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California court ruling limits discovery by inmates in appeals

Justices say they must show the material they want exists to avoid a 'fishing expedition' and that they can be denied information from out-of-state law enforcement agencies that assisted prosecutors.

By Maura Dolan, Los Angeles Times

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The California Supreme Court on Thursday limited the ability of death row inmates and those sentenced to life without parole to obtain information from law enforcement that might help their appeals.

In interpreting a 2002 law, the state high court ruled 4 to 3 that such inmates must show the material they want exists to avoid a "fishing expedition" and decided that inmates can be denied information from out-of-state law enforcement agencies that assisted the prosecution.

The decision came in a case involving death row inmate Lee Max Barnett, condemned in Butte County in 1988 for a murder and other crimes. Justice Ming W. Chin, writing for the majority, said a 2002 state law on post-trial discovery did not entitle Barnett to the voluminous materials he demanded.

"We do not believe the Legislature intended the post-trial discovery right to extend so far as to permit a court to order discovery from 22 law enforcement officers working for six different out-of-state agencies, one outside the country, regarding crimes committed between 1965 and 1988," Chin wrote.

In a dissent, Justice Kathryn Mickle Werdegar agreed that some of Barnett's requests were excessive but said the majority's decision was "intolerably unfair to the defense."

She said the court had diminished the value of the 2002 law and invited the Legislature to "reassert its prerogative in terms that cannot so easily be ignored."

"To hold that a defendant must prove specific undisclosed materials exist before requesting their production will inevitably have the pernicious effect of shielding both negligent and intentional failures to produce relevant evidence," wrote Werdegar, joined by 6th District Court of Appeal Justice Conrad L. Rushing, who was sitting in for Justice Joyce L. Kennard.

Justice Carlos R. Moreno wrote separately to say he agreed that inmates should show the existence of materials they seek but dissented on the grounds that Barnett was entitled to

information from out-of-state law enforcement that assisted the prosecution.

The entire court in *Barnett vs. Superior Court*, S165522, agreed that inmates sentenced to life or death do not have to prove the material they want would be exculpatory.

Deputy Atty. Gen. Eric L. Christoffersen praised the majority decision for putting the state law "in the proper perspective."

The defense lawyer in the case was unavailable for comment.