

CERTIFIED FOR PUBLICATION
NO CHANGE IN JUDGMENT

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re WALTER S., a Person Coming Under
the Juvenile Court Law.

B144386
(Los Angeles County
Super. Ct. No. YJ19704)

THE PEOPLE,

Plaintiff and Respondent,

v.

WALTER S.,

Defendant and Appellant.

ORDER MODIFYING OPINION
AND DENYING REHEARING

THE COURT:*

It is ordered that the opinion filed herein on June 6, 2001, be modified in the following particulars:

On page 10, after the heading "Cruel or Unusual Punishment," the following is inserted:

In *In re Reed* (1983) 33 Cal.3d 914, 919-922 (*Reed*), the California Supreme Court held that the requirement to register as a convicted sex offender is punishment within the meaning of the prohibition of California Constitution, article 1, section 17 against cruel or unusual punishment. That holding has never been overruled.

* BOREN, P.J., NOTT, J. and COOPER, J.

In *People v. Castellanos* (1999) 21 Cal.4th 785, the lead opinion concluded that the requirement to register as a sex offender is not punishment within the meaning of the prohibition in the federal and California Constitutions against ex post facto laws. (*Castellanos, supra*, 21 Cal.4th at pp. 789-799 (lead opn. of George, C.J.)) In a concurring and dissenting opinion, Justice Kennard noted that sex offender registration may be punishment for purposes of article I, section 17 of the California Constitution. (*Id.* at p. 805.) Recently, in *People v. Ansell* (June 14, 2001, S079744) ___ Cal.4th ___, the California Supreme Court unanimously held that an amendment to the procedure for certificates of rehabilitation that made such a certificate unavailable to persons convicted of particular sex offenses does not violate the prohibition of the federal and California Constitutions against ex post facto laws. (*Ansell, supra*, at pp. ___ - ___ [typed opn. at pp. 19-33].) The court noted that a majority of the California Supreme Court had agreed in *Castellanos* that registration laws have traditionally not been viewed as criminal or penal in nature. (*Ansell, supra*, at p. ___ [typed opn. at p. 23].)

In *In re Alva* (May 31, 2001, B142625) ___ Cal.App.4th ___, Division Three of this court held that since *Reed* has not been overruled, the requirement to register as a sex offender is punishment within the meaning of the prohibition in the California Constitution against cruel or unusual punishment. (*Alva, supra*, at p. ___ [typed opn. at p. 12].) *Alva* also held, however, that the requirement to register as a convicted sex offender for possession of child pornography in violation of Penal Code section 311.11, subdivision (a) does not constitute cruel or unusual punishment within the meaning of the prohibition in the California Constitution against cruel or unusual punishment.

Based on the holding in *Reed*, we conclude that the requirement to register as a gang offender is punishment within the meaning of the prohibition against cruel or unusual punishment in California Constitution, article I, section 17.

Respondent's petition for rehearing is denied.

This modification does not change the judgment.