

IN THE SUPREME COURT OF CALIFORNIA

| | | |
|--------------------------------|---|-------------------------|
| MORGAN VICTOR MANDULEY et al., |) | |
| |) | |
| Petitioners, |) | |
| |) | |
| v. |) | S095992 |
| |) | |
| THE SUPERIOR COURT OF |) | Ct.App. 4/1 |
| SAN DIEGO COUNTY |) | D036356, D036456 |
| |) | |
| Respondent. |) | San Diego County |
| |) | Super. Ct. No. CD154096 |
| THE PEOPLE, |) | |
| |) | |
| Real Party in Interest. |) | |
| ----- |) | |
| |) | |
| MICHAEL ROSE et al., |) | |
| |) | |
| Petitioners, |) | |
| |) | |
| v. |) | |
| |) | |
| THE SUPERIOR COURT OF |) | |
| SAN DIEGO COUNTY |) | |
| |) | |
| Respondent. |) | |
| |) | |
| THE PEOPLE, |) | |
| |) | |
| Real Party in Interest. |) | |
| ----- |) | |

MODIFICATION OF OPINION

THE COURT:

The People have requested modification of the opinion on the ground — not previously asserted by the parties — that a violation of Penal Code section 288.5 (continuous sexual abuse of a child) constituted a serious felony and a strike under the Three Strikes law before the passage of Proposition 21, contrary to the contention of petitioners and contrary to the format of the ballot materials indicating that proposed Penal Code section 1192.7, subdivision (c)(35) (referring to Pen. Code, § 288.5), was a new provision. (See Stats. 1998, ch. 936, § 13.5, p. 90; Stats. 1991, ch. 451, § 1, p. 2247; Ballot Pamp., Primary Elec. (Mar. 7, 2000) text of Prop. 21, § 17.) In light of the newly presented material, the People’s request for modification of the opinion is granted, as set forth below. The majority opinion appearing herein at 27 Cal.4th 537 is modified as follows.

The last sentence of the second paragraph on page 577 is modified to read as follows:

“The serious felonies qualifying as strikes under the initiative include exploding a destructive device causing bodily injury; certain felonies committed in connection with a street gang in violation of Penal Code section 186.22; throwing acid or a flammable substance; assault with a deadly weapon; assault on a peace officer or firefighter; assault with a deadly weapon against a public transit employee, custodial officer, or school employee; discharge of a firearm at an inhabited dwelling, vehicle, or aircraft; rape in concert; shooting from a vehicle; intimidation of victims or witnesses; and terrorist threats. (Pen. Code, § 1192.7, subd. (c), as amended by Prop. 21, § 17.)”

The first full paragraph on page 578 is deleted. This paragraph had stated:

“Furthermore, although the continuous sexual abuse of a child under the age of 14 years (Pen. Code, § 288.5) ordinarily might not be considered a crime associated with juvenile or gang offenders, another recent United States

Department of Justice report suggests otherwise. According to this report, sexual abuse by juveniles is a serious problem that is underreported, and such abuse involves a wide range of sexual misconduct. (Off. of Juvenile Justice and Delinquency Prevention, *Juveniles Who Have Sexually Offended* (Mar. 2001) p. 1 <<http://virlib.ncjrs.org/JuvenileJustice.asp>> [as of Feb. 28, 2002].) Victims of such abuse typically are relatives or acquaintances of the juvenile offender and are substantially younger than the perpetrator. (*Id.* at p. 4.) Among the types of abuse considered in this report is abuse against siblings (including stepsiblings and adoptive siblings). As compared with juveniles who abused individuals other than siblings, juveniles who sexually offended against siblings perpetrate a greater number of abusive acts over a longer period of time, and these acts are more likely to involve substantial sexual conduct. Sibling offenders also are more likely to abuse multiple victims. (*Id.* at p. 15.) Penal Code section 288.5 provides that any person who resides in the same home with a minor and engages in three or more acts of substantial sexual conduct with a child under the age of 14 years, over a period of time not less than three months in duration, is guilty of the offense of continuous sexual abuse of a child. In light of the data reported by the Department of Justice, we cannot conclude that this crime bears no reasonable relationship to juvenile offenders.”

The concurring opinion of Werdegarr, J., appearing herein at 27 Cal.4th 582, is modified as follows.

In the paragraph spanning pages 583-584, the third, fourth and fifth sentences are deleted, and are replaced with the following single sentence:

“For this reason, we need not determine whether assault with intent to commit rape, mayhem, sodomy, or oral copulation (§ 1192.7, subd. (c)(29)), a set of crimes already listed in section 1192.7 by virtue of 1998 amendments (Stats. 1998, ch. 936, § 13.5), though qualified as a strike only by virtue of Proposition 21’s change in the lock-in date, is germane to Proposition 21’s subject.”

The concurring opinion of Moreno, J., appearing herein at 27 Cal.4th 585, is modified as follows.

In the paragraph spanning pages 589-590, the last two sentences are modified to read as follows:

“I disagree with the majority’s argument that crimes such as first degree burglary or use of a firearm in connection with a felony are sufficiently related to

the subject of juvenile and gang-related crime merely because *some* juveniles or gang members commit such crimes, even though the large majority of those committing these crimes are adults who are not members of gangs. Employing the popular understanding test discussed above, it is highly doubtful that, for example, the general public would particularly associate first degree burglary with juveniles or gangs.”

This modification does not affect the judgment.