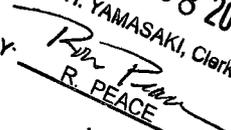


People v. Dejon Vincent Griffin
16NF2053

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER
FEB 08 2019
DAVID H. YAMASAKI, Clerk of the Court
BY: 
R. PEACE, DEPUTY

Ruling on Constitutionality of the enactment of SB1437.

1. Initial enactment of the current version of the comprehensive portion murder statute was by Prop. 7 which was an initiative response to California's reinstatement of capital punishment after *Gregg v. Georgia*.
2. Initiative process a constitutional right of the electorate. (art. IV, sec. 1.)
3. To amend a statute enacted by an initiative is a unique process. (Cal. Const., art. II, sec. 10(c).)
4. "The initiative and referendum are not rights granted the people, but ... powers reserved by them ... and must be zealously guarded by the courts". (*Rossi v. Brown* (1996) 9 Cal.4th 688, 695; *People v. Kelly* (2010) 47 Cal.4th 1008, 1026.) This power is greater than the power of the legislative body. (*Id.* at p. 715.)
5. Amendments that conflict with the subject matter of the initiative process must be accomplished by popular vote. (*Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473, 1486.)
6. "An amendment is a legislative act designed to change some prior or existing law by adding or taking from it some particular provision." (*Quackenbush*, p. 1485.)
7. The defense correctly asks the court to recognize that the legislature remains free to address "related but distinct areas" of an initiative.
8. SB1437 changes definition of malice
9. SB1437 amends the scope of FMR.
10. The Legislature cannot amend or redefine murder in order to avoid the penalties that Proposition 7 set for the crime. (*People v. Weidert* (1985) 39 Cal.3d 836, 844.)
11. Prop. 7 "broadened the class of persons subject to the most severe penalties known to court criminal law." (*Weidert, supra.*)
12. Statutory Intent of the Voters' support this position.,
 - a. Proposition 7 changed the minimum term for both 1st and 2nd degree murder.
 - b. *In re Oluwa* (1989) 207 Cal.App.3d 439, the Legislature's subsequent enactment of a more generous credit scheme for post-sentence credits was held to be an illegal amendment to Proposition 7.
13. Proposition 7 eliminated the requirement that both principals and accomplices be personally present during the commission of the act or acts causing death. Then existing scope of accomplice liability to defendants who physically aided and abetted the act(s) causing death.
14. Proposition 115 included changes to the FMR by adding additional felonies under Penal Code section 189.
15. Proposition 115 added a language of "major participant" in the special circumstance portion of the death penalty scheme.
 - a. An underlying constitutional principal is that for a death penalty statute to be constitutional, the function of the special circumstance to make a first-degree murder eligible for the potential of capital punishment, it must

“narrow’ the class of murders. (*People v. Enraca* (2012) 53 Cal.4th 735, 769 [“California Homicide law and the special circumstance listed in section 190.2 adequately narrow the class of murderers eligible for the death penalty. (Citations.) Specifically, the felony-murder special circumstance (190.2, subd. (a)(17)) is not overbroad and adequately narrows the pool of those eligible for death (*People v. Gamache* [(2010)] 48 Cal.4th [347,] 406; *People v. Kraft* (2000) 23 Cal.4th 978, 1078). “In particular, the felony-murder special circumstance is not overbroad despite the number of different possible predicate felonies and the lack of a requirement that the killer have had the intent to kill. (*People v. Marshall* (1990) 50 Cal.3d 907, 946; *Tison v. Arizona* (1987) 481 U.S. 137, 158.)” *Kraft, supra*, at p. 1078. See also *People v. Anderson* (1987) 43 Cal.3d 1104, 1147

- b. SB1437 now imposes the same requirement for aider and abettors to qualify for first degree murder.
 - c. This amendment has the effect of calling into question the ability of the state to seek the death penalty for aiders and abettors under the FMR.
16. And finally, the Legislature was placed on notice of the need to comply with special rules for amending section 188/189 by the Legislative Counsel’s letter attached to the People’s motion.
17. Thus, for all of the above, under the rule and analysis employed by the California Supreme Court in *Kelly*, the Legislature was not free to enact SB1437 except under the perimeters of art. II, section 10 for amending Proposition 7 or by the supermajority requirement of Proposition. 115. This legislature was enacted by neither procedure and hence is invalid.
18. The situation the court confronted in *County of San Diego v. Commission on State Mandates* is vastly different than SB1437’s changes to Proposition 115 and especially Proposition 7, and thus does not change this court’s conclusion.
19. The Court declines to give enforcement to this section, SB1437.