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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, **Petitioner,** **v.** **THE SUPERIOR COURT OF CONTRA COSTA COUNTY,** **Respondent,** **MICHAEL NEVAIL PEARSON,** **Real Party in Interest.**	**A120430** **(Contra Costa County Super. Ct. No. 05-951701-2)**

Penal Code section 1054.9[1] allows persons subject to a sentence of death or life in prison without the possibility of parole to file a motion for postconviction discovery to facilitate preparation of a petition for writ of habeas corpus or a motion to vacate judgment. Petitioner (the People, represented by the District Attorney of Contra Costa County) challenges the respondent superior court's discovery order, contending that section 1054.9 is an invalid amendment to the criminal discovery statutes enacted by Proposition 115 in 1990. We conclude section 1054.9 did not amend those statutes and affirm the superior court's order.[2]

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[1] All undesignated section references are to the Penal Code.

[2] This issue is pending before the California Supreme Court in *Barnett v. Superior Court*, review granted September 17, 2008, S165522.

BACKGROUND

In 1996, real party in interest Michael Nevail Pearson was convicted of two murders in the first degree and sentenced to death. In 2007, Pearson, represented by the Habeas Corpus Resource Center, filed a motion for postconviction discovery under section 1054.9. The People opposed the request, arguing that section 1054.9 is an invalid amendment to the criminal discovery statutes enacted by Proposition 115.

The superior court rejected the People's argument, and the People filed a petition for writ of mandate, which this court denied as premature. After the superior court issued a final order, the People filed a new petition for writ of mandate. This court issued an order to show cause on April 25, 2008.

DISCUSSION

On June 5, 1990, the voters adopted an initiative measure entitled the " 'Crime Victims Justice Reform Act,' " designated on the ballot as Proposition 115. (*Izazaga v. Superior Court* (1991) 54 Cal.3d 356, 363.) "Proposition 115 added both constitutional and statutory language authorizing reciprocal discovery in criminal cases. Section 30, subdivision (c), added to article I of the California Constitution . . . declares discovery to be 'reciprocal' in criminal cases. ('In order to provide for fair and speedy trials, discovery in criminal cases shall be reciprocal in nature, as prescribed by the Legislature or by the People through the initiative process.') [¶] Proposition 115 also added a new Penal Code chapter on discovery. [Citation.]" (*Id.* at p. 364.) Under the provisions of that new chapter, section 1054 et seq., both the prosecuting attorney and the defense are required to make certain disclosures to the other side. (§§ 1054.1, 1054.3.)

An uncodified section of Proposition 115 prescribes the requirements for amending the new statutes: "The statutory provisions contained in this measure may not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors." (Stats. 1990, § 30, p. A-256.) In

2002, 12 years after the passage of Proposition 115, the California Legislature enacted section 1054.9 (Stats. 2002, ch. 1105, § 1).[3]

Petitioner contends the Legislature's enactment of section 1054.9 did not satisfy Proposition 115's requirements for amendments because section 1054.9 did not pass by "two-thirds of the membership" of "each house" and did not become effective "only when approved by the electors." It is undisputed that section 1054.9 did not pass by a two-thirds vote. Therefore, if section 1054.9 amends the statutory provisions enacted by Proposition 115, the Legislature acted beyond the powers granted by the voters. (See *Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473, 1483-1484 ["[w]hen a statute enacted by the initiative process is involved, the Legislature may amend it only if the voters specifically gave the Legislature that power, and then only upon whatever conditions the voters attached to the Legislature's amendatory powers"].)

"An amendment is a legislative act designed to change an existing initiative statute by adding or taking from it some particular provision." (*People v. Cooper* (2002) 27 Cal.4th 38, 44.) At the outset, we reject the suggestion that the Legislature amended the Proposition 115 criminal discovery statutes simply because it added section 1054.9 to the Penal Code chapter enacted by the initiative. It is true that "amending a statute includes adding sections to . . . that statute." (*Huening v. Eu* (1991) 231 Cal.App.3d 766, 777.) But "in the case of an added code section, it is the effect of the added section and

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[3] As relevant here, section 1054.9 provides:

"(a) Upon the prosecution of a postconviction writ of habeas corpus or a motion to vacate a judgment in a case in which a sentence of death or of life in prison without the possibility of parole has been imposed, and on a showing that good faith efforts to obtain discovery materials from trial counsel were made and were unsuccessful, the court shall, except as provided in subdivision (c) [relating to access to physical evidence for the purpose of examination], order that the defendant be provided reasonable access to any of the materials described in subdivision (b).

"(b) For purposes of this section, 'discovery materials' means materials in the possession of the prosecution and law enforcement authorities to which the same defendant would have been entitled at time of trial."

not its label or the representations in the enactment creating it which controls. Where a new section affects the application of the original statute or impliedly modifies its provisions, the new section is an amendment to the statute." (*Ibid.*) Thus, the fact that the Legislature added section 1054.9 to the Penal Code chapter on discovery enacted by Proposition 115 does not necessarily mean section 1054.9 amended the initiative's statutory provisions. (See also *Mobilepark West Homeowners Assn. v. Escondido Mobilepark West* (1995) 35 Cal.App.4th 32, 43 ["legislation in a related but distinct area" of law does not constitute an amendment].) Instead, we must look to the effect of section 1054.9 on the discovery provisions the voters enacted.

Critical to this analysis is determining the intended reach of the discovery provisions in Proposition 115. Pearson argues that the voters were concerned only with pretrial discovery and that section 1054.9 had no effect on the initiative's discovery provisions. On the other hand, petitioner contends the reach of Proposition 115 is far broader. Petitioner does not argue that section 1054.9 directly modifies any of the initiative's discovery provisions, but it does argue that the voters intended to prohibit all other discovery, including postconviction discovery. Petitioner places particular emphasis on subdivision (a) of section 1054.5 (hereafter section 1054.5(a)), which specifies that "[n]o order requiring discovery shall be made in criminal cases except as provided in this chapter. This chapter shall be the only means by which the defendant may compel the disclosure or production of information from prosecuting attorneys, law enforcement agencies which investigated or prepared the case against the defendant, or any other persons or agencies which the prosecuting attorney or investigating agency may have employed to assist them in performing their duties."[4]

The same principles apply in the interpretation of a statute enacted by initiative or by the Legislature. (*Professional Engineers in California Government v. Kempton*

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[4] Along the same lines is section 1054, subd. (e), which provides that one of the purposes of the chapter is "[t]o provide that no discovery shall occur in criminal cases except as provided by this chapter, other express statutory provisions, or as mandated by the Constitution of the United States."

(2007) 40 Cal.4th 1016, 1037; *Hodges v. Superior Court* (1999) 21 Cal.4th 109, 114.) Our primary objective is to determine and give effect to the underlying intent of the voters. (Code Civ. Proc., § 1859.) We begin by examining the statutory language, giving the words their " 'usual, ordinary meaning.' " (*Curle v. Superior Court* (2001) 24 Cal.4th 1057, 1063.) Nevertheless, " '[t]o seek the meaning of a statute is not simply to look up dictionary definitions and then stitch together the results. Rather, it is to discern the sense of the statute, and therefore its words, in the legal and broader culture. Obviously, a statute has no meaning apart from its words. Similarly, its words have no meaning apart from the world in which they are spoken.' [Citation.] We do not interpret the meaning or intended application of a legislative enactment in a vacuum. In the case of a voters' initiative statute, too, we may not properly interpret the measure in a way that the electorate did not contemplate: the voters should get what they enacted, not more and not less." (*Hodges*, at p. 114, italics omitted.) Thus, section 1054.5(a) must be construed not in isolation but in the context of the initiative's overall scheme. (*Kempton*, at p. 1037.)

The critical statutory language at issue is the language providing that "[n]o order requiring discovery shall be made in criminal cases except as provided in this chapter." (Section 1054.5(a).) That language is ambiguous because the phrase "criminal case" does not have a single usual and ordinary meaning; instead, the term is susceptible to more than one reasonable interpretation. (*California Forestry Assn. v. California Fish & Game Commission* (2007) 156 Cal.App.4th 1535, 1545.) The phrase can be construed to refer to the pretrial and trial proceedings resulting in conviction or acquittal on the criminal charges, which is arguably the "meaning that would be commonly understood by the electorate." (*People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 302; see also *ibid.* [where an initiative does not further define a phrase, "it can be assumed to refer not to any special term of art, but rather to a meaning that would be commonly understood by the electorate"]; *Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 902 [focusing on what "the average voter, unschooled in the patois of criminal law, would have understood the plain language . . . to encompass"].) On the other hand, as petitioner argues, the phrase may be construed to encompass postconviction proceedings related to

the original criminal charges, even if occurring long after trial.[5] When, as here, "a statute is amenable to two alternative interpretations, the one that leads to the more reasonable result will be followed." (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735; see also *People v. Simon* (1995) 9 Cal.4th 493, 517.) We must consider " ' "the object to be achieved and the evil to be prevented by the legislation." ' " (*People v. Superior Court (Zamudio)* (2000) 23 Cal.4th 183, 193 (*Zamudio*).)

Petitioner points to nothing in the language of the initiative, statutes, or ballot arguments evidencing an intent to prohibit the type of postconviction discovery authorized by section 1054.9. Instead, petitioner relies almost entirely on the language of section 1054.5(a) and the argument that section 1054.9 discovery occurs within the confines of the underlying criminal action, rather than as part of an independent proceeding. Petitioner's analysis begs the question. The issue is not whether a section 1054.9 motion is technically part of an independent proceeding. Instead, the central issue is what the voters understood the ambiguous phrase "criminal case" to mean, which requires consideration of the objects to be achieved by Proposition 115. (*Zamudio*, *supra*, 23 Cal.4th at p. 193.)

The express purposes of the Penal Code chapter enacted by Proposition 115 are set forth in section 1054.[6] Several of those statements of purpose suggest that the chapter is

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5 It is established that the reciprocal discovery provisions of Proposition 115 do not govern habeas proceedings. (*In re Scott* (2003) 29 Cal.4th 783, 813.) Pearson argues that his section 1054.9 motion is actually part of the habeas proceedings, even though the habeas petition has not yet been filed. Because we ultimately reject petitioner's broad construction of "criminal case," we need not address Pearson's argument.

6 Section 1054 provides:

"This chapter shall be interpreted to give effect to all of the following purposes:

"(a) To promote the ascertainment of truth in trials by requiring timely pretrial discovery.

"(b) To save court time by requiring that discovery be conducted informally between and among the parties before judicial enforcement is requested.

"(c) To save court time in trial and avoid the necessity for frequent interruptions and postponements.

intended to reach only pretrial discovery. In particular, the first stated purpose is "[t]o promote the ascertainment of truth in trials by requiring timely pretrial discovery." (§ 1054, subd. (a).) Another stated purpose of the statutory scheme is "[t]o save court time in trial and avoid the necessity for frequent interruptions and postponements." (§ 1054, subd. (c).) None of the statements of purpose refers to postconviction matters.

The chapter's substantive provisions also relate to pretrial discovery. Section 1054.7 specifies that "[t]he disclosures required under this chapter shall be made at least 30 days prior to the trial, unless good cause is shown why a disclosure should be denied, restricted, or deferred." Subdivisions (b) and (c) of section 1054.5, which govern the sanctions a court may impose on a party for not making the required disclosures, contemplate application before trial, inasmuch as the potential sanctions include "delaying or prohibiting the testimony of a witness or the presentation of real evidence," "continuance of the matter," "advis[ing] the jury of any failure or refusal to disclose and of any untimely disclosure," and (if required by the federal Constitution) "dismiss[ing] a charge."

We conclude that the discovery provisions of Proposition 115 were intended to address pretrial discovery. The more reasonable interpretation of section 1054.5(a) is that the voters understood "criminal case" to refer to the pretrial and trial proceedings resulting in conviction or acquittal on the criminal charges. Again, petitioner points to nothing other than the ambiguous language of section 1054.5(a) to suggest that the statutes are intended to encompass, and limit by silence, postconviction discovery. Petitioner does not explain how such a limitation would serve the express purposes delineated in section 1054. Adoption of petitioner's construction of "criminal case" in section 1054.5(a) would greatly expand the impact of the initiative in the absence of any

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"(d) To protect victims and witnesses from danger, harassment, and undue delay of the proceedings.

"(e) To provide that no discovery shall occur in criminal cases except as provided by this chapter, other express statutory provisions, or as mandated by the Constitution of the United States."

basis to conclude the voters were concerned with anything other than the fairness of pretrial discovery procedures. This we may not do.

We reject petitioner's expansive construction of "criminal case" in section 1054.5(a) and hold that section 1054.9 did not amend the statutory provisions enacted by Proposition 115. Therefore, the Legislature was not required to adopt section 1054.9 by the two-thirds vote specified in the initiative measure, and petitioner's challenge to the validity of the statute fails.

DISPOSITION

The order to show cause is discharged, and the petition for writ of mandate is denied.

SIMONS, Acting P.J.

We concur.

NEEDHAM, J.

DONDERO, J.*

* Judge of the Superior Court of the City and County of San Francisco, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.