien* (1993) 4 Cal.4th 929, 980; *People v. Williams* (1998) 44 Cal.3d 883, 936.) This obligation, in the context of a petitioner's burden to plead a prima facie case for relief and include "reasonably available documentary evidence" in the petition (*Duvall, supra*, 9 Cal.4th at p. 474), requires the petitioner to provide a sworn statement from counsel disclosing whether counsel had tactical reasons for his or her actions or omissions (*In re Harris, supra*, 5 Cal.4th at p. 827 fn. 5; see *People v. Cox* (1991) 53 Cal.3d 618, 662, overruled

on another ground in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22 [claim of failure to call particular witness "must be supported by declarations or other proffered testimony establishing both the substance of the omitted evidence and its likelihood for exonerating the accused"]).

Petitioner has not provided this Court with "reasonably available documentary evidence" in the form of a sworn statement, made under penalty of perjury, from trial counsel disclosing whether he had tactical reasons for the alleged acts or omissions. Moreover, petitioner has not offered this Court any explanation for his failure to provide a declaration or affidavit from counsel.

Petitioner also has not presented any declaration nor cited any documents to support his claims of childhood trauma. In the petition, petitioner alleges he grew up in poverty, was beaten by his parents, and that he and his family was subjected to subjected to violence from a "fervently anti-Black gang." (Pet. at 22-25.) But in support of these allegations, he cites only a 2013 newspaper article reporting that two Latino gang members pleaded guilty to hate crimes against Blacks in Compton. (Pet. at 24.) Petitioner presents no declarations of himself or his family members describing his family's poverty or abuse inflicted by his family members. Petitioner has presented no explanation for failing to provide documents supporting his claim that his counsel failed to investigate and present mitigating evidence of his childhood trauma.

Accordingly, petitioner has failed to establish a prima facie case for relief as to his ineffective assistance of counsel claim must be rejected because he did not provide reasonably available documentary evidence to support it. (*People v. Duvall*, *supra*, 9 Cal.4th at p. 474; *In re Harris*, *supra*, 5 Cal.4th at p. 827, fn. 5; *People v. Karis*, *supra*, 46 Cal.3d at p. 656; see *People v. Watts* (2018) 22 Cal.App.5th 102, 118 [upholding denial of new trial motion based on ineffective assistance of counsel in part because defendant failed to provide declaration or affidavit from trial counsel].)

2. Petitioner failed to make a prima facie showing of ineffective assistance of counsel or resulting prejudice

Petitioner asserts counsel failed to investigate and present evidence that he had a serious mental illness. He asserts that documents available at the time of his 2001 sentencing, such as prison forms, showed he was taking psychotropic medication and had been placed in mental health treatment programs while incarcerated. Petitioner also asserts that if counsel had spoken to him, counsel would have discovered petitioner had a history of auditory hallucinations, had attempted suicide in 1997, and had a history of childhood abuse and neglect. (Pet. at 32-33.) But petitioner conclusory asserts counsel failed to review the available documents or speak to him. He has presented no evidence showing counsel was unaware of his mental health history, failed to review available documents, or failed to consult with him.

Moreover, petitioner must make a prima facie showing that counsel lacked a tactical or strategic reason for not presenting the mitigating evidence. Under *Strickland*, it is presumed that counsel's performance was adequate. (*Strickland v. Washington, supra*, 466 U.S. at p. 689.) An attorney's decision whether to call certain witnesses or present certain evidence is a matter of "trial tactics and strategy which a reviewing court generally may not second-guess. [Citation.]" (*People v. Mitcham* (1992) 1 Cal.4th 1027, 1059; *People v. Bolin* (1998) 18 Cal.4th 297, 334.)

Trial counsel filed a motion to dismiss petitioner's prior strike convictions, noting the court could look to factors including petitioner's background, the nature of the present offense, and other individualized considerations. Counsel argued petitioner's history of violent conduct was due to a serious drug problem. (1CT 93.) At the 2001 sentencing hearing counsel had several witnesses speak on petitioner's behalf in support of a motion to dismiss the strikes, including his parents. In sum, they all stated that though petitioner had spent time in prison, he was doing well, including working, and playing music for a gospel group, and that the instant crimes were due to use of drugs. (1RT 227-233.) Petitioner also spoke on his own behalf, explaining the circumstances of his three prior robbery convictions, that those offenses did not involve the use of weapons. (1RT 233-242.) Counsel also pointed out that petitioner's prior convictions for robberies were "strong-arm robberies" that did not involve any weapon use. (1RT 242.) Nothing shows that counsel lacked a tactical or strategic reason for presenting the specific mitigating

evidence presented to the sentencing court, and forgoing presenting evidence of his mental illness and childhood trauma.

Further, even if it is true, as petitioner asserts, that he suffered childhood trauma, including abuse inflicted by his parents, he has not specified how counsel would have introduced the mitigating evidence. For example, he has not specified which witnesses would have testified as to his asserted childhood abuse and neglect. And nothing shows that any witness, including petitioner, would have testified as to that abuse. Critically, petitioner told the court at sentencing, "I had a good life. I was brought up right by my parents. And I – nothing can be accused me [*sic*] – can be directed towards them as not raising me right, because they did." (1CT 234.) The record does not suggest that petitioner or any of the witnesses who testified at sentencing would have been willing to testify that petitioner had been abused by his parents as a child. Similarly, petitioner has not specified what specific evidence counsel could have or should have introduced to show he suffered a mental illness.

Petitioner also has failed to establish a prima facie case of prejudice. A petitioner must demonstrate that a witness whom counsel did not present was available and willing to testify at trial. (*In re Champion* (2014) 58 Cal.4th 965, 981, 999; *People v. Allison* (1989) 48 Cal.3d 879, 907; *People v. Williams* (1988) 44 Cal.3d 1127, 1153; see *Lincecum v. Collins* (9th Cir. 1992) 958 F.2d 1271, 1278 [petitioner failed to establish prejudice because he did not provide the likely substance of the witnesses' testimony, and there was no evidence that they were willing to

testify had they been contacted by his trial counsel]; *United States v. Harden* (9th Cir. 1988) 846 F.2d 1229, 1231-1232 [ineffective assistance of counsel claim rejected in part because there was no evidence that potential witness would have testified].)

As noted above, several witnesses testified at petitioner's sentencing. But petitioner has not demonstrated that any of them would have been willing to testify that petitioner's parents abused him or neglected him. And, as noted above, he has not specified what evidence of his mental illness should have been introduced at his sentencing.

B. Petitioner has not established a prima facie case for relief as to his cruel and unusual punishment claim

Petitioner asserts that his sentence constitutes cruel and unusual punishment under *Avila, supra,* 57 Cal.App.5th 1134, asserting the facts of his case (commitment offense, prior convictions, and "mitigators") are indistinguishable and noting *Avila*'s language that changes to sentencing laws lessening punishment amplify the disproportionality of his sentence. (Pet. at 38-45.) But petitioner has failed to make a prima facie case that his sentence is cruel and unusual punishment under *Avila*.

Petitioner's claim that his case is indistinguishable from *Avila* is clearly incorrect. In *Avila*, the defendant demanded money from two men who were selling fruit near a freeway off-ramp. (*Avila, supra,* 57 Cal.App.5th at p. 1139.) When the victims did not give the defendant any money, he stomped on their bags of oranges. (*Ibid.*) A jury convicted the defendant of

attempted robbery and attempted extortion. (*Ibid.*) He admitted he suffered two prior strike convictions. (*Id.* at p. 1140.) The trial court declined to dismiss the strikes, and sentenced the defendant to 25 years to life, plus 14 years. (*Id.* at pp. 1139-1140.)

Avila concluded the sentence was disproportionate to the offense and the offender, noting he would likely die in prison given his age. (*Avila, supra,* 57 Cal.App.5th at pp. 1144, 1149.) The court reasoned the current offenses were minor, unsophisticated, and nonviolent, and the defendant did not physical harm or threaten the victims. (*Id.* at p. 1146-1147.) *Avila* concluded that "[c]rushing oranges, even for the purpose of trying to steal or to extort money, is not constitutionally worthy of the sentence imposed where, as here, the defendant's criminal history on close examination cannot bear its share of such a sentence." (*Id.* at p. 1151.)

In contrast, here, the offenses did not involve simply crushing fruit. Petitioner entered the victim's car and tried to take her keys. He used force, struggling with the victim for control of her purse. He also committed violence, punching her in the face. (Opn. at 2-3.) Petitioner's crimes were much more dangerous and violent than Avila's crimes of destroying fruit. Further, in finding that the defendant's sentence constituted cruel and unusual punishment, *Avila* noted he would likely die in prison. (*Avila, supra,* 57 Cal.App.5th at pp. 1144, 1149.) In contrast, the California Department of Corrections and

Rehabilitation's website indicates petitioner's "parole eligible date" is September 2025 and that he is currently 59 years old.[3]

Moreover, that *Avila* concluded the defendant's Three Strike sentence was cruel and unusual is not any sort of binding precedent proving that petitioner's sentence also is unconstitutional. Whether a defendant's sentence is cruel and unusual is a fact-intensive inquiry based on the nature and facts of the crime and the offender. (*People v. Weddle* (1991) 1 Cal.App.4th 1190, 1196.)

Avila noted that there had been changes to California sentencing law decreasing the severity of sentences in different contexts. (*Avila, supra,* 57 Cal.App.5th at pp. 1150-1151.) *Avila* reasoned "the changes suggest disproportionality." (*Id.* at p. 1151.) But none of the sentencing changes cited by *Avila* have invalidated the Three Strikes law. In particular, the Three Strike law still applies where the instant offense, as here, were serious or involved violence. Moreover, while *Avila* noted the trend towards reducing sentences in support for its ruling, the critical reason *Avila* found the defendant's sentence was cruel and unusual was that life in prison for crushing oranges shocked the conscious and offended fundamental notions of human dignity. Here, the changes in sentencing laws do not show that petitioner's sentence was cruel and unusual.

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[3] See https://ciris.mt.cdcr.ca.gov. Petitioner's CDCR inmate number is E44409.

C. Petitioner cannot establish a prima facie case for habeas relief as to his equal protection claim

Petitioner asserts that his sentence of 40 years to life violates the equal protection clause. He notes that under section 1172.75, defendants who are serving a sentence which includes a section 667.5 prior prison term are entitled to have their sentences recalled and to be resentenced. He asserts that since his prior section 667.5 enhancements were stricken by the trial court, he cannot have his sentence reevaluated under section 1172.75. (Pet. 45-47.) But petitioner has not demonstrated a prima facie case for relief as to this equal protection claim.

"The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that no state may 'deny to any person within its jurisdiction the equal protection of the laws.'" (*People v. Hardin* (2024) 15 Cal.5th 834, 847.) "The California Constitution also guarantees equal protection of the law. (Cal. Const., art. I, § 7, subd. (a).)" (*Id.* at p. 847, fn. 2.) "At core, the requirement of equal protection ensures that the government does not treat a group of people unequally without some justification." (*Id.* at p. 847, internal quotation marks and citation omitted.)

This Court modified the equal protection analysis as follows: "[W]hen plaintiffs challenge laws drawing distinctions between identifiable groups or classes of persons, on the basis that the distinctions drawn are inconsistent with equal protection, courts no longer need to ask at the threshold whether the two groups are similarly situated for purposes of the law in question. The only pertinent inquiry is whether the challenged difference in

treatment is adequately justified under the applicable standard of review. The burden is on the party challenging the law to show that it is not." (*People v. Hardin*, supra, 15 Cal.5th at pp. 850-851; accord, *People v. Burgos* (2024) 16 Cal.5th 1, 29.) "[W]hen a statute involves neither a suspect classification nor a fundamental right, the 'general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest.'" (*Hardin*, at p. 847; accord, *Burgos*, at p. 29.)

Effective January 1, 2020, Senate Bill No. 136 (2019-2020 Reg. Sess.) (Senate Bill 136) amended section 667.5, subdivision (b), by limiting the one-year prior prison term enhancement to prior terms for sexually violent offenses. (Stats. 2019, ch. 590, § 1.) This change applied retroactively to all nonfinal cases. (*People v. Jennings* (2019) 42 Cal.App.5th at pp. 681-682.) Thus, any nonfinal case in which a now-invalid section 667.5 prior prison term enhancement had been imposed is subject to resentencing to strike the enhancement. (*Ibid.*) Moreover, on remand, such a defendant is entitled to a full resentencing pursuant to *People v. Buycks* (2018) 5 Cal.5th 857. (*Id.* at p. 682; *People v. Monroe* (2022) 85 Cal.App.5th 393, 401-402.)

The Legislature enacted Senate Bill No. 483 (2021-2022 Reg. Sess.) (Senate Bill 483), effective January 1, 2022, to expand the retroactive scope of Senate Bill 136 to include "all persons currently serving a term of incarceration in jail or prison for these repealed sentence enhancements." (Stats. 2021, ch. 728, § 1.) To that end, Senate Bill 483 added former section 1171.1

(Stats. 2021, ch. 728, § 3), now section 1172.75 (Stats. 2022, ch. 58, § 12), which provides:

> Any sentence enhancement that was imposed prior to January 1, 2020, pursuant to subdivision (b) of Section 667.5, except for any enhancement imposed for a prior conviction for a sexually violent offense as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code is legally invalid.

(§ 1172.75, subd. (a).) The legislation created a procedure for resentencing relief "[i]f the court determines that the current judgment includes an enhancement described in subdivision (a)." (§ 1172.75, subd. (c).)

Here, petitioner has identified two groups. First, there are defendants whose sentences include a section 667.5 prior prison term that was imposed; they are eligible for recall of their sentences and a full resentencing under section 1172.75. Second, there are defendants (like petitioner) whose sentences do not include a section 667.5 prior prison term because it was stricken at sentencing; they are not eligible for recall and resentencing under section 1172.75.

But under the current state of the law, petitioner has cannot show the two groups definitively are treated differently. Under current law, at least one appellate court has held that a defendant with a stricken section 667.5 prior prison term can be resentenced under section 1172.75; that issue is currently under review by this Court. (See *People v. Espino* (2024) 104 Cal.App.5th 188, 193, review granted Oct. 23, 2024, S286987, [defendant is entitled to resentencing under section 1172.75 when the punishment for the defendant's prior prison term

enhancement was stricken by the original sentencing court] & *id.* at pp. 195-198 [noting its holding is consistent with majority view among appellate courts that a defendant with a stayed section 667.5 prior prison term is entitled to resentencing under section 1172.75].) Since petitioner cannot show that the two groups are treated differently, he fails to show a prima facie case for relief as to his equal protection claim.

Moreover, petitioner's equal protection challenge fails because there is a rational basis to treat defendants who have stricken section 667.5 prior prison term enhancements differently than those whose sentences were increased by the imposition and execution of now-invalid enhancements. The purpose of the legislation enacting section 1172.75 was to provide actual sentencing relief for inmates whose cases were otherwise final after appeal, but who were suffering a term of incarceration for a now-invalid enhancement. (See § 1172.75, subd. (d)(1) [providing for a lesser sentence "as a result of the elimination of the repealed enhancement"]; Stats. 2021, ch. 728, § 1 ["[T]o ensure equal justice and address systemic racial bias in sentencing, it is the intent of the Legislature to retroactively apply . . . Senate Bill 136 . . . to all persons currently serving a term of incarceration in jail or prison for these repealed sentence enhancements"].) The Legislature could rationally have distinguished between a person who is currently serving a term for a section 667.5 prior prison term enhancement, or who would eventually be serving such a term, from someone (like petitioner) who will *never* serve a

sentence for the enhancement because the punishment has been stricken.

Finally, the Legislature may act incrementally in providing classes of defendants with an opportunity for resentencing without violating equal protection. (See *Hardin*, *supra*, 15 Cal.5th at p. 866; *People v. Barrett* (2012) 54 Cal.4th 1081, 1110.) Accordingly, petitioner has failed to show a prima facie case for relief as to his equal protection claim.

D. Petitioner cannot establish a prima facie case for relief under Assembly Bill No. 600 (AB 600)/Penal Code section 1172.1

Petitioner asserts he is entitled to reconsideration of his sentence under AB 600/section 1172.1. (Pet. 47-50.) But he cannot demonstrate a prima facie case for habeas relief as to this claim because he has no standing to raise it.

Under section 1172.1, subdivision (a)(1) (formerly section 1170, subdivision (d)(1)), a trial court may recall a defendant's sentence and resentence the defendant "within 120 days of the date of commitment," or at any time "upon the recommendation of the secretary or the Board of Parole Hearings . . . the county correctional administrator . . . the district attorney of the county in which the defendant was sentenced, or the Attorney General." Effective January 1, 2024, AB 600 amended section 1172.1 to expand the trial court's ability to resentence felony offenders. Under section 1172.1, the trial court may, on its own motion, recall an offender's sentence "*at any time* if the applicable sentencing laws at the time of original sentencing are subsequently changed by new statutory authority or case law." (§

1172.1, subd. (a)(1), italics added, as amended by Stats. 2023, ch. 446, § 2.) Thus, after the effective date of AB 600, the trial court is not limited by the 120-day constraint in section 1172.1, subdivision (a)(1), if there has been a change in the applicable sentencing laws.

Under both the current and former version of section 1172.1, a defendant has no standing to move for recall and resentencing. The current version of section 1172.1 provides that "A defendant is not entitled to file a petition seeking relief from the court under this section. If a defendant requests consideration for relief under this section, the court is not required to respond." (§ 1172.1, subd. (c).) Prior to AB 600, this rule was the same - a defendant had no standing to initiate a motion to recall a sentence. (*People v. Magana* (2021) 63 Cal.App.5th 1120, 1127-1128; *People v. Chlad* (1992) 6 Cal.App.4th 1719, 1725.) Since petitioner has no standing to file a motion seeking relief under section 1172.1, he cannot demonstrate a prima facie case for habeas relief.

CONCLUSION

For the foregoing reasons, the petition should be summarily denied without issuance of an order to show cause.

Respectfully submitted,

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December 23, 2024

CERTIFICATE OF COMPLIANCE

I certify that the attached **INFORMAL RESPONSE** uses a 13-point Century Schoolbook font and contains 7,075 words.

ROB BONTA
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Deputy Attorney General
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December 23, 2024

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DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: ***In re Eugene Thompson***
No.: **S285006**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On December 23, 2024, I electronically served the attached **INFORMAL RESPONSE** by transmitting a true copy via this Court's TrueFiling system.

Michael S. Romano
Attorney for Appellant

Susan Champion
Attorney for Appellant

LA County
District Attorney's Office

Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on December 23, 2024, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA

90013-1230, addressed as follows:

David Slayton
Case Records Manager
Stanley Mosk Courthouse
111 North Hill Street
Los Angeles, CA 90012
For Delivery to
The Honorable Francis J. Hourigan

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on December 23, 2024, at Los Angeles, California.

Silvia Feigin	
Declarant	Signature

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STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **THOMPSON (EUGENE) ON H.C.**
Case Number: **S285006**
Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **thomas.hsieh@doj.ca.gov**

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Date

/s/Silvia Feigin
Signature

Hsieh, Thomas (190896)
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