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.	Case No. F079560

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

RESPONDENT'S BRIEF

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STATEMENT OF THE CASE

Following a second jury trial, appellant, Douglas Stankewitz, was convicted of first degree murder (Pen.[1] Code, § 187), robbery (§ 211), and kidnapping (§ 207), all with personal use of a firearm (§ 12022.5). (*People v. Stankewitz* (1990) 51 Cal.3d 72, 81.) The jury further "found true the special circumstance allegations that the murder was wilful, deliberate and premeditated and was committed by defendant during the commission of a robbery and a kidnapping." (*Ibid.*) Following a penalty phase, the jury returned a verdict of death. (*Ibid.*)

Following an automatic appeal, the California Supreme Court affirmed the guilt, special circumstance, and penalty findings by the jury. (*People v. Stankewitz, supra*, 51 Cal.3d at p. 116.) In 2012, following extensive litigation, the Ninth Circuit Court of Appeal affirmed the district court's grant of habeas relief that reversed appellant's death sentence for ineffective assistance of counsel. (*Stankewitz v. Wong* (9th Cir. 2012) 698 F.3d 1163, 1176.)[2] The court specifically affirmed

> the district court's order granting Stankewitz a writ of habeas corpus directing the State of California to either: (a) vacate and set aside the death sentence in People v. Douglas Ray Stankewitz, Fresno County Superior Court Case No. 227015-5, unless the State of California initiates proceedings to retry Stankewitz's sentence

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[1] Unless otherwise specified, all further statutory references are to the Penal Code.

[2] The Ninth Circuit had previously affirmed the district court's denial of appellant's guilt-phase challenges. (*Id.* at p. 1165, citing *Stankewitz v. Woodford* (9th Cir. 2004) 94 F. App'x 600.)

> within 90 days; or (b) resentence Stankewitz to life without the possibility of parole.

(*Id*. at p. 1176.)

On April 19, 2019, the People filed a request to resentence appellant to life without the possibility of parole. (CT 140-142.) On April 24, 2019, appellant filed a request to continue, among other matters, the resentencing hearing. (CT 143-148.) The court denied the motion to continue. (CT 151-152.) On April 30, 2019, appellant filed another motion to continue the scheduled sentencing hearing. (CT 153-155.) On May 1, 2019, the court denied the continuance, citing a lack of discretion to sentence appellant to anything other than life without possibility of parole. (CT 157-158.)

On May 3, 2019, the court vacated appellant's death sentence and resentenced appellant to a total sentence of life without possibility of parole (LWOP) plus seven years. (CT 160, 162-164.) The court imposed LWOP for count 1, the murder with special circumstances conviction; seven years total on the kidnapping conviction (upper term of five years with a two-year gun use enhancement); and a concurrent term of four years on the robbery conviction. (CT 162-164.)

On June 27, 2019, appellant filed a notice of appeal. (CT 171.)

STATEMENT OF FACTS[3]

On the evening of February 7, 1978, defendant, then 19 years old, left Sacramento driving a white Oldsmobile. He was headed for Fresno. In his company were his mother and brother, an older man named J.C., and three young companions, Marlin Lewis, Tina Topping and fourteen-year-old Billy B.

The group reached Manteca about 1 a.m. on February 8, and stopped at a 7-Eleven store to buy oil for the car. Manteca police observed the car irregularly parked and ran a check on the license plate. Information was received indicating that the car had been stolen. Several officers then approached the car and frisked several of the occupants. One of the passengers who identified herself as "Tina Lewis" stated that the car had been borrowed from her uncle in Sacramento. Based on that information the officers contacted Sacramento police, but were unable to determine whether the car had in fact been stolen. The officers asked the group to follow them to the police station. Another attempt was made to contact the vehicle's owner without success. After about an hour and a half, they were allowed to leave, but the vehicle was impounded. Before departing, the group obtained directions to the local bus depot.

The bus depot was not open when they arrived so they waited in a nearby donut shop. After several hours, defendant,

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[3] The facts are taken verbatim from the California Supreme Court's 1990 published opinion. (*People v. Stankewitz* (1990) 51 Cal.3d 72, 81-84.) For ease of reading, block quotation format has not been used.

Tina Topping, Marlin Lewis, and Billy B. decided to hitchhike. Defendant's mother and brother and J.C. remained at the station. Defendant and his three companions succeeded in hitchhiking as far as Modesto. Unable to get a ride any farther, the four walked to a nearby Kmart, where defendant announced that they were "going to look around for a car." Defendant and Tina Topping proceeded to look for a car—apparently to steal—in the parking lot; Billy eventually went inside the K mart. When he exited, he saw Topping pointing toward a woman walking to her parked car. Defendant, Marlin Lewis and Topping followed the woman; as she opened her car door, Topping pushed her inside and entered the car herself. Marlin Lewis then jumped in the backseat and opened the passenger side door, admitting defendant. Topping honked the car horn. Billy, in response, started to walk back toward the store; Topping shouted "come on" and Billy reversed field, ran to the car and got in the backseat with Marlin Lewis. In the meantime, defendant had produced a pistol, and Marlin Lewis produced a knife.

They exited the K mart parking lot, Tina Topping driving, the victim—Theresa Greybeal—seated on the console, and defendant seated next to her in the passenger seat; Billy B. and Marlin Lewis were seated in the back. The group proceeded to the freeway and turned south toward Fresno.

Once on the freeway, Ms. Greybeal stated that none of this would have happened if she had her dog with her. Defendant responded by pulling out his gun and stating, "This would have took care of your dog." After several miles, Tina Topping asked

Ms. Greybeal for money and Ms. Greybeal took $32 from her purse and handed it to Marlin Lewis. She also gave Topping her wristwatch, with the comment that she could put in an insurance claim for the loss.

When the group arrived in Fresno they drove directly to a bar called the "Joy and Joy." Tina Topping went into the bar and returned after a few minutes with a woman named Christina Menchaca. Menchaca joined the group, now totalling six, and they drove around the corner to the Olympic Hotel. Topping and Menchaca went into the hotel. A few minutes later they returned to get defendant and all three then reentered the hotel. Several minutes later defendant returned to retrieve the pistol from Marlin Lewis. Shortly thereafter, defendant, Topping and Menchaca returned to the car. They appeared to be moving more slowly; their eyes were glassy.

Tina Topping then suggested they go to Calwa to "pick up," a slang expression meaning to obtain heroin. They drove to Calwa, stopping near a house with a white picket fence. Topping told everyone to get out, she did not want a lot of company when they went to "pick up." Several of the group exited the car, including Billy B., Marlin Lewis, defendant, and the victim, Ms. Greybeal. Billy asked the victim for a cigarette; she gave him one and took one for herself. After two or three minutes, Topping told Billy to get back in the car. Billy reentered the car along with Marlin Lewis. From inside the car, Billy saw defendant walk toward Ms. Greybeal, who was standing five or six feet away. Ms. Greybeal was facing away from the car. Defendant raised the gun in his

left hand, braced it with his right hand, and shot her once in the head from a distance of about one foot. Ms. Greybeal fell to the ground, fatally wounded.

Defendant returned to the car and said, "Did I drop her or did I drop her?" Marlin Lewis responded, "You dropped her." Both were giggling. As the car pulled away, defendant cautioned Tina Topping to drive slowly so they would not get caught. Marlin Lewis observed that the victim's purse was not in the car and concluded, "we made a bad mistake."

After returning to Fresno, the group drove to the Seven Seas Bar and Christina Menchaca went inside to try to sell the victim's watch. Defendant asked her to try to get $60 for it. While Menchaca and Marlin Lewis were inside the bar, two police officers approached the car. Tina Topping told Billy B. to give a false name. He did so and after some brief questioning the officers left. Menchaca returned saying that she had not succeeded in selling the watch and defendant suggested they move on and try to sell it in Clovis.

Defendant's efforts to sell the watch, however, were also unsuccessful. In Clovis a girl informed Billy that his mother had filed a missing person's report on him. Billy asked to be driven home to Pinedale.

When he arrived home, Billy B. began to cry and told his mother what had happened. His mother called the police and an investigator came to the house and took a statement from Billy. Later that evening, Fresno police apprehended defendant, Tina Topping and Marlin Lewis, still in possession of the victim's car.

The pistol that had been used to kill Ms. Greybeal was found in the car. Her watch was recovered from the jacket of Christina Menchaca, who was arrested nearby.

The foregoing account of the murder came primarily from Billy B. Other witnesses corroborated various portions of the testimony. Ms. Greybeal's father confirmed that she had left his residence on the evening of the murder to pick up some cigarettes at the K mart; she was driving her father's car, the vehicle in which defendant was later apprehended. He also testified that the victim owned two dogs. The officers who arrested defendant were called as witnesses, as well the officers who found the victim's body and examined the crime scene. A ballistics expert confirmed that the victim had been shot from a distance of six to twelve inches; an expended shell case found in the vicinity of the body was determined to have been fired from the gun recovered from the victim's car. The victim's handbag and an unlit cigarette were also found near the body. The coroner who performed the autopsy confirmed that the victim had been killed by a single gunshot wound to the neck, severing the spinal cord and causing immediate paralysis and death.

Also introduced at the guilt phase were five yellow sheets of paper seized from defendant's cell during a routine search for contraband. The handwriting on the papers was identified as defendant's. The papers contained narrative scripts for Tina Topping, Marlin Lewis and Christina Menchaca indicating how the kidnapping, robbery and homicide had supposedly occurred. These fictional accounts blamed the killing on Lewis.

ARGUMENT

I. SINCE APPELLANT'S DEATH SENTENCE WAS VACATED, THE TRIAL COURT HAD FULL SENTENCING DISCRETION AT RESENTENCING; REMAND FOR RESENTENCING IS THEREFORE NECESSARY

Appellant first argues that the trial court violated his constitutional rights by failing to exercise its discretion when imposing sentence following a grant of federal habeas relief. (AOB 26-52.) Appellant's constitutional arguments aside, respondent agrees that the trial court erred by failing to recognize its inherent sentencing discretion in this matter. Remand is therefore necessary for the court to properly exercise "full resentencing." (*People v. Buycks* (2018) 5 Cal.5th 857, 893.)

A. Relevant Background

After the People moved to have appellant sentenced to LWOP (CT 140-142), the court denied appellant's requests for a continuance of the sentencing hearing (CT 143-148, 153-155), which was scheduled for May 3, 2019. (CT 157-158; RT 35-36.) At the sentencing hearing, counsel for appellant again renewed the motion for a continuance. (RT 36-37.) Counsel argued that another of appellant's attorneys, "wanted to present the Court with an argument and points and authorities that would allow the Court to strike the special circumstances and impose a sentence of life with parole. And I do believe the Court has that authority under 1385 and 1118." (RT 37.)

In response, the court ruled, "on the continuance issue, the Court is denying the continuance, as I had denied it twice

previously." (RT 39.) On the issue of sentencing, the court further ruled:

> Frankly, at this point, the Court doesn't see – given the position taken by the People and the directive from the Federal Court, again, this Court's jurisdiction is based upon that order from the Court. And the order was to impose a specific sentence in the case if the People did not pursue the death penalty. . . . Now that [the penalty retrial] is being removed, it doesn't appear to the Court that it has any ability – and to be completely frank, I'm not sure how I would perform – if I did have the ability, I can't say what I would do. I'm a rule follower, basically, and I was given very specific directions from the Federal Court in this particular instance.

(RT 40.)

After further argument from appellant's counsel, the court stated:

> Again, I'm afraid I tipped my hand a little bit, but it should be no surprise to anyone that when the Federal Court gives a directive to a State Court that the State Court is going to follow that directive. So the Court will proceed to sentencing. I have not heard anything concerning any other remedies that may be sought by Mr. Stankewitz, or on behalf of Mr. Stankewitz, that suggest that those remedies cannot be addressed post judgment.

(RT 42.) Ultimately the court ruled,

> This Court has one option, and that is, to impose life without the possibility of parole [¶] In order to accomplish the directive set by the Federal Court, the Court hereby vacates the death sentence imposed concerning Mr. Stankewitz pursuant to that Federal directive and will resentence Mr. Stankewitz concerning the first degree murder conviction with

special circumstance to a term of life without the possibility of parole.

(RT 47-48.) The court proceeded to sentence appellant to LWOP on the murder conviction and imposed the same sentences for the kidnapping and robbery counts as had been originally imposed. (RT 48-49.)

B. Relevant Law

The instant case implicates two principles of law: (1) the scope and nature of federal habeas relief; and (2) a trial court's discretion on resentencing when a conviction has been vacated.

1. Scope of federal habeas corpus authority

"Habeas lies to enforce the right of personal liberty; when that right is denied and a person confined, the federal court has the power to release him." (*Fay v. Noia* (1963) 372 U.S. 391, 430-431, overruled on other grounds by *Wainwright v. Sykes* (1977) 433 U.S. 72, 87.) However, as the United States Supreme Court has made clear, outside of the power to release a petitioner, a federal habeas court "has no other power." (*Id.* at p. 431.) Specifically, the court "cannot revise the state court judgment; it can act only on the body of the petitioner." (*Ibid.*)

This principle was recognized by the Ninth Circuit Court of Appeals in *Douglas v. Jacquez* (9th Cir. 2010) 626 F.3d 501, 505. In that case, the district court had granted habeas relief after concluding that the evidence was insufficient to sustain the defendant's conviction for arson of an inhabited structure. (*Id.* at p. 504.) Specifically, the court had found that the evidence that the structure was "inhabited" was insufficient. (*Ibid.*) Given the

lack of evidence of only one element of the offense when it granted habeas relief, the district court specifically "instructed the state court to enter a sentence for arson of a structure." (*Ibid*.)

On appeal, the Ninth Circuit held that the district court "exceeded its habeas jurisdiction" and "impermissibly attempted to revise the state court judgment." (*Douglas*, *supra*, 626 F.3d at p. 504.) The court recognized that "[t]he district court's power under habeas corpus was either immediately to vacate the prisoner's arson sentence, or to postpone such relief for a reasonable period to allow the state court properly to sentence the prisoner." (*Ibid*.) The court further noted that since the California trial court had the authority to modify the judgment under state law, "it should be given the opportunity to do so." (*Id*. at p. 505.) In other words, the state court should "have the opportunity to correct its own constitutional error" through the appropriate application of California law. (*Ibid*.)

2. California's "Full Resentencing Rule"

In *People v. Buycks, supra*, 5 Cal.5th at page 893, our Supreme Court reaffirmed California's "full resentencing rule" in the context of a Proposition 47 resentencing proceeding. Specifically, the Supreme Court recognized that "[w]e have held that when part of a sentence is stricken on review, on remand 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.' [Citations]." (*Ibid*.) Thus, when a sentence has been recalled, "the resentencing court has

jurisdiction to modify every aspect of the sentence, and not just the portion subjected to the recall. [Citations]." (*Ibid.*) And, "the resentencing court may consider 'any pertinent circumstances which have arisen since the prior sentence was imposed.' [Citation]." (*Ibid.*)

C. The Trial Court Was Mistaken Regarding the Scope of Its Discretion When Resentencing Appellant

As the court below made clear, it operated under the impression that it had no discretion to deviate from the specific direction of the federal court that granted relief. Specifically, the court determined that it had no choice but to sentence appellant to LWOP if the People chose not to seek another death sentence. (RT 47-48.) The court was mistaken.

First, pursuant to *Fay* and *Douglas*, the federal court in this case had no power to limit or otherwise control the state court's discretion at resentencing. The only power the federal court had was to order appellant's death sentence to be vacated because it was unconstitutional. Thus, the federal court had no power to order the trial court to impose a specific sentence once the unconstitutional sentence had been vacated. To the extent that the trial court believed the federal court's order limited its discretion, the court was mistaken.

Second, given that appellant's death judgment had been vacated by the federal court, any resentencing would be subject to the full resentencing rule as articulated in *Buycks*, *supra*, 5 Cal.5th at page 893. Under that rule, the trial court here had full

discretion when resentencing appellant on his murder, kidnapping, and robbery conviction.

As appellant recognizes (AOB 34), in 1978, at the time of the offense in this case, a trial court had the authority pursuant to section 1385 to strike a jury's special circumstance finding. (*Tapia v. Superior Court* (1991) 53 Cal.3d 282, 298, fn. 17; *People v. Williams* (1981) 30 Cal.3d 470, 489.)[4] Thus, at resentencing, the trial court had the authority under section 1385 to strike the special circumstance finding.

Moreover, the trial court also had the discretion to strike the firearm enhancement imposed pursuant to section 12022.5. Subdivision (c) of that law, as amended by SB 620, provides

> The court may, in the interest of justice pursuant to Section 1385 and at the time of sentencing, strike or dismiss an enhancement otherwise required to be imposed by this section. The authority provided by this subdivision applies to any resentencing that may occur pursuant to any other law.

As the statutory language makes clear, this discretionary authority applies retroactively to any resentencing that may occur, like in the present case.

Accordingly, the trial court below was authorized to exercise its discretion on resentencing on two distinct matters: striking the special circumstance findings and the firearm enhancement.

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[4] Subsequent to *Williams*, the Legislature added section 1385.1, which prohibits a trial court from striking a special circumstance finding under section 1385. (*Tapia*, *supra*, 53 Cal.3d at 298, fn. 17.) However, that statutory change may not be imposed retroactively to offenses arising prior to the change. (*Id*. at p. 298.)

The court's failure to recognize the existence of this discretion was error. And, "[w]hen the record shows that the trial court proceeded with sentencing on the … assumption it lacked discretion, remand is necessary so that the trial court may have the opportunity to exercise its sentencing discretion at a new sentencing hearing." (*People v. McDaniels* (2018) 22 Cal.App.5th 420, 425.)

Finally, remand is appropriate here because the record does not definitively show that the trial court would not have exercised its discretion to strike had it been aware of such authority. (Cf. *People v. Gamble* (2008) 164 Cal.App.4th 891, 901 [if "'the record shows that the trial court would not have exercised its discretion even if it believed it could do so, then remand would be an idle act and is not required.'"].) Here, the trial court specifically indicated that it was not sure how it would rule if it had the discretion appellant urged him to exercise. (RT 40.) Given the court's express uncertainty regarding how it would exercise its discretion, remand is required.

II. APPELLANT'S CLAIM REGARDING DENIAL OF A CONTINUANCE IS MOOT

In his second claim of error, appellant asserts that the trial court erred in denying him a continuance to prepare for the sentencing hearing. (AOB 53-62.) Given respondent's concession that the matter should be remanded for a new sentencing hearing, this claim is moot.

Respondent would note, however, that appellant appears to misunderstand the nature and scope of any sentencing hearing in this matter. For example, appellant discusses the duty of counsel

to prepare "a defense." (AOB 47-48.) However, the time to prepare and present a defense is the trial, and not sentencing. A sentencing hearing, while a critical stage of the criminal process, is not a forum for relitigating guilt or presenting defenses.

The Constitution does not demand the "full panoply of rights" at a sentencing hearing, such as the "trial by jury, confrontation and proof beyond a reasonable doubt." (*People v. Betterton* (1979) 93 Cal.App.3d 406, 411.) Indeed, "[d]ue process does not require that a criminal defendant be afforded the same evidentiary protections at sentencing proceedings as exist at trial." (*People v. Lamb* (1999) 76 Cal.App.4th 664, 683, citing *Williams v. New York* (1949) 337 U.S. 241, 251.) "Rather than focusing on factfinding, sentencing is addressed to the trial court's 'power of decision exercised to the necessary end of awarding justice based upon reason and law but for which decision there is no special governing statute or rule.' [Citation]." (*People v. Stuckey* (2009) 175 Cal.App.4th 898, 916.)

As discussed above, the trial court's discretion on remand will be limited to striking matters pursuant to section 1385. Outside of that authority, the court has no discretion to deviate from a sentence of LWOP. Given such limited matters at issue, the trial court would be well within its discretion to limit the scope of any evidentiary presentation appellant could present.

A. The Trial Court Properly Denied Appellant's Motion for New Trial As Untimely

Appellant finally argues that the trial court erred in denying appellant's motion for new trial. (AOB 63-71.) The trial court properly concluded that it had no authority to entertain a motion

for new trial because appellant's convictions were long since final and were undisturbed by the reversal of appellant's death sentence. Accordingly, this claim should be denied.

Following remand, and while the penalty phase retrial was pending, appellant filed a motion for new trial. (2 ACT[5] 402-417.) The People filed an opposition. (3 ACT 642-644.) The trial court denied the motion, finding it untimely. (3 ACT 794; 7 ART 437-438). Specifically, the court found, "The motion is properly to be brought before judgment is entered. In this case, judgment was entered quite some time ago." (7 ART 437.)

The permissible time in which a motion for new trial may be made is governed by statute.

> The application for a new trial must be made and determined before judgment, the making of an order granting probation, the commitment of a defendant for observation as a mentally disordered sex offender, or the commitment of a defendant for narcotics addiction or insanity, whichever first occurs, and the order granting or denying the application shall be immediately entered by the clerk in the minutes.

(§ 1182.)

"It is axiomatic . . . that a motion for new trial cannot be entertained or granted after judgment is entered." (*People v. Hales* (1966) 244 Cal.App.2d 507, 511.) Moreover, "[i]f the judgment is vacated or set aside, the motion for new trial may then be entertained." (*Ibid*.) However, "[t]he rule permitting the entertaining of a motion for new trial where the judgment is

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[5] ACT refers to the Augmented Clerk's Transcript, and ART refers to the Augmented Reporter's Transcript.

thereafter vacated or set aside [citation], has no application where the appellate court affirms the conviction as such, and merely orders a limited reversal and remand for sentencing or other post trial procedures." (*People v. Smyers* (1969) 2 Cal.App.3d 666, 668-669.)

The unavailability of a new trial motion when a case has been remanded for a limited matter was recognized in *People v. Pineda* (1967) 253 Cal.App.2d 443. In that case, the defendant's conviction had been affirmed on appeal, but the appellate court found errors in sentencing. (*Id*. at p. 447.) Specifically, the court held, "The judgment, insofar as it decrees the sentence as entered, is reversed and the cause is remanded for further proceedings in conformity with this opinion." (*Ibid*.) On remand for resentencing, the defendant filed a motion for new trial based on newly discovered evidence. (*Id*. at pp. 447-448.) The trial court ruled it did not have authority to entertain the motion, and the defendant appealed. (*Id*. at p. 448.)

The appellate court affirmed the trial court's ruling. (*Pineda, supra*, 253 Cal.App.2d at 448.) The court recognized the power of appellate courts to issue limited reversals that do not reverse the underlying convictions. (*Id*. at p. 450.) Accordingly, "in the light of decisions decreeing limited reversals (see cases last cited) it is clear that the question of guilt was finally determined on the prior appeal, and that there was no intent to vacate the judgment to permit further inquiry regarding that issue." (*Id*. at p. 450.) In rejecting the defendant's arguments to the contrary, the court held "that an appellate court has power

and authority to open the penalty aspect of the judgment without affecting the finality of the adjudication of guilt." (*Id*. at 451.) Otherwise, "[t]o permit a new attack on the conviction in the trial court is to grant the trial court the unwarranted power to rehear a decision of the appellate court." (*Ibid*.)

Appellant argues that two decisions from the California Supreme Court have undermined the well-established rule of *Pineda*. (AOB 68-70, citing *People v. McKenzie* (2020) 9 Cal.5th 40 and *People v. Chavez* (2018) 4 Cal.5th 771.) Appellant's reliance is misplaced. Both of those cases concerned the extent that an order granting probation may be considered a final judgment. In *McKenzie*, the court held that an order granting probation does not give rise to a final judgment for purposes of the *Estrada*[6] retroactivity rule. (*McKenzie*, at pp. 46-47.) Similarly, in *Chavez* the court held that an order granting probation does not create a final judgment for purposes of section 1385 dismissal authority. (*Chavez*, at p. 784.)

Thus, both *McKenzie* and *Chavez* addressed unique issues of finality that arise in probation cases. Neither case, however, concerned the finality of criminal judgments in general or the effect, on a judgment, of a limited reversal for resentencing. "'It is axiomatic that cases are not authority for propositions not considered.'" (*In re Marriage of Cornejo* (1996) 13 Cal.4th 381, 388.)

[6] *In re Estrada* (1965) 63 Cal.2d 740.

Turning to the present case, the trial court properly recognized that it had no authority to entertain a motion for a new trial in this matter. Appellant's convictions became final in 1990, when the California Supreme Court affirmed those convictions on direct appeal. (*People v. Stankewitz, supra*, 51 Cal.3d at p. 116.) The reversal of appellant's death sentence by the federal court in habeas corpus did not vacate the entire judgment nor undo the finality of the California Supreme Court's affirmance of his criminal convictions. (See *People v. Deere* (1991) 53 Cal.3d 705, 713 ["Although the judgment was reversed as to penalty, it was 'affirmed in all other respects.' [Citation.] Thus, only errors relating to the penalty phase retrial may be considered in this subsequent appeal."].)

CONCLUSION

Accordingly, the matter should be remanded for the trial court to conduct a full sentencing hearing consistent with California law. In all other respects, the judgment should be affirmed.

Dated: December 17, 2020 Respectfully submitted,

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SA2019104326

CERTIFICATE OF COMPLIANCE

I certify that the attached RESPONDENT'S BRIEF uses a 13-point Century Schoolbook font and contains 4,778 words.

Dated: December 17, 2020

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Attorney General of California

/s/ *Eric L. Christoffersen*

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Supervising Deputy Attorney General
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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 December 17, 2020, I electronically served the attached **RESPONDENT'S 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 December 17, 2020, 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

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The Honorable Lisa A. Smittcamp
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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 December 17, 2020, at Sacramento, California.

/s/ *D. Boggess*
Declarant

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