

No. F079560

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

v.

DOUGLAS RAY STANKEWITZ,
Defendant and Appellant.

Fresno County Superior Court, Case No. CF78227015
The Honorable Arlan Harrell, Judge

RESPONDENT'S SUPPLEMENTAL BRIEF

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ARGUMENT

APPELLANT’S REQUEST FOR AN ORDER REQUIRING THE TRIAL COURT TO REQUEST A SUPPLEMENTAL PROBATION REPORT ON REMAND SEEKS AN IMPROPER ADVISORY OPINION

Appellant asks this Court to order the superior court to request a supplemental probation report pursuant to California Rules of Court, rule 4.411(a)(2). (ASOB 5.) Appellant seeks an improper advisory opinion from this Court.

The ripeness requirement, a branch of the doctrine of justiciability, prevents courts from issuing purely advisory opinions. [Citation.] It is rooted in the fundamental concept that the proper role of the judiciary does not extend to the resolution of abstract differences of legal opinion. It is in part designed to regulate the workload of courts by preventing judicial consideration of lawsuits that seek only to obtain general guidance, rather than to resolve specific legal disputes. However, the ripeness doctrine is primarily bottomed on the recognition that judicial decisionmaking is best conducted in the context of an actual set of facts so that the issues will be framed with sufficient definiteness to enable the court to make a decree finally disposing of the controversy.

(*Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 170.) To be ripe, “[t]he controversy must be definite and concrete . . . as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.” (*Id.* at pp. 170–171, quoting *Aetna Life Ins. Co. v. Haworth* (1937) 300 U.S. 227, 240–241.) An issue is not ripe when it is “based on hypothetical facts or speculative future events.” (*Teachers’ Retirement Bd. v. Genest* (2007) 154 Cal.App.4th 1012, 1040.)

The issue of whether the trial court should order a supplemental probation report on remand is not yet ripe.

Respondent has conceded that this case should be remanded so the trial court can exercise its discretion whether to strike the special circumstance finding and the gun use enhancement in this case. (RB 16-18.) This Court has not yet decided the matter, and though unlikely, this Court could reject respondent's concession and hold that remand was not necessary. Obviously, such a result would render the question of a supplemental probation report on remand moot.

Moreover, assuming that this matter will be remanded to the trial court, the issue of a supplemental report is not ripe and presents a hypothetical question that should not be addressed at this point. On remand, there is no telling how the issue of a supplemental probation report will play out. The trial court could decide to request such a report on its own motion or at the suggestion of appellant and/or the prosecution. The parties could also stipulate that such a report is not necessary. (Cal. Rules of Court, rule 4.411(b).) Accordingly, the precise factual and legal circumstances that would face the trial court on remand are not known.

Despite these uncertainties, appellant asks this Court to issue a decision based on unknown, hypothetical facts to simply provide guidance to the court below. The "ripeness requirement," however, "prevents courts from . . . considering a hypothetical state of facts in order to give general guidance rather than to resolve a specific legal dispute." (*Hunt v. Superior Court* (1999) 21 Cal.4th 984, 998.) Rather than engage in such a speculative analysis, this Court should trust that the trial court, on remand,

will follow the applicable law governing resentencing and properly exercise its discretion in deciding the relevant matters according to the terms of any remand order.

CONCLUSION

Appellant's request for an order requiring the trial court to obtain a supplemental probation report on remand should be denied as unripe.

Respectfully submitted,

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/s/ Eric L. Christoffersen

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August 17, 2021

CERTIFICATE OF COMPLIANCE

I certify that the attached RESPONDENT'S SUPPLEMENTAL BRIEF uses a 13-point Century Schoolbook font and contains 598 words.

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Attorney General of California

/s/ Eric L. Christoffersen

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August 17, 2021

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**DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S.
MAIL**

Case Name: **People v. Stankewitz**
No.: **F079560**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On August 17, 2021, I electronically served the attached **RESPONDENT'S SUPPLEMENTAL BRIEF** by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on August 17, 2021, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

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**(1) Courtesy Copy for Counsel's
Client**

The Honorable Arlan Harrell
Judge
Fresno County Superior Court
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The Honorable Lisa A. Smittcamp
District Attorney
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I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on August 17, 2021, at Sacramento, California.

/s/ D. Boggess

Declarant

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