

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

DOUGLAS RAY STANKEWITZ,

Defendant and Appellant.

F079560

Fresno County  
Superior Court  
No. CF78227015

APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT  
OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF FRESNO

Hon. Arlan Harrell, Judge

**APPELLANT'S SUPPLEMENTAL REPLY BRIEF**

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under the Central California  
Appellate Program  
Independent Case System.

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APPELLANT’S SUPPLEMENTAL REPLY BRIEF  
ARGUMENT

THE TRIAL COURT’S FAILURE TO ORDER A SUPPLEMENTAL PROBATION REPORT, WITH UPDATED INFORMATION ABOUT APPELLANT’S POST-CONVICTION CONDUCT, WAS ERROR; UPON REMAND, A SUPPLEMENTAL REPORT MUST BE PREPARED

In addition to the arguments already presented in the opening brief, appellant has argued in supplemental briefing that the lower court erred in failing to order a new probation report following a lapse of approximately forty years, and asked this court to order preparation of such a report on remand. (Supp. AOB 5 et seq.) In response, the Attorney General argues that the issue is not ripe for adjudication and constitutes a request for an improper advisory opinion. (Supp. RB 4-5.) Respondent’s argument misses the point.

Respondent's ripeness argument ignores the fact that the failure to order an updated probation report is an error that has already occurred. In other words, appellant does not argue that it would be error for the trial court to fail to order a supplemental probation report at the resentencing hearing (although it is difficult to imagine a circumstances when this would not be so). Rather, the trial court already erred in failing to order a new report. The remedy for this error is remand, along with an order requiring that a supplemental report be prepared.

The same circumstances that required the lower court to hold a full sentencing hearing also required the court to order an updated probation report. Presumably that report would have included much of the information recounted in *Stankewitz v. Woodford* (9th Cir. 2004) 365 F.3d 706, 710-712, information that was entirely absent from the original report, in addition to new material from the more than four decades that appellant has spent in prison since the drafting of the original report.

Appellant has already argued that the case should be remanded for a new sentencing hearing, and respondent has conceded as much. (See RB 18.) The failure to order an updated probation report prior to the May 3, 2019, hearing is simply one more error by the trial court, and including in the remedy of remand an order requiring an updated probation report is a common sense way to avoid further appellate litigation.

Appellant accordingly asks this court to remand the matter for resentencing, and as part of that order, instruct the lower court to order preparation of an updated probation report.

## CONCLUSION

For the foregoing reasons, and for reasons previously stated in the opening and reply briefs, appellant asks this court to remand for a meaningful sentencing hearing, and for a hearing on appellant's motion for new trial, and further requests that the court direct the superior court to order preparation of a new probation report..

Dated: September 7, 2021

Respectfully submitted,

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## CERTIFICATE OF WORD COUNT

As required by California Rules of Court, Rule 8.360(b), I certify that this brief contains 950 words, as determined by the word processing program used to create it.

/s/Elizabeth M. Campbell  
Elizabeth M. Campbell  
Attorney at Law

DECLARATION OF SERVICE

I, the undersigned, declare as follows:

I am a member of the State Bar of California and a citizen of the United States. I am over the age of 18 years and not a party to the within-entitled cause; my business address is PMB 334, 3104 O Street, Sacramento, California, 95816.

On September 7, 2021, I served the attached

APPELLANT'S SUPPLEMENTAL REPLY BRIEF

**(by mail)** - by placing a true copy thereof in an envelope addressed to the person(s) named below at the address(es) shown, and by sealing and depositing said envelope in the United States Mail at Sacramento, California, with postage thereon fully prepaid. There is delivery service by United States Mail at each of the places so addressed, or there is regular communication by mail between the place of mailing and each of the places so addressed.

Douglas Ray Stankewitz Appellant San Quentin State Prison B97879 San Quentin, CA 94964	Fresno County Superior Court 1100 Van Ness Avenue Fresno, CA 93724
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**(by electronic transmission)** - I am personally and readily familiar with the preparation of and process of documents in portable document format (PDF) for e-mailing, and I caused said document(s) to be prepared in PDF and then served by electronic mail to the party listed below, by close of business on the date listed above:

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 7, 2021, in Sacramento, California.

/s/Elizabeth M. Campbell  
DECLARANT