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State of California

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| OPINION                 | : | No. 82-811           |
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| of                      | : | <u>APRI 28, 1983</u> |
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| JOHN K. VAN DE KAMP     | : |                      |
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THE HONORABLE ROBERT W. NAYLOR, A MEMBER OF THE CALIFORNIA ASSEMBLY, has requested an opinion on the following question:

Does "python" as used in Penal Code section 653o to identify an endangered snake include "anaconda"?

CONCLUSION

As used in Penal Code section 653o to identify an endangered snake, "python" does not include "anaconda."

## ANALYSIS

Penal Code section 653o, subd. (a), provides as follows:

"It is unlawful to import into this state for commercial purposes, to possess with intent to sell, or to sell within the state, the dead body, or any part or product thereof, of any alligator, crocodile, polar bear, leopard, ocelot, tiger, cheetah, jaguar, sable antelope, wolf (*Canis lupus*), zebra, whale, cobra, *python*, sea turtle, colobus monkey, kangaroo, vicuna, sea otter, free-roaming feral horse, dolphin or porpoise (*Delphinidae*), Spanish lynx, or elephant."

"Any person who violates any provision of this section is guilty of a misdemeanor and shall be subject to a fine of not less than one thousand dollars (\$1,000) and not to exceed five thousand dollars (\$5,000) or imprisonment in the county jail for not to exceed six months, or both such fine and imprisonment, for each violation." (Emphasis added.)

We are asked whether or not the term "python" in this statute includes "anaconda."

Section 653o was enacted in 1970 (Stats. 1970, ch. 1557, § 1, p. 3186) following the passage of the federal Endangered Species Conservation Act of 1969 (Pub. L. 91-135; 83 Stat. 275).<sup>1</sup> Each statute was designed to "prevent the extinction of endangered species." (*People v. K. Sakai Co.* (1976) 56 Cal.App.3d 531, 536.) The original version of section 653o did not include python among the listed varieties of threatened wildlife. Python was added in 1971 along with zebra, whale, cobra, sea turtle, colobus monkey and kangaroo. (Stats. 1971, ch. 1283, § 1, pp. 2511-2512.) The inclusion of python represents a legislative determination that this form of life is imperiled and "elimination of a market for products from these species will promote their continued existence." (*People v. K. Sakai Co.*, *supra*, at p. 537.) We are informed that python hides are used in the manufacture of such items as purses, belts and shoes.

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<sup>1</sup> See also Endangered Species Act of 1973 (16 U.S.C. §§ 1531-1543); The Convention of International Trade in Endangered Species of Wild Fauna and Flora (27 U.S.T. 1087- 1361); 50 C.F.R. 17.11 and 23.23.

In *H. J. Justin & Sons, Inc. v. Brown* (E.D. Cal. 1981) 519 F.Supp. 1383, appeal pending, the court held, inter alia, that section 653o did not impermissibly burden interstate commerce and that federal law did not preempt state protected species legislation. For a discussion of the relationship between state and federal law on this subject, see Phillips, *Federal Preemption of State Commerce Bans Under the Endangered Species Act*, 34 Stan. L.Rev. 1323 (1982). (See also *Fouke Co. v. Brown* (E.D. Cal. 1979) 463 F.Supp. 1142.) California statutes incorporating provisions of federal law are Penal Code sections 653p and 653r.

In determining the meaning of the term python as used in section 653o we are mindful that this section is a penal statute and is to be construed according to the fair import of its terms, with a view to effect its object and to promote justice. (Pen. Code, § 4; *People v. Upchurch* (1978) 76 Cal.App.3d 721, 723.) Where a penal statute is susceptible to two reasonable constructions, the criminal defendant is ordinarily entitled to the construction most favorable to him or her. (*Bowland v. Municipal Court* (1976) 18 Cal.3d 479, 487-488.) Considering that the legislative objective of section 653o is to protect certain threatened creatures, we must examine the reasonable meanings which might be attached to the term python and determine whether or not any of these meanings would incorporate anaconda and remain consistent with the legislative intent. When interpreting a statute a word of technical or restricted meaning should not be extended in scope or operation by substituting another meaning. (Civ. Code, § 13; Code. Civ. Proc., § 16.) The statutory context in which a word is used determines whether it will be used in a technical sense only or whether it will be given a popular or common meaning. (Civ. Code, § 1645; *County of Sacramento v. Hickman* (1967) 66 Cal.2d 841, 850-951.)

While herpetologists may disagree to some extent on the classification of snakes, there appears to be general agreement on the scientific classifications of the python and the anaconda.<sup>2</sup> (See Appendix.) Both belong to the phylum Chordata, the class Reptilia, the order Squamata, the suborder Serpentes, the infraorder Henophidia, superfamily Booidea and the family Boidae. A python belongs to the subfamily Pythoninae. There are seven genera in the subfamily: *Python*; *Leiasis*; *Aspidiles*; *Chondropython viridis*; *Calabaria reinhardtii*; *Bothrochilus*; and *Morelia argus*. Each genus has several species, for example, *P. molurus*, commonly known as the Indian python, is among the species in the genus *Python*. A subspecies *P. molurus bivittatus* is a dark-colored Indian python; *P. molurus molurus* is a light-colored Indian python.

Like the python, the anaconda is in the family Boidae. However, the anaconda is placed in a different subfamily called the Boinae. It is the popular or common

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<sup>2</sup> For this opinion we have consulted Underwood, *Contribution to the Classification of Snakes*, British Museum, Staples Printers, Ltd., Kettering, UK, 1967; Goin, Goin and Zug, *Introduction to Herpetology*, 3rd ed., W. H. Freeman & Co., San Francisco, 1978; Grzimek, *Animal Life Encyclopedia*, Vol. 6, Van Nostrand and Reinhold Co., New York, 1975; *The New Larousse Encyclopedia of Animal Life*, Bonanza Books, New York, 1981; *The World Book Encyclopedia*, Vol 17, World Book-Childcraft International, Inc., Chicago, 1981; *Encyclopedia Americana*, Vols. 1, 23 and 25, Americana Corporation, Danbury, Conn., 1979; Englemann and Obst, *Snakes*, Exeter Books, New York, 1982.

name for the genus *Eunectes* which has two species, *E. notaeus* and *E. murinus*.<sup>3</sup> The name anaconda is attributed to both species; however *E. murinus* being "the largest and certainly most massive snake living on earth today" is most commonly called the anaconda. (Engelmann and Obst, *Snakes, supra*, pp. 105-106.)

As described in Volume 23, *Encyclopedia Americana*, 1979 ed., the python is any of a group of constricting snakes found in the Eastern Hemisphere, particularly Asia, Africa and Australia. Species range in length from about 4 feet to 30 feet and vary in color, identifying features and habitats. Pythons give birth from eggs which are incubated beneath the female (oviparous). The anaconda, as described in the same reference work in Volume 1, is a semiaquatic constricting snake found in tropical South America east of the Andes. It grows to the length of about 40 feet and is identifiable by an olive-colored skin marked with black rings and spots. The young are produced by live birth (viviparous).

Being nonpoisonous, pythons and anacondas kill their prey by strangulation. However, this characteristic is found in other snakes such as members of the family Colubridae and other members of the family Boidae (boas generally). (Engelmann and Obst, *Snakes, supra*, p. 34.)

Using the accepted taxonomy,<sup>4</sup> the term "python" would include the snakes of the genus *Python*, or the larger number of snakes in the subfamily Pythoninae; the term "anaconda" would include snakes of the genus *Eunectes*. In technical usage, python would not include anaconda. Penal Code section 653o, however, lists some animals by popular or common name, for examples: "polar bear," "leopard" and "tiger." Only wolf (*Canis lupus*) and porpoise (*Delphinidae*) are scientifically identified.<sup>5</sup> Can "python" be popularly understood to mean "anaconda"? We do not believe so.

We have examined the word "python" as defined in several dictionaries. It has been defined by description as "a large constricting snake (as a boa or an anaconda)," and as "a genus of large nonvenomous snakes of the family Boidae . . . ." (*Webster's Third New International Dictionary*, 1961 ed., p. 1855.) It also has been defined as "any of several Old World constrictors of the family Boidae, of the subfamily Pythoninae, often

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<sup>3</sup> *Eunectes* is sometimes placed in the Boini tribe, a subclassification of the Boinae subfamily. (Underwood, *Contribution etc., supra*, pp. 76-78.) The species *E. notaeus* is among the snakes subject to federal importation regulations. (15 C.F.R. § 23.23.)

<sup>4</sup> The scientific practice of classifying organisms, being a dynamic process, allows for changes in classifications as new discoveries are made, new criteria are applied and new theories are advanced.

<sup>5</sup> By the 1971 amendment "red wolf" and "timber wolf" were deleted and "wolf (*Canis lupis*)" was added. Porpoise was added in 1972. (Stats. 1972, ch. 119, § 2, p. 160.)

growing to a length of more than 20 feet." (*The Random House Dictionary of the English Language*, 1966 ed., p. 1171.)

Other dictionaries recognize a popular as well as technical meaning. "A genus of large nonvenomous snakes inhabiting the tropical regions of the Old World, which kill their prey by constriction; the rock snakes; popularly, any large snake which crushes its prey; loosely, including the BOAS of tropical America." (*Oxford English Dictionary*, 1971 ed., vol. II, p. 1675.) Another dictionary furnishes a first meaning, "any of a genus (*Python*) of very large, nonpoisonous snakes of Asia, Africa, and Australia, that crush their prey to death," and a second meaning, "popularly, any large snake that crushes its prey." (*New World Dictionary*, Second College Edition, 1976, p. 1159.)

The python and the anaconda, while having a similar constricting characteristic, are nevertheless distinct varieties of snake dissimilar in appearance and geographically distant. Interpreting python to mean all large constricting snakes would bring many types of snakes, including the boas, into the section 653o prohibition; limiting python to its genus or subfamily would narrow the scope of the statute. It is our view that the Legislature intended python to have a technical meaning rather than a loose meaning. When it used the word python, as well as the word cobra, it was referring to a particular type of snake, not to physical characteristics common to many snakes.

To popularly define python to incorporate all large<sup>6</sup> constricting snakes such as anacondas would remove elements of clarity and certainty from the penal statute. (See *People v. King* (1978) 22 Cal.3d 12, 23; *People v. Costello* (1955) 138 Cal.App.2d Supp. 894, 896.)

We conclude that the use of the term "python," the technical name of a particular form of wildlife, was not intended to cover another form known popularly as the "anaconda." Accordingly, as used in Penal Code section 653o to identify an endangered snake, "python" does not include "anaconda."

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<sup>6</sup> As we have seen, all pythons are not large. The usual length of the genus *Bothrochilus* of the subfamily Pythoninae is four feet. (*Encyclopedia Americana*, *supra*, Vol. 23, p. 47.) The python which most closely resembles the anaconda in size is *P. reticulatus* found in Borneo. (Englemann and Obst, *Snakes*, *supra*, p. 109.)

## APPENDIX

### PARTIAL CLASSIFICATION OF BOID SNAKES

