

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 REPLY BRIEF

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under the Central California
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COURT OF APPEAL OF THE STATE OF CALIFORNIA
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PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. DOUGLAS RAY STANKEWITZ, Defendant and Appellant.	F079560 Fresno County Superior Court No. CF78227015
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APPELLANT'S REPLY BRIEF
INTRODUCTION

This reply brief will focus only on specific contentions made by the Attorney General and will not attempt to reiterate arguments already addressed in the opening brief. Failure to reiterate arguments previously raised does not constitute an abandonment of those issues.

ARGUMENT

I.

THE TRIAL COURT'S REFUSAL TO EXERCISE SENTENCING DISCRETION DEPRIVED APPELLANT OF DUE PROCESS AND THE RIGHT TO COUNSEL AS GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENTS

In the opening brief, appellant asked this court to remand the case for a full sentencing hearing. (AOB 26 et seq.) Respondent has agreed that the trial court had the authority to impose a different sentence, and that the matter should be remanded. (RB 12 et seq.)

Respondent specifically agrees that the court had authority to strike a special circumstance finding and to strike the firearm enhancement. (RB 17-18.) Appellant was also entitled to present factors in mitigation, including post-sentence conduct (see *Pepper v. United States* (2011) 562 U.S. 476, 490), and to have an updated probation report. (See, e.g., *People v. Flores* (1988) 198 Cal.App.3d 1156, 1160; *People v. Leffel* (1987) 196 Cal.App.3d 1310, 1319; *People v. Jackson* (1987) 189 Cal.App.3d 113, 118-119; *People v. Foley* (1985) 170 Cal.App.3d 1039, 1046-1047; and *People v. Smith* (1985) 166 Cal.App.3d 1003, 1008-1009; but see *People v. Bullock* (1994) 26 Cal.App.4th 985.)

The court's authority on remand is thus not limited to exercising discretion under Penal Code section 1385; rather, as respondent recognizes, the entirety of the sentence imposed may be reconsidered. (See RB 15-16; see *People v. Buycks* (2018) 5 Cal.5th 857, 893.)

For these reasons and for reasons already stated in the opening brief, appellant asks this court to remand for a meaningful sentencing hearing.

II.

APPELLANT'S RIGHTS TO COUNSEL AND TO DUE PROCESS AS GUARANTEED BY THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS WERE VIOLATED WHEN THE TRIAL COURT REFUSED TO GRANT A CONTINUANCE FOR SENTENCING

In the opening brief, appellant argued that the trial court's refusal to grant a continuance for sentencing deprived him of due process and his right to counsel. (AOB 53 et seq.) Respondent argues that this claim is moot because respondent has conceded that the matter should be remanded for resentencing. (RB 18 et seq.)

Respondent then goes on to argue that the court's authority upon remand is "limited to striking matters pursuant to section 1385." (RB 19.) As noted above, the court's authority upon resentencing is not in fact so limited. The California Supreme Court has held that when a case is remanded for resentencing "a full resentencing as to all counts is appropriate, so the trial court can exercise its sentencing discretion in light of the changed circumstances." (*People v. Navarro* (2007) 40 Cal.4th 668, 681; see also *People v. Buycks, supra*, 5 Cal.5th at p. 893.)

Moreover, respondent belittles the role of defense counsel at a sentencing hearing. As discussed at length in the opening brief, appellant is entitled to a meaningful sentencing hearing at which he is represented effectively by counsel who has had time to prepare and present arguments. Such representation and due

process are afforded to appellant by the Fifth, Sixth, and Fourteenth Amendments.

Thus, not only should the matter be remanded, but this court should order that, upon remand, defense counsel be afforded sufficient time to prepare for a meaningful sentencing hearing.

III.

THE TRIAL COURT ERRED IN DENYING THE MOTION FOR NEW TRIAL AND RELATED MOTIONS AS UNTIMELY; THIS ERROR DEPRIVED APPELLANT OF DUE PROCESS AND THE RIGHT TO COUNSEL AS GUARANTEED BY THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS

In the opening brief, appellant asked this court to remand the matter for consideration of his motion for new trial, which the trial court denied as untimely. Respondent argues that the motion was untimely because it was filed long after the judgment had become final. (RB 20.) In so arguing, respondent demonstrates the same misunderstanding of how the California Supreme Court has defined a “judgment” as that demonstrated by the court below. In addition to the sentencing discretion inherently retained by the court below, the court retained the right to grant a motion for new trial prior to sentencing. Accordingly, appellant asks this court to order the lower court to hear the motion for new trial on its merits.

Respondent cites Penal Code section 1182, which states that an application for new trial must be filed prior to judgment, and cites *People v. Pineda* (1967) 253 Cal.App.2d 443, which adopted a view of “judgment” that distinguished between the judgment of guilt and the sentence. But this distinction is no longer valid following clarification by the California Supreme Court in *People v. McKenzie* (2020) 9 Cal.5th 40 and *People v. Chavez* (2018) 4 Cal.5th 771. Respondent seeks to limit the holdings of those cases

to the probation context, but that view misrepresents the Supreme Court's holdings.

In a criminal matter the judgment is the sentence, and the terms are considered synonymous. (*People v. McKenzie, supra*, 9 Cal.5th at p. 46.) Just as a court may exercise its dismissal power under Penal Code section 1385 at any time before judgment is pronounced, so may a court grant a motion for new trial.

Appellant's argument rests soundly on the plain language of Penal Code section 1182. Appellant does not argue that, because the judgment of death has been vacated, his case begins at square one. But Penal Code section 1182 uses the word "judgment." The courts of the state have clearly defined that term to mean the sentence. Before sentence is pronounced, appellant may file, and the court should consider, a motion for new trial.

Appellant accordingly requests that this court remand the matter with an order that the lower court consider appellant's motion for new trial on its merits.

CONCLUSION

For the foregoing reasons, and for reasons previously stated in the opening brief, appellant asks this court to remand for a meaningful sentencing hearing, and for a hearing on appellant's motion for new trial.

Dated: April 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 1,507 words, as determined by the word processing program used to create it.

/s/Elizabeth M. Campbell
Elizabeth M. Campbell
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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 April 7, 2021, I served the attached

APPELLANT'S REPLY BRIEF

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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 April 7, 2021, in Sacramento, California.

/s/Elizabeth M. Campbell
DECLARANT