

In re \_\_\_\_\_ *(your name)*

**ATTACHMENT TO HABEAS CORPUS PETITION UNDER *PEOPLE V. COOK***

**ANSWERS TO QUESTION 6, GROUNDS FOR RELIEF  
(JUDICIAL COUNCIL FORM MC-275)**

**QUESTION 6:** To answer Question 6, write "Please see attached" in the space for that question on the MC-275 form if it is not already printed there.

**FILL OUT THE ATTACHMENT:** Fill in the blanks that apply to you in section (a) "Supporting facts," below.

**SIGN, DATE, ATTACH:** When you are done with the Attachment, sign and date the Verification, which is at the end of the attachment. Attach all of the pages (and any additional sheets you needed) to your MC-275 petition. Then return to the instructions for completing the MC-275 form petition.

**IMPORTANT:** Read everything very carefully, both the parts already printed and the information you added. Make sure it is all correct and applies to your case. Cross out or change anything that is not accurate. This Attachment is filed under penalty of perjury.

**Question 6: GROUNDS FOR RELIEF**

**Ground 1:** This petition alleges that one or more great bodily injury enhancements under Penal Code section 122022.7, subdivision (a), attached to my conviction(s) for murder or manslaughter, must be stricken under *People v. Cook* (Feb. 5, 2015) 2015 WL 467270.

**(a) Supporting facts:**

I was convicted of \_\_\_\_\_ *(murder or manslaughter)* on \_\_\_\_\_ *(month/day/year)* in case number \_\_\_\_\_ *(case number)*. My sentence was enhanced under Penal Code section 12022.7, subdivision (a) for inflicting great bodily injury on counts number \_\_\_\_\_ *(list murder or*

*manslaughter count numbers that had a great bodily injury enhancement*). I am currently in custody at \_\_\_\_\_ (*prison name and address*).

I enclosed a copy of the transcript from my sentencing. (*If your sentencing transcript is available, check this box and enclose a copy of it with the petition.*)

**(b) Supporting authority:**

In *People v. Cook* (Feb. 5, 2015) 2015 WL 467270, the California Supreme Court held that great bodily injury enhancements under Penal Code section 12022.7, subdivision (a) cannot attach to a conviction for murder or manslaughter. The language of section 12022.7, subdivision (g), specifically provides the enhancement “shall not apply to murder or manslaughter” and shall not apply “if infliction of great bodily injury is an element of the offense.” The court disapproved of *People v. Julian* (2011) 198 Cal.App.4th 1524, *People v. Weaver* (2007) 149 Cal.App.4th 1301, and *People v. Verlinde* (2002) 100 Cal.App.4th 1146 to the extent those cases carved out exceptions to subdivision (g).

In *Cook* the defendant was convicted of three counts of gross vehicular manslaughter (Pen. Code, § 192, subd. (c)(1)), for an accident in which three victims were killed and another survived with injuries. Three great bodily injury enhancements were attached to sentence for the first count of gross vehicular manslaughter. Two related to the deceased victims who were subjects of the other two manslaughter convictions, and

one related to the surviving injured victim, who was not the subject of any other charge or conviction.

The Supreme Court determined all of the enhancements were improper. The language of Penal Code section 12022.7, subdivision (g) prohibits a great bodily injury enhancement for a murder or manslaughter conviction. “Subdivision (g) means what it says – great bodily injury enhancements simply do not apply to murder or manslaughter.” (*People v. Cook* at \*10.)

**Retroactivity:** *Cook*’s holding is a substantive rule of law that defines the reach of a great bodily injury enhancement under Penal Code section 12022.7, subdivision (a), and so it should be fully retroactive. (See *Schriro v. Summerlin* (2004) 542 U.S. 348, 351-352; *Bousley v. United States* (1998) 523 U.S. 614, 619-621 [decision that a substantive criminal statute does not reach certain conduct is fully retroactive]; *People v. Mutch* (1971) 4 Cal.3d 389, 394-396 [reinterpretation of substantive definition of kidnapping applies to defendant whose conviction became final before *People v. Daniels* (1969) 71 Cal.2d 1119]; *In re Hansen* (2014) 227 Cal.App.4th 906, 916-917 [retroactively applying *People v. Sara Chun* (2009) 45 Cal.4th 1172 on merger of shooting at inhabited dwelling with resulting homicide to conviction final on appeal].)

**(c) Relief sought – request that enhancements be stricken:**

The great bodily injury enhancement(s) under Penal Code section 12022.7(a) attached to my conviction(s) for murder or manslaughter violate the decision in *People v. Cook, supra*, 2015 WL 467270, and the prohibition against such attachments in Penal

Code section 12022.7, subdivision (g). I therefore request the great bodily injury enhancements(s) be stricken.

I also request that counsel be appointed to represent me for any further proceedings ordered by this court. (Cal. Rules of Court, rules 4.551(c)(2), 8.385(f).) I am indigent and am unable to hire my own attorney.

**CHECK:** Carefully check everything in this Attachment, both the parts already printed and everything added by you, for accuracy. Make any needed corrections.

**SIGN AND DATE THE VERIFICATION:** Sign and date the Verification below on this page.

**ATTACH:** Add this Attachment (and any continuation sheets you prepared) to your form MC-275.

### **VERIFICATION OF ATTACHMENT**

**DECLARATION: I declare under penalty of perjury under the laws of California that the foregoing is true and correct.**

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*Date*

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*Signature of petitioner*