CRIMINAL JUSTICE LEGAL FOUNDATION

CJLF Advisory

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COURT REJECTS DOUBLE MURDERER'S SENTENCING CHALLENGE

In a unanimous decision announced on October 19, a panel of the U. S. Court of Appeals for the Eighth Circuit rejected a Missouri double murderer's claim that the length of time taken to review multiple appeals of his death sentence violated his constitutional right to due process and amounted to cruel and unusual punishment.

The case involves the conviction of Carman Deck for the burglary, robbery, and murder of an elderly couple in 1996. During the twelve years following his 1998 conviction and death sentence, Deck won two appellate court rulings granting him new sentencing trials. At each new trial, a new jury again recommended the death sentence. Finally in 2017, Deck won a federal district court ruling announcing that the years spent on his sentencing challenges violated his constitutional rights and that the attorney for his third resentencing was incompetent. The appeals court overturned that ruling, reinstating Deck's death sentence.

Carman Deck

The Criminal Justice Legal Foundation had joined the case of **Deck v. Jennings** on behalf of the family of the murdered couple to encourage a decision overturning the district court ruling.

In its decision, the court held that "Deck cannot identify any 'controlling authority' from either the Supreme Court of the United States or the Supreme Court of Missouri that had recognized a Due Process claim under these or similar circumstances." With regard to the challenge to the competence of Deck's lawyer, the court noted that because his due process claim was not supported by precedent, " 'competent' performance does not require counsel to 'recognize and raise every conceivable constitutional claim.' "

Evidence introduced at trial indicates that Carman Deck and his sister went to the home of Zelma and James Long in the small town of DeSoto, Missouri, on a summer evening in 1996. After waiting for nightfall, Deck and his sister knocked on the door of the Longs' home, and

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WILLIAM OTIS JOINS CJLF BOARD

At a virtual meeting held on June 26, Georgetown Law Professor William Otis was unanimously elected to the Criminal Justice Legal Foundation's Board of Trustees. Professor Otis spent most of his career in law enforcement after taking his J.D. from Stanford Law School in 1974, beginning as a prosecutor in the U. S. Department of Justice. In 1981, he joined the U. S. Attorney's office in the Eastern District of Virginia. In 1992, he served as Special Counsel to President George H.W. Bush. He then served six years as Chief of the Appellate Division for the U. S. Attorney in Eastern Virginia while working as an adjunct Professor of Law at George Mason Law School. He finished his career in government service as a counselor to the head of the U. S. Drug Enforcement Administration during the George W. Bush Administration. In 2010, he joined Georgetown Law as an adjunct professor. He has written several op-ed pieces on criminal law for USA Today, Forbes, the Washington Post, and US News & World Report; has been interviewed and quoted by the New York Times and the Wall Street Journal; has testified as an expert witness before Congress; has appeared on various network programs such as MSNBC's Hardball, the O'Reilly Factor, Sixty Minutes, and the PBS News Hour; and is a regular contributor to the Foundation's blog, Crime and Consequences.

Professor William Otis was elected to the CJLF Board of Trustees in June 2020.

VIEWPOINT

GET USED TO INCREASED CRIME

Over the past several months local news outlets have been reporting on a spike in shootings and homicides in large American cities, often with experts attributing it to the pandemic and the unrest following the death of George Floyd. But with most businesses closed and most people staying home shouldn't there be less violent crime? George Floyd's death was in May, and while there are still sporadic protests in places like Portland and Seattle, this does not explain the reported 728 people shot in Philadelphia in the month of November, the highest number of Los Angeles murders in a decade, the 26% homicide increase in Nashville, or the 38% increase in Sacramento.

NBC News reports that in the leafy town of Waltham, MA, twelve miles outside of Boston, there have been at least ten unprovoked violent assaults on men in November. Police say that in each case the assailant was lying in wait, then ran up to each victim from behind, hitting them on the head multiple times with a blunt instrument. In the toney Oakland Hills, CA, a 23-year-old woman was shot while sitting in a car on December 2, leaving her in critical condition. Elsewhere in Oakland, two gang members were arrested for shooting at a Highway Patrol vehicle, the next day two people were shot with one dead, and another shooting put a man in critical condition. In Frankford, PA, a 12-year-old boy was killed after being shot in the face while answering his front door. On Black Friday, two groups of teens in a Sacramento, CA, mall got into a gunfight leaving two dead. Police report that a significant number of recent attacks appear to be random and many are happening in broad daylight.

While unemployment and depression due to the pandemic and anger about claimed racial bias by police may be contributing to what's going on, the primary cause of today's lawlessness and violence is the widespread breakdown in law enforcement. Most of this breakdown has been intentionally created. During all eight years of the Obama Administration, U. S. Attorneys were ordered to back off on the prosecution and sentencing of drug traffickers, while granting early release from federal prisons to thousands of drug dealers. At the same time, the President, his Attorney General, liberal members of Congress, Governors, Mayors, Black Lives Matter and other activist groups, most of academia, and the national media endlessly proclaimed that America is a country founded on racial bias and that every institution, and particularly the criminal justice system, blatantly discriminates against minorities. In the name of racial justice, states including California, Oregon, Colorado, Georgia, Washington, Illinois, Massachusetts, Minnesota, Pennsylvania, New York, Virginia, Maryland, Louisiana, and even to some extent Texas and Nevada, have passed laws and implemented policies eliminating proactive policing, reducing sentences, legalizing drugs, protecting illegal alien criminals from federal arrest, and giving early release to thousands of repeat offenders. This is far more dangerous than Covid-19.

Under a Biden Presidency, the new Attorney General will likely resume the policies of the Obama years. In many states, even those where conservatives have regained the legislatures, undoing pro-criminal policies may take a decade. In states like California, New York, Washington, and Illinois, sufficient pro-law enforcement change to make any difference will likely take a generation. While our Foundation intends to continue fighting for these changes, law-abiding Americans should prepare for a crime wave.

Michael Rushford
President & CEO

Advisory layout design by Irma H. Abella

BOXSCORE

An accounting of the state and federal court decisions handed down over the past year on cases in which CJLF was a participant. Rulings favoring CJLF positions are listed as WINS, unfavorable rulings are LOSSES, and rulings which have left the issue unsettled are DRAWS.

Deck v. Jennings (formerly **Deck v. Steele**): 10/19/20. Unanimous Eighth Circuit Court of Appeals decision reinstating the death sentence of a double murderer. Undisputed evidence proved that Carman Deck robbed and executed an elderly couple in their Missouri home in 1996. On appeal, Deck raised claims successfully challenging his sentencing hearing twice and juries sentenced him to death at each new hearing. After the third hearing in 2008, Deck petitioned the federal district court on habeas corpus, arguing that the length of time spent between his conviction in 1998 and on his third re-sentencing trial in 2008 violated his rights and that his attorney for the third sentencing trial was incompetent because he failed to raise that claim. The district court agreed and overturned his sentence. When the Eighth Circuit agreed to review that ruling, CJLF submitted argument on behalf of the family of the victims, noting that the district court invented a new constitutional right for Deck with no legal precedent to support it. CJLF also noted that a lawyer who does not present a claim never raised before and unsupported by precedent is not incompetent. The Eighth Circuit followed that argument in its decision. **WIN**

DHS v. Thuraissigiam: 6/25/20. U. S. Supreme Court decision overturning a March 2019 Ninth Circuit ruling granting constitutional rights to an illegal alien caught walking across the U. S. border. The case involves an illegal from Sri Lanka arrested 25 yards inside the California/Mexico border. The alien asked for asylum, claiming that he was a persecuted minority in his home country who had been beaten for his political beliefs. After the claim was determined not credible, he was ordered deported. Represented by the ACLU, the alien appealed to the federal district court in San Francisco. That court rejected the claim that he was entitled to sue the government because federal law sharply limits judicial review of the deportation of certain recent arrivals, including those in Thuraissigiam's situation. The Ninth Circuit reversed the lower court announcing that the federal law limiting habeas corpus review was unconstitutional. CJLF has joined the case to argue that the Ninth Circuit was flat wrong. Congress, not the courts, holds the power to determine if an illegal alien who steps across the border and seeks asylum is entitled to the constitutional rights afforded to U. S. citizens and persons who have established residence here. The high court upheld the statute as applied to this case, although on different reasoning. **DRAW**

Mathena v. Malvo: 2/26/20. U. S. Supreme Court case reviewing a 2018 ruling by the Fourth Circuit Court of Appeals that voided the four life sentences given to Lee Boyd Malvo, one of the notorious DC snipers. In that ruling, the Fourth Circuit held that Supreme Court decisions announced after Malvo's conviction prohibited the trial court from sentencing him to life without parole (LWOP) under the law in effect in Virginia at the time. In 2002, 17-year-old Malvo and John Muhammad terrorized the Washington metropolitan area, indiscriminately murdering 12 people and critically injuring 6 others over a 6-week period. Malvo personally killed 3 of the victims. He robbed several other victims after they were killed by Muhammad. The Supreme Court's 2012 ruling in **Miller v. Alabama** prohibited a *mandatory* LWOP decision for murderers under the age of 18 years old. Later in **Montgomery v. Louisiana**, the Court held that an LWOP sentence would be permitted for the "rare juvenile offender whose crime reflects irreparable corruption." CJLF joined the case to argue that in Malvo's case the LWOP sentence was not mandatory and that the murders he helped commit easily met the "irreparable corruption" exception. In February, the Court dismissed the case after Virginia passed a law prohibiting LWOP for juvenile murderers. **DRAW**

Hernández v. Mesa: 2/25/20. U. S. Supreme Court decision to reject a lawsuit seeking to hold a U. S. Border Patrol agent personally liable for the shooting of a Mexican juvenile on the Mexican side of the border. The case stems from a border patrol agent's attempt to arrest a Mexican national trying to sneak across the border in El Paso, Texas. As the agent detained the suspect, a group of juveniles on the Mexican side began pelting him with rocks. The agent responded by firing at the juveniles, killing Sergio Adrian Hernández Guereca, a known smuggler of aliens across the U. S. border. Sergio's parents, who are also Mexican citizens, filed a federal lawsuit claiming that their son's U. S. constitutional rights were violated by the border patrol agent and that they are entitled to hold him personally liable for the excessive force he used. CJLF joined the case to argue that Mexican citizens killed or injured in Mexico by the actions of a U. S. agent have no U. S. constitutional rights unless Congress passes a law giving rights to them. The Court's 5-4 decision adopted that argument to dismiss the lawsuit. **WIN**

McKinney v. Arizona: 2/25/20. U. S. Supreme Court decision which *utilized CJLF arguments* to reject a condemned double-murder's claim that he was entitled to a new sentencing hearing. James McKinney was sentenced to death after he and an accomplice intentionally killed two people during a 1991 spree of residential burglaries. In 1993, a jury found him guilty, and the judge identified and weighed the aggravating and mitigating factors and sentenced McKinney to death. In 2002, the U. S. Supreme Court changed the rules, announcing in **Ring v. Arizona** that a jury, rather than a judge, must make the finding of at least one aggravating factor that makes a case eligible for capital punishment, but did not apply this change retroactively. In 2015, the Ninth Circuit overturned McKinney's sentence, ruling that the sentencing judge did not **WIN**

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BOXSCORE *continued from page 3*

properly weigh the aggravating and mitigating factors in reaching the final sentencing decision. After the Arizona Supreme Court reweighed the sentencing factors and reaffirmed the death sentence, the U. S. Supreme Court accepted McKinney's appeal for review. CJLF joined the case to argue that the Arizona Supreme Court's reweighing procedure was valid. **Ring** requires a jury only for the finding that makes a case eligible to be considered for the death penalty. Whether the weighing of the factors and final decision of the sentence is done by judges or juries is a matter of state law. Expanding **Ring** as McKinney requests, would invite hundreds of challenges of lawful sentences in settled cases. The Court's 5-4 decision *utilized* arguments made only by CJLF in this case.

Ellis v. Harrison: 1/15/20. Ninth Circuit Court of Appeals case involving a murderer's claim that racial prejudice rendered his attorney incompetent. After a district court rejected the claim, the appeals court invited CJLF to file argument in the case because California's Attorney General Xavier Becerra decided not to defend the conviction. In 1989, habitual felon Ezzard Ellis shot two young men waiting in a crowded McDonald's drive-thru, in order to steal their car. One of the victims died. Years after his conviction, Ellis claimed that the racial prejudice of his defense attorney, *which he did not know about during his trial or sentencing*, tainted his case requiring that his conviction be overturned. CJLF argued that in order for a defendant to sustain such a claim he must show that some defect in the performance of his trial attorney injured his defense. The murderer had not done this. The court's January 2020, two-paragraph order disposed of the case without resolving the legal issue presented. The court held that the Attorney General's change of position alone was sufficient to reverse the decision of the district court. Although this decision is contrary to long-established practice, only the Attorney General can appeal to the U. S. Supreme Court, which he has not done. **DRAW**

People v. Arredondo: 12/16/19. California Supreme Court case involving a challenge to the conviction of a Los Angeles sex offender found guilty of molesting his girlfriend's three young daughters for eight years. When Jason Arredondo began the assaults, the girls were eight, six, and five. He was arrested in 2013 after he molested one of the girls' friends during a sleepover who then reported it to a school counselor. At trial, the oldest sister was afraid to testify with Arredondo staring at her so the judge had a computer monitor, which was already attached to the witness stand, elevated a few inches so that she could not see his face. He was convicted of all charges and sentenced to life in prison. After the court of appeal upheld his conviction, the state Supreme Court agreed to hear his claim that the trial judge had violated his right to confront his accusers because of the raised computer monitor. CJLF joined this case to argue that trial courts have the flexibility to make minor accommodations to allow traumatized victims to testify. The high court agreed, but held that the trial court had not adequately explained the need for raising the monitor, striking three convictions regarding the oldest victim and upholding the others. **DRAW**

Johnson v. City of Ferguson: 6/17/19. Federal Eighth Circuit Court of Appeals ruling dismissing a lawsuit by Dorian Johnson against the City of Ferguson, Missouri, and Officer Darren Wilson for violating his rights. In August 2014, Officer Wilson shot and killed Michael Brown as Brown was attacking him. Brown had just robbed a convenience store, after which Officer Wilson saw the pair walking down the middle of a street in Ferguson. Johnson claimed that when Officer Wilson stopped his patrol car and ordered them to the sidewalk, he had unlawfully seized him in violation of the Fourth Amendment. Although the Obama Justice Department and a federal grand jury found that Johnson had lied about what transpired before and after the shooting, motions to dismiss the lawsuit were rejected by the federal district court and a divided Eighth Circuit panel. When the circuit agreed to reconsider the panel's ruling en banc, CJLF filed an *amicus curiae* brief on behalf of the National Police Association arguing that by Johnson's own admission he was not ordered to stop and was not prevented from leaving. Citing its 1991 U. S. Supreme Court victory in **California v. Hodari D**., CJLF argued that the facts Johnson described of his encounter in the middle of the street with Officer Wilson do not constitute a seizure. The Court agreed. **WIN**

TOTAL	4 Wins	0 Losses	4 Draws

Case Report *A Summary of Foundation Cases Currently Before the Courts*

People v. Friend: California Supreme Court case involving a death-sentenced murderer's request that the court effectively invalidate voter-enacted limits to repeated appeals. In 1989, an Alameda County jury found habitual felon John Friend guilty of the 1984 robbery and stabbing murder of bartender Herbert Pierucci. At trial, witnesses testified about Friend's plan to rob the bartender, placed him at the murder scene with a knife, and testified about hearing his admission to killing Pierucci for roughly $300. Friend's conviction and sentence were upheld by the California Supreme Court in July 2009. His habeas corpus challenge was reviewed and denied in 2015. In 2016, state voters adopted Proposition 66, which prohibits state courts from reviewing successive habeas corpus petitions except in cases where there is significant evidence questioning the defendant's guilt. In this case, the murderer has no credible claim of innocence. Instead, he argues that the initiative's prohibition of successive petitions does not include successive petitions where the defendant adequately explains why some new claims were not included in the first petition. CJLF, which authored this provision of Proposition 66, argues that "successive" means any petition after the first one, period. California Attorney General Xavier Becerra has filed argument *supporting the murderer's claim*.

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Case Report *continued from page 4*

Jones v. Mississippi: U. S. Supreme Court case to review a juvenile murderer's claim that his life-without-parole (LWOP) sentence is a violation of his constitutional rights. In 2004, less than one month after his grandparents took him in, 15-year-old Brett Jones stabbed his 67-year-old grandfather 8 times, killing him. After hiding his body and cleaning up the blood, he was arrested while trying to leave town. At trial, Jones claimed that he killed his grandfather in self-defense. The jury found him guilty of deliberate murder and he was sentenced to LWOP. Six years later, the Supreme Court held in **Miller v. Alabama** that a mandatory LWOP sentence for a juvenile murderer was unconstitutional. Jones was resentenced under the new rules and again received LWOP. The following year the Supreme Court handed down a new juvenile sentencing requirement in **Montgomery v. Louisiana**, which the Court claimed was actually included in the **Miller** decision. Jones argues that he is now entitled to another resentencing. CJLF is joining the case to argue that the Court clearly misinterpreted **Miller** to impose a new rule not required by the Constitution.

In re Mohammad: California Supreme Court case to consider whether California's 2016 Proposition 57 requires early parole consideration for inmates currently serving a sentence for both violent and nonviolent felony offenses. The defendant in this case was convicted in 2012 of nine violent crimes and six nonviolent crimes. While the initiative was advertised as permitting early parole eligibility for state prisoners "convicted of a nonviolent felony offense" after completing the full term of their primary offense, a state appeals court held that, because Mohammad had a nonviolent crime among his convictions, Proposition 57 requires he be eligible for early release. CJLF has joined the case to argue that the lower court has misinterpreted the initiative to crease the absurd result that criminals convicted of multiple violent crimes and at least one nonviolent crime are required to receive a shorter sentence than a criminal convicted of only one violent crime.

O.G. v. Superior Court: California Supreme Court case involving a legal challenge to a law signed by Jerry Brown, SB 1391, which prohibits *any* juvenile murderer, even the very worst, under the age of 16 from being tried in adult court. Any criminal, including murderers, who are convicted in juvenile court can only be imprisoned *until age 25.* In this case, O.G., a 15-year-old street gang member, murdered two people, one with a gun and another with a knife, to gain respect from his fellow gang members. When the Ventura County District Attorney requested that the killer be tried in adult court, the presiding judge agreed, questioning the validity of SB 1391. The murderer appealed, and last September a unanimous panel of the Second District Court of Appeal held that SB 1391 violated Jerry Brown's 2016 Proposition 57, which allows the prosecution of juveniles in adult court. Proposition 57 specified that it could not be amended by the Legislature unless the amendment furthers the intent of the initiative. When the Supreme Court agreed to hear the murderer's appeal, CJLF filed arguments stressing that the intent of Proposition 57 was to give judges the discretion to order the prosecution of a violent juvenile in adult court. SB 1391 ignores that intent by taking away that discretion.

Borden v. United States: U. S. Supreme Court case to review a habitual criminal's claim that one of his prior assault convictions should not be considered a violent crime. In 2017, habitual felon Charles Borden was caught with a handgun during a traffic stop in Tennessee. Because Borden had three prior convictions for aggravated assault, he qualified for a ten-year prison sentence under the federal Armed Career Criminal Act (ACCA). Borden pleaded guilty to having the gun, but claimed that because one of his priors was for "reckless" aggravated assault, it should not count as a violent felony. CJLF is joining the case to argue that aggravated assault, be it reckless or intentional, qualifies as a violent crime under federal law. If the high court upheld Borden's claim, it would open the door to sentencing challenges for thousands of career felons with prior convictions for crimes that included recklessness as a factor.

In re Alexander: Federal Ninth Circuit review of a CJLF petition on behalf of families of 5 murder victims asking the court to vacate 24 invalid stays of execution, prohibit the district court from granting any additional stays, and lift restrictions on California's preparations for executions. For 13 years, a federal district court in San Francisco has blocked the executions of every death-sentenced murderer in California who has exhausted his appeals and become eligible for execution. The original 2006 order stayed the execution of Michael Morales—sentenced to death for the 1981 kidnap, rape, and brutal murder of a high school cheerleader on the claim that the state's three-drug protocol amounted to cruel and unusual punishment in violation of the Eighth Amendment. Since 2006, two precedent-setting U. S. Supreme Court decisions provided the state with opportunities to challenge the stays, but the state has failed to take action. CJLF filed its petition in the Ninth Circuit in January 2019 after the district court rejected a similar petition filed by district attorneys and refused to consider the Foundation's *amicus curiae* (friend of the court) brief.

In re Humphrey: California Supreme Court review of an appeals court ruling announcing that the decision to set bail for a habitual felon must be based on his ability to pay it, not public safety. The case involves a repeat felon charged with robbery after he followed an elderly man into his San Francisco apartment and robbed him. At the bail hearing, Humphrey asked to be released without bail because of his ties to the community. The judge refused, setting bail at $350,000. On appeal, Humphrey won a ruling ordering the trial judge to base the decision regarding bail on his ability to pay. When the Supreme Court agreed to review that ruling, CJLF joined the case. After Governor Brown signed SB 10, a bill eliminating cash bail in California, the court asked if that new law impacts Humphrey's case. CJLF argues that SB 10 won't go into effect until October 2019 and does not apply. CJLF also argues that SB 10 is invalid because it amends the Public Safety Bail provisions of at least two previously adopted ballot measures. In this case, neither Proposition 4 (1982) nor Proposition 9 (2008) allowed amendments by the Legislature. Public safety remains the first priority of any bail decision, not ability to pay.

"MURDERER'S SENTENCING CHALLENGE"

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when Mrs. Long answered, they asked for directions. Mrs. Long invited them in, and she and Mr. Long assisted them with directions. When Deck moved toward the door to leave, he drew a pistol, pointed it at the Longs, and ordered them to lie face down on their bed. The Longs did, offering up money and valuables throughout the house and all the while begging that he not harm them. After Deck finished robbing their house, he stood at the edge of their bed, deliberating for ten minutes over whether to spare them. He ignored their pleas and shot them each twice in the head. Deck later told police that he shot the Longs because he thought that they would be able to recognize him.

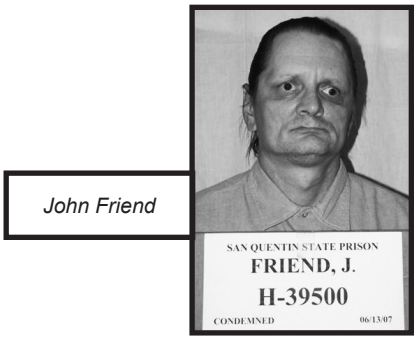
After a third jury sentenced Deck to death in 2008, he petitioned the federal district court on habeas corpus to review his 32 claims of trial, sentencing, and defense counsel errors. The court dismissed 30 of those claims, but upheld the claim that Deck's rights were violated by resentencing him so long after the crime and also found the defense attorney for his third sentencing trial incompetent for not raising that claim.

On behalf of the victims' family, CJLF Associate Attorney Kymberlee Stapleton submitted a scholarly *amicus curiae* (friend of the court) brief, arguing that the delay claim was a novel one, not supported by existing precedent. The Supreme Court has held that lawyers are not required to make every conceivable argument and passing on a novel claim is not incompetence.

"For over 20 years, Deck has taken full advantage of all available appeals and post-conviction remedies to deliberately prolong the imposition of his own death sentence. If the lower court ruling had been upheld, it would have amounted to a fundamental miscarriage of justice to the Long family," said Stapleton. "This cold-blooded convicted killer richly deserves the sentence that three separate juries have given him. Fortunately the illegal ruling sparing him did not stand," she added.

MURDERER SEEKS TO VOID LIMITS ON APPEALS

The California Supreme Court has agreed to review the case of **In re Friend**, involving a death sentenced murderer's request that the court effectively invalidate voter-enacted limits to repeated appeals. In 1989, an Alameda County jury found habitual felon John Friend guilty of the 1984 robbery and stabbing murder of bartender Herbert Pierucci. At trial, witnesses testified about Friend's plan to rob the bartender, placed him at the murder scene with a knife, and testified about hearing his admission to killing Pierucci for roughly $300. Friend's conviction and sentence were upheld by the California Supreme Court in July 2009. His habeas corpus challenge to his conviction and sentence was reviewed and denied in 2015. In 2016, state voters adopted Proposition 66, which prohibits state courts from reviewing successive habeas corpus petitions except in cases where there is significant evidence questioning the defendant's guilt. In this case, the murderer has no credible claim of innocence. Instead, he argues that the initiative's prohibition of successive petitions does not include successive petitions where the defendant adequately explains why some new claims were not included in the first petition. CJLF, which authored this provision of Proposition 66, argues that "successive" means *any* petition after the first one, period. California Attorney General Xavier Becerra has filed argument supporting the murderer's claim.



"Cases like this one are the reason we limited successive petitions in Proposition 66," said CJLF Legal Director Kent Scheidegger. "Now, 31 years after his conviction, with the support of California's Attorney General, this cold-blooded murderer is trying to erase a key provision of a law adopted by state voters," he added.

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CRIME & CONSEQUENCES

MURDERER SEEKS CHANGE IN LAW TO OVERTURN DEATH SENTENCE

A Los Angeles drug dealer convicted of the brutal murders of two people and the attempted murder of two others is asking the California Supreme Court to reinterpret the state's 1978 death penalty law in order to overturn his sentence.

Specifically, Donte Lamont McDaniel is seeking a ruling announcing that over the past 42 years the state has misapplied the death penalty law by not requiring the sentencing jury to find each aggravating factor of a murder true beyond a reasonable doubt and find that a death sentence is appropriate beyond a reasonable doubt.

The Criminal Justice Legal Foundation has joined **People v. McDaniel** to encourage a decision rejecting the murderer's claim.

In March 2009, a Los Angeles jury convicted McDaniel of the 2004 murders of Annette Anderson and George Brooks and the attempted murder of Debra Johnson and Janice Williams. At a later sentencing hearing, a separate jury unanimously recommended that he be sentenced to death.

Overwhelming evidence introduced at trial indicated that on April 6, 2004, McDaniel and an accomplice went to the apartment of Annette Anderson in the LA projects looking for George Brooks. McDaniel and his accomplice were members of the Bounty Hunter Bloods (BHB) street gang, a group primarily engaged in drug dealing and murder. A week earlier, Brooks had stolen some drugs from a BHB member, and McDaniel and his accomplice had been dispatched to seek revenge. At the apartment that night were Anderson, Brooks, Williams, and Johnson.

Anderson, 52, was like an older sister to the younger residents in the neighborhood and they often hung out at her apartment. When she answered a knock at her kitchen door, McDaniel and his accomplice stormed in shooting, hitting Williams in the mouth, arms, and legs. Brooks suffered so many fatal gunshots to the head that his face collapsed. Anderson was shot in the head and chest and also died. Debra Johnson was sleeping on the living room floor when she heard gunshots in the kitchen. She opened her eyes to see McDaniel pointing a gun to her head. He shot her in the face and in the chest. She played dead and survived along with Williams. Both women, who were permanently disabled from the shooting, testified at McDaniel's trial. Both McDaniel and his accomplice and all four shooting victims were African American.

Witnesses testified that after the killings McDaniel bragged about it.

Now before the state Supreme Court on direct appeal, McDaniel claims that California death penalty law discriminates against African Americans and has been misapplied since its adoption in 1978. The American Civil Liberties Union, the California Association of Public Defenders, a group calling itself the California Constitutional Law Scholars, and Governor Gavin Newsom have filed briefs in support of the murderer in this case.

In a scholarly *amicus curiae* (friend of the court) brief, CJLF Legal Director Kent Scheidegger argues that nothing in California legal history, English common law, or the 1978 death penalty ballot measure (adopted by 71% of voters), suggest that jurors are required to find the aggravating factors in a murder case or the appropriateness of a death sentence "beyond a reasonable doubt."

Existing state and federal law requires that a defendant's guilt be found beyond a reasonable doubt based upon the weight of the evidence. This standard does not fit with judgments that are not findings of fact, including the appropriate sentence for a crime. Nobody knows how a jury would go about sentencing a murderer to death beyond a reasonable doubt.

The CJLF brief notes that McDaniel's claimed requirement would toss out precedents that go back over 40 years for the aggravating circumstances and decades longer for the penalty verdict based on nothing more than a far-fetched interpretation of an 1872 statute that has never been held to have such an effect before, with a devastating impact on hundreds of hard-won judgments for horrible crimes. The result would be the overturning of the death sentences of hundreds of California's worst murderers.

With violent crime increasing in most parts of the country, CJLF is focusing on laws and policies that have reduced the consequences for crime. Right now we are fighting to prevent court decisions allowing California's worst murderers to overturn their death sentences, violent habitual criminals from gaining early release from prison, and setting free the worst juvenile murderers at age 25. We cannot continue our work without the annual support of our loyal contributors. Please make your 2020 tax-deductible contribution today by returning the card on the right with your check, giving at our website www.cjlf.org, or calling us at (916) 446-0345 to contribute with your credit card. **Thank you so much.**

THIS IS MY CONTRIBUTION TO CJLF

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2131 L Street
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Name: _____

Address: _____

_____

Type of Contribution (check one): ☐ Business ☐ Personal

If you itemize your deductions, your contributions to CJLF are TAX DEDUCTIBLE.
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Fall 2020

VIOLENT FELON SEEKS EARLY RELEASE UNDER PROPOSITION 57

The California Supreme Court has agreed to review the case of **In re Mohammad** to consider whether Proposition 57 requires early parole consideration for inmates currently serving a sentence for both violent and nonviolent felony offenses. In 2016, Governor Jerry Brown and progressive hedge fund billionaire George Soros pooled $10 million to convince California voters to adopt Proposition 57, the so-called Public Safety and Rehabilitation Act. The act was advertised as permitting early parole eligibility for state prisoners "convicted of a nonviolent felony offense" after completing the full term of their primary offense.

For defendants convicted of multiple offenses, existing law gives the sentencing judge the authority to decide which crime would be considered the primary offense. Proposition 57 left it to the California Department of Corrections and Rehabilitation (CDCR) to devise the rules to determine which inmates qualified for early release. The CDCR promulgated regulations that excluded inmates serving a sentence for a violent crime from early parole consideration.

In early 2012, four years before Proposition 57 was adopted, habitual felon Mohammad pleaded no contest to nine counts of robbery (violent felonies) and six counts of receiving stolen property (nonviolent felonies). Remarkably, the sentencing court designated one of the *nonviolent felonies* as the principal offense and ordered him to serve a base term of three years in prison. The court then ordered consecutive one-year terms on each of the nine violent offenses, and consecutive eight-month terms on each of the remaining five nonviolent felonies. With sentencing enhancements added, Mohammad's aggregate sentence was 29 years.

After completing the full three-year term for the nonviolent primary offense, Mohammad requested an early parole consideration hearing. CDCR denied his request. On November 26, 2019, a three-judge panel of California's Second District Court of Appeal reversed the CDCR in a ruling which announced that because Mohammad had completed the full term of his primary offense, under Proposition 57, he was eligible for early parole consideration even though he was also convicted and sentenced for violent offenses. The Court of Appeal interpreted the measure to mean that an inmate who is serving an aggregate sentence for more than one conviction will be eligible for an early parole hearing if one of those convictions was for "a" nonviolent felony offense.

In a scholarly *amicus curiae* (friend of the court) brief, CJLF Associate Attorney Kymberlee Stapleton argues that the Court of Appeal's erroneous interpretation of the measure ignored the expressed intent of the proponents and the language of the materials describing the initiative to the voters. The appeals court ruling suggests that Proposition 57 *gives nearly the entire state prison population the opportunity for early release*, contrary to the voter's understanding and intent of the initiative. Such an interpretation would also lead to the absurd result that inmates convicted of multiple violent crimes and one nonviolent crime would be eligible for early parole consideration whereas inmates convicted only of one violent crime would not. Watch for a decision in this important case in an upcoming *Advisory*.

Happy Holidays from the CJLF staff

Criminal Justice Legal Foundation
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