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CASES COMING UNDER *PEOPLE V. CHIU*

***Chiu* decision: aider and abettor may not be convicted of first degree premeditated murder under a natural and probable consequences theory.**

Thank you for asking about the California Supreme Court decision in *People v. Chiu* (2014) 59 Cal.4th 155, which held an aider and abettor may not be convicted of first degree premeditated murder under the natural and probable consequences doctrine. It is not enough that the aider and abettor intended some other offense than murder and that the natural and probable result of that offense would be murder; such conduct can be no more than second degree murder. To be convicted of first degree, an aider and abettor must have directly assisted with the killing with the necessary intent and knowledge. (*Chiu* does not apply to first degree felony murder under Penal Code section 189.)

Under *Chiu* it would be error to give a jury instruction permitting conviction of first degree murder on the natural and probable consequences theory, as applied to an aider and abettor (for example, [CALCRIM](#) No. 402 or 403). If it was given, the error usually would be found harmful.

Enclosed materials for unrepresented defendants

Appellate Defenders, Inc. (ADI), has prepared these materials to help unrepresented defendants whose cases come under *Chiu*. They are intended to be used by defendants whose appeal is over or for whom the time for appealing is past. They apply if: (a) you were convicted as an aider and abettor of first degree murder and (b) the jury was instructed under the theory of the natural and probable consequences doctrine (currently CALCRIM No. 402 or 403) to determine guilt for the first degree murder charge. *Do not use the materials unless your case fits both categories.* If you have questions regarding your eligibility for *Chiu* relief, please contact your former trial or appellate counsel.

The materials are to be used in preparing a petition for a writ of habeas corpus asking for reversal under *Chiu*. They include (a) the standard habeas form MC-275, (b) an “Attachment” for completing the section on why the sentence was legally improper, and (c) instructions for both.

The ADI materials are necessarily very general: they just lay out important recent decisions and some broad legal principles. *They were not written for a specific case and therefore do not talk about the facts in your case. Providing those is your job, and it is in many ways the key part of your petition.*

Legal representation

Once your trial and direct appeal are over, or the time to pursue an appeal has expired, you no longer have the right to an appointed lawyer to file new petitions, including habeas corpus. ADI is not able to represent you or assign an attorney to do it. Because ADI is not your attorney, it cannot analyze your particular case or give you legal advice. It is up to you to complete and file the petition. If the court finds your petition states facts that may entitle you to relief, it will then appoint a lawyer.

Possible risks

There is always some risk in reopening a case or attaching documents to something filed in court. Errors in your favor could be discovered and corrected, or something incriminating might come up, leaving you worse off than before you took action. If you have any doubts, consult your former trial or appeals lawyers, who are familiar with your case and may be able to help.

Thank you again for asking. We wish you the best in your efforts.

APPELLATE DEFENDERS, INC.

Encl: Judicial Council Habeas Corpus Petition Form (MC-275)
Answers to Question 6, Grounds for Relief
Instructions for a *Chiu* Habeas Corpus Petition

IMPORTANT

These materials are **not legal advice** to you. Your use of the ADI materials does not create an attorney-client relationship between you and ADI or anyone at ADI. The statements in the materials are not guaranteed to be complete or free from error or up to date (the law is constantly changing). You may use them only at your own risk and should always check to make sure what you are saying in your petition is correct and up to date, both as to fact and law.