

"THE THREE STRIKES REFORM ACT OF 2012"

The Elusive Scales of Justice

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On October 21, 2011, an initiative was filed with the State's Attorney General Office requesting clearance to gather signatures for placing the matter of reforming California's "Three Strikes Law" before voters. Previous attempts to change the law, most notably Proposition 66, seemingly failed due to negative campaigning regarding both the number of "dangerous criminals" that would be released, and the law's future uselessness if its "teeth" were removed. In short, politics has always commanded center stage when attempting reform and has always prevented change. Under the latest proposal, styled "The Three Strikes Reform Act of 2012," life sentences may still be meted out for relatively minor offenses. However, this may be so only if a defendant has either suffered specified prior convictions or engaged in specific misconduct within the currently charged offense. The "Act" also proffers a modest retroactive application (couched in terms of a resentencing provision) that may ameliorate life sentences for non-violent, -serious offenses of some presently incarcerated. Supporters of reform, especially those with ties to someone serving a three-strikes sentence, are divided over the Act, since not all three strikers will be eligible to have their sentences modified under the measure. Inside the prisons too divide is palpable, with those deeming themselves beneficiaries of the Act beating a drum of secession from the camp that has for years fueled the charge for change. This new repositioning of interests somewhat impresses, if you will, a throwing "under-the-bus" ideology immolating a group of three strikers who have likewise committed minor offenses.

Within this context jubilation over the filing and possible passage of The Three Strikes Reform Act of 2012--although meriting warm quarters from all--must be counterbalanced by the gravity that the struggle for some will continue on. Victories of this kind, unfortunately, are Pyrrhic victories.

Disappointment aside, however, The Three Strikes Reform Act of 2012 may provide the necessary foundation for some three strikers to raise successful claims because the reform measure clearly implies that punishment under its provisions is not to be construed as an aggravated penalty either for the misconduct itself, or for the principle of repeat offending, or for the concept of exhibiting a particular offense characteristic, but simply for the past miscon-

duct of an offender. Punishment of this sort is explicitly prohibited by the Double Jeopardy Clause of the U.S. Constitution, which was alluded to, in dictum, by the U.S. Supreme Court in Solem. In Solem, the Court cautioned that increased punished for an offense cannot be tailored to punish for a past offense, but only designed to increase punishment of the current offense because it is aggravated by the past offense. Sentencing schemes contrary to this principle are considered "tails-that-waive-the-dog" type statutes, wherein there is either a cogent inverse relationship among severities of offenses, or a complete lack of nexuses among elements in that the offenses are non-relative to enhancement by statutory definition. In general, the logic of permissibly enhanced punishment schemes can be found in the Petty Theft Statue of the State, wherein the only legal mechanism that can be used to elevate that misdemeanor conduct to felonious theft is that an accused has previously suffered a theft-related conviction. This is to say notwithstanding three strikes legislation a defendant facing petty theft charges, ironically, can have multiple violent and/or serious prior convictions and cannot be subjected to a life sentence unless he or she has a theft related conviction.

The framers of that statute realized that the only types of offenses that could aggravate theft were other theft related offenses. Additionally, the logic can also be found in Penal Code Section 1170.12, wherein punishment for a current serious offense can only be augmented by a defendant's prior convictions of other serious offenses. These are the two types of sentencing schemes Justice Stevens categorized in Solem; for the Petty Theft Statue (and those analogous thereto) addresses a particular offense characteristic, and those similar to Penal Code Section 1170.12 address general recidivism. The Three Strikes Law runs awry of this logic, and The Three Strikes Reform Act of 2012 might be helpful in successfully exposing this miscarriage, since its provisions venture even farther than its progenitor's into a class of offenders to single out for increased punishment.

In closing it must be noted that the elusive scales of justice in America have sadly never swung to equipoise magically thereby according everyone his or her just due. Rights granted by the Constitution in some cases are only secured through long fought battles fraught with sacrifices and disappointments. History is replete with such struggles, and regrettably this long and winding road is being

traveled by three strikers. It is hoped, though, that all see a grander scheme in this challenge, and remember it is not what form the relief takes first that is of moment, but what the relief eventually forms that really counts!

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JAILHOUSE LEGAL OPINION

Regarding the Three Strikes Reform Act of 2012; resentencing is not automatic. It will be left to the discretion of the judge who sentenced the striker.

Habeas proceedings are begun by filing a 'verified' petition. Penal Code Section 1474 (3) and 1475. "The court must rule on the petition within 60 days after the petition has been filed." California Rules of Court, Rule 4.551 (a) (3) (A). A court rules on the petition by either (1) issuing an order to show cause under Rule 4.551 (c), (2) deny the petition, or (3) request an informal response to the petition (Rule 5.551 (b), or grant the writ and ordering the confining authority (warden) to produce the body of the petitioner (striker) and set a deadline for the return to be filed.

Anthony Ramirez
PVSP

Attention Three Strikers, Family, and Friends!

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