

GENERAL OFFICE MEMORANDUM 20-111

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM:  JOSEPH P. ESPOSITO  
Chief Deputy District Attorney

SUBJECT: PENAL CODE § 1170.95 REQUIRES SENTENCING JUDGE TO RULE  
ON PETITION ABSENT UNAVAILABILITY - *PEOPLE V. SANTOS*

DATE: AUGUST 25, 2020

On August 13, 2020, the 2<sup>nd</sup> District Court of Appeal, issued an opinion in the case of *People v. Santos* (Aug. 13, 2020, B299844) \_\_\_ Cal.App.5th \_\_\_ [[2020 Cal.App. LEXIS 762](#)].<sup>1</sup> In that case, Santos filed a petition for resentencing under Penal Code § 1170.95. The case was assigned by the Supervising Judge of the criminal courts to the *department* in which Santos was initially sentenced. At the time of the filing of the petition, a different judge (Lomeli) was assigned to the department than the sentencing judge (Pastor). Judge Pastor presided in another department on the same floor.

After Judge Lomeli denied Santos' petition, Santos refiled the petition in Judge Pastor's court. Santos argued that the first petition was improperly heard by Judge Lomeli because, under the plain language of the statute, section 1170.95, subdivision (b)(1) requires that the petition be ruled upon by the sentencing judge if that judge is available. Judge Lomeli advanced the matter and again denied the petition and ruled that the statute provides that petitioner be heard by the bench officer who presides in the department where petitioner was sentenced.

In the published portion of the opinion, the Court of Appeal reversed the trial court's order denying Santos' resentencing petition and held that, absent a showing of unavailability, Penal Code § 1170.95 requires the judge who originally sentenced the petitioner to rule on the petition.

If the original sentencing judge is not available (e.g., retired or deceased), deputies should make sure the current judge makes a finding of unavailability and states the reason on the record.

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<sup>1</sup> Available at <https://www.courts.ca.gov/opinions/documents/B299844.PDF>.