

In re _____ (your full name)

CHIU ATTACHMENT:

**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 the section entitled "(a) Supporting facts," below. Use additional pages if needed.

REVIEW: Read everything very carefully, both the parts already printed and the information you add. Make sure it is all correct and applies to your case. Cross out or change anything that is not accurate. This Attachment, like the MC-275 form, is filed under penalty of perjury.

SIGN, DATE, ATTACH: When you are done with the Attachment, sign and date the "Verification of Attachment" on the last page. Attach all pages (and any additional sheets you needed) to your MC-275 form.

Question 6: GROUNDS FOR RELIEF

Ground 1: This petition alleges reversal of my first-degree murder conviction is required under *People v. Chiu* (2014) 59 Cal.4th 155.

(a) Supporting facts

The crime for which I was convicted is shown in question 3 of my MC-275 form. I was convicted as an aider and abettor of first-degree murder on the date of

_____ (month/day/year) in case number _____ (Superior

Court case number). I am currently in custody at this institution: _____

_____ (prison name and address).

The jury was instructed on the following theories of guilt for the first-degree murder charge: _____

List all theories of guilt mentioned in the instructions for the first-degree murder charge, including the natural and probable consequences doctrine, presented to the jury. Include the CALCRIM jury instruction number if you know it. For example, you might list, "Direct aiding and abetting (CALCRIM No. 401) and the natural and probable consequences doctrine (CALCRIM No. 403)."

- I enclose a copy of the transcript from the day the court instructed the jury.
If your transcript is available, check this box and enclose a copy of it with the petition.

There is a reasonable possibility that the jury relied on the natural and probable consequences instruction in reaching its verdict. _____

Point out evidence introduced *at trial* that your state of mind was not to aid and abet *murder*, but rather to commit another offense, from which the killing arose. If the prosecutor often mentioned the natural and probable consequence theory in argument or questioning, or there were jury questions about that theory, describe all of that in as much detail as possible. If anything occurred that might move the jury away from direct aiding and abetting or another legally correct theory and toward the natural and probable consequences theory, describe that.)

(b) Supporting authority

***Chiu* decision**

The California Supreme Court in *People v. Chiu, supra*, 59 Cal.4th 155, 158-159, held that an aider and abettor may not be convicted of first degree premeditated murder under the natural and probable consequences doctrine. *Chiu* found that a second-degree murder conviction is more closely proportional with a defendant's culpability for aiding and abetting a target crime that would naturally, probably, and foreseeably result in a murder. (*Id.* at p. 166.)

In *Chiu*, two theories of first degree murder were presented to the jury: (1) the defendant directly aided and abetted the murder, and (2) the defendant aided and abetted

the perpetrator of the target offense (disturbing the peace or assault), the natural and probable consequence of which was the victim's murder. (*Chiu, supra*, 59 Cal.4th at p. 160.) After the jury reported itself deadlocked between first and second degree, the trial court removed the holdout juror, who objected to aiding and abetting law as stated in the instructions. The jury then found the defendant guilty of first degree murder. (*Id.* at p. 168.)

On review, the court concluded that the culpability of aider and abettor under the natural and probable consequences doctrine does not reach that required for first degree murder: “[T]he connection between the defendant’s culpability and the perpetrator’s premeditative state is too attenuated.” (*People v. Chiu, supra*, 59 Cal.4th 155, 166.) The court found that an aider and abettor’s liability for first degree premeditated murder must be based on *direct* aiding and abetting principles (e.g., CALCRIM No. 401). (*Id.* at pp. 158-159.) That means the jury must find “the defendant aided or encouraged the commission of the murder with knowledge of the unlawful purpose of the perpetrator and with the intent or purpose of committing, encouraging or facilitating its commission.” (*Id.* at p. 167.)

The court found prejudice because it could not conclude, beyond a reasonable doubt, that the jury based its verdict on something other than the legally incorrect natural and probable consequences theory. (*People v. Chiu, supra*, 59 Cal.4th at pp. 167-168.) The court allowed the People to accept a reduction of the conviction to second-degree murder or to retry the first degree murder conviction under a direct aiding and abetting theory. (*Id.* at p. 168.)

Retroactivity

Chiu did not create new law. Rather, it reinterpreted aider and abettor liability under Penal Code section 31 and related principles by determining the offender's level of culpability under the natural and probable consequences doctrine and its relationship with the degrees of murder. (*Chiu, supra*, 59 Cal.4th 155, 164.) The result is a substantive rule of law that defines the reach of aider and abettor liability, and therefore 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]; *People v. Canizales* (2014) 229 Cal.App.4th 820 [retroactively applying *Chiu, supra*, 59 Cal.4th 155 to a first degree murder conviction]; *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) Request for relief and appointment of counsel

The jury instructions in my case violated the decision in *People v. Chiu, supra*, 59 Cal.4th 155, in that they allowed an aider and abettor to be found guilty of first degree murder under the natural and probable consequences doctrine. There is a reasonable possibility the jury used this theory in arriving at a verdict. I therefore request my first degree murder conviction be vacated.

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

VERIFICATION OF ATTACHMENT

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

Date

Signature of Petitioner