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Attorney for Appellant/Petitioner
Johnny Aguilar, Jr.

In the Supreme Court of the State of California

People Of The State Of California,

Plaintiff and Respondent,

v.

Johnny Aguilar, Jr.,

Defendant and Appellant.

No. _____

Court of Appeal No. F061462
Fresno County Superior Court
No. F09903920

Motion for Judicial Notice

Pursuant to Rules 8.54(a) and 8.252(a) of the California Rules of Court¹ and Evidence Code sections 452, subdivision (d) and 459, subdivision (a), defendant/petitioner Johnny Aguilar, Jr. moves this court to take judicial notice of its own files in two prior proceedings: *People v. David Deandre Lewis*, No. S204103; and *People v. Juan C. Huevo*, No. S204962. These records weren't presented to the trial court (rule 8.252(a)(2)(B)), as they are relevant only to defendant's accompanying petition for review (PFR); for that reason, the records also don't relate to post-judgment matters in this case (rule 8.252(a)(2)(C)).

This motion is based on the accompanying petition for review in Court of Appeal No. F061462, the record on appeal in that case, and the following points and authorities (rule 8.54(a)(2)). A proposed order is attached. (Rule 8.252(a)(1).)

¹ Further unspecified references to rules are to the California Rules of Court.

Memorandum in Support of Motion

Procedural Background

On January 29, 2013, the Fifth District Court of Appeal issued an unpublished opinion in No. F061462, affirming defendant's judgment of second-degree murder and arson. (Opn 2-3, 73.) Concurrently with this motion, defendant submits his petition for review, No. S _____, presenting six issues. (PFR 2-3.)

Argument

This Court's Files from Prior Proceedings Are a Proper Subject of Judicial Notice.

Evidence Code section 459 provides that a "reviewing court may take judicial notice of any matter specified in Section 452." And under the cited statute judicial notice may be taken of the records of any court in the state. (Evid. Code, § 452, subd. (d).) Thus, it's proper for this court to take notice of petitions for review and related documents in its own files. (See, e.g., *Morris v. Chiang* (2008) 163 Cal.App.4th 753, 758, fn. 5 ["briefs in other cases"]; *Duggal v. G.E. Capital Communications Services, Inc.* (2000) 81 Cal.App.4th 81, 86 ["records of a California court"].)

The Records Are Relevant to This Appeal.

Of course, the subject of judicial notice must also be relevant to the current proceeding. (*People v. Rowland* (1992) 4 Cal.4th 238, 268, fn. 6; rule 8.252(a)(2)(A).) In petitioning for review, defendant's task is not only to identify legal issues, but also to explain why they're "important." (Cal. Rules of Court, rule 8.500(b)(1).) As the first issue in the accompanying petition, defendant poses the question, "Where the Court of Appeal *isn't alone* in mistakenly relying on a judgment-favoring view of the evidence to find even federal constitutional errors harmless, should this court should grant review or transfer for reconsideration?"

(PFR 2, italics added.) And in arguing Necessity for Review of that issue (PFR 11-16), defendant identifies several standards of review materially misapplied in the Court of Appeal opinion. Turning to the problem's review-worthiness, he asserts:

As well-settled standards, defendant acknowledges they don't exactly cry out for a review grant. But this court also should acknowledge something: *to the extent Courts of Appeal ignore or otherwise violate those standards, a defendant's right to appeal might as well be nonexistent. After all, if reversal is reserved for cases with insufficient evidence to support the judgment, then there's no point in litigating other issues, no matter how substantial.*

(PFR 14, original italics.)

He adds:

the errors surely are *not* confined to his case, and even a small sample of recent similar problems — in serious felony appeals raising substantial claims — should concern this court enough to grant review; the issue is “important” not only to this defendant, but to defendants as a class and to our system of justice. (Rule 8.500(b)(1).) To that end, he submits with this petition a motion for judicial notice of two recent petitions: *People v. Lewis*, S204103, and *People v. Huevo*, S204962. In each case, the petitioner asked this court to grant review to determine whether the Court of Appeal had found harmless error by mistakenly relying on a judgment-favoring view of the record — in an opinion issued after this court's Mil decision. (*Lewis*, issue 3; *Huevo*, issue 1.)

(PFR 15, original italics.)

Because the *Lewis* and *Huevo* petitions support defendant's argument for review but aren't part of the record in this case, judicial notice is appropriate.

Conclusion

For the foregoing reasons, appellant requests that this court take judicial notice of its own files in *People v. David Deandre Lewis*, No. S204103; and *People v. Juan C. Huevo*, No. S204962.

Dated: March 11, 2013

Respectfully submitted,

Stephen Greenberg
Attorney for Appellant

Attached: Proposed Order; Proof of Service

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHNNY AGUILAR, JR.,

Defendant and Appellant.

No. S _____

Court of Appeal No. F061462

Fresno County

Superior Court No. F09903920

**ORDER GRANTING MOTION
FOR JUDICIAL NOTICE**

Defendant/petitioner's motion for judicial notice is hereby granted. This court hereby takes notice of its own files in *People v. Lewis*, No. S204103, and *People v. Huelzo*, No. S204962.

Date: _____

Chief Justice

Proof of Service by Mail

Case: *People v. Johnny Aguilar, Jr.*

No. S _____/F061462

I am an active member of the State Bar of California (SBN 88495), over 18, and not a party to this action. My business mailing address is P.O. Box 754, Nevada City, CA 95959-0754.

On the date stated below, I served the document(s) described below on each of the listed parties by mailing a copy through the U.S. Postal Service in Nevada City, California.

Document(s): Motion for Judicial Notice

Addressee(s):

Attorney General, California
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Executed _____ at Nevada City, California. I declare under penalty of perjury that the foregoing is true and correct.

Stephen Greenberg