IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,]	
]	NO. S_________
Plaintiff and Respondent,]	
]	(COURT OF APPEAL
vs.]	NO. H023838)
]	
MICHAEL RAY JOHNSON,]	(SANTA CLARA CO.
]	SUPERIOR COURT
Defendant and Appellant.]	NO. 208944)
____]	

APPELLANT'S PETITION FOR REVIEW

ON APPEAL FROM A JUDGMENT OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA, COUNTY OF SANTA CLARA
HONORABLE RISE J. PICHON, JUDGE PRESIDING

SIXTH DISTRICT APPELLATE PROGRAM

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	]	SUPERIOR COURT
Defendant and Appellant.	]	NO. 208944)
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TO THE HONORABLE RONALD GEORGE, CHIEF JUSTICE OF THE STATE OF CALIFORNIA, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT:

ISSUES PRESENTED FOR REVIEW

I. SHOULD THIS COURT GRANT REVIEW IN ORDER TO ADDRESS THE ISSUE LEFT OPEN IN *PEOPLE v. BUCKHALTER* (2001) 26 CAL.4TH 20 AS TO WHETHER A DEFENDANT IS ENTITLED TO PENAL CODE SECTION 4019 CREDIT FOR THE PERIOD BETWEEN HIS INITIAL SENTENCING HEARING AND THE SUBSEQUENT SENTENCING HEARING WHEN THE TRIAL COURT HAS RECALLED THE FIRST SENTENCE PURSUANT TO PENAL CODE SECTION 1170, SUBD. (d)?

II. SHOULD THIS COURT GRANT REVIEW IN ORDER TO ADDRESS THE HERETOFORE UNSETTLED ISSUE OF WHETHER A TRIAL COURT HAS DISCRETION UNDER PENAL CODE SECTION 1170.12, SUBD. (a)(6) TO IMPOSE A CONCURRENT SENTENCE ON A PRESENT

CONVICTION WHICH THE TRIAL COURT HAS TAKEN OUT OF THE THREE STRIKES SCHEME BY GRANTING RELIEF PURSUANT TO PEOPLE V. GARCIA (1999) 20 CAL.4th 490?

III. SHOULD THIS COURT GRANT REVIEW IN ORDER TO ADDRESS THE UNSETTLED ISSUE OF WHETHER THE WAIVER RULE OF PEOPLE v. SCOTT (1994) 9 CAL.4TH 331 APPLIES WHEN THE TRIAL COURT HAS FAILED TO EXERCISE ITS SENTENCING DISCRETION SINCE IT WAS UNAWARE THAT IT HAD SUCH DISCRETION?

REASONS FOR GRANTING REVIEW

In its published opinion, the Court of Appeal addressed two issues which are presently unsettled under California law. In its original opinion, the Court of Appeal addressed a third unsettled issue. However, the court then modified its opinion to delete its analysis of the third point. Since all three of these issues are likely to reoccur on a frequent basis, this court should grant review.

The first issue involves a point which this court left open in *People v. Buckhalter, supra*, 26 Cal.4th 20. Here, the trial court recalled its initial sentence pursuant to Penal Code section 1170, subd. (d). Since section 1170, subd. (d) provides that the subsequent sentencing hearing is to be conducted "in the same manner as if [the defendant] had not previously been sentenced," appellant has taken the position that he is entitled to Penal Code section 4019 credit for the entire period up to the subsequent sentencing hearing. Insofar

as this issue has been specifically left open by this court (*Buckhalter, supra*, 26 Cal.4th 20, 40, fn. 10), this case provides an appropriate vehicle for its resolution.

The second issue raised by this petition is equally unsettled. Appellant was convicted on two counts and was eligible for consecutive sentences of 25 years to life pursuant to the Three Strikes law. (Penal Code section 1170.12, subd. (a)(6)). Exercising its discretion under Penal Code section 1385 as interpreted in *People v. Garcia, supra*, 20 Cal.4th 490, the trial court dismissed all of appellant's serious felony priors as to one count. The court then imposed a full term determinate sentence on that count which was run consecutive to the 25 year to life sentence on the other count. In so doing, the court twice noted for the record that it would have imposed a concurrent sentence had the law allowed for that result. (RT in H020227, p. 223; RT 5.)[1]

It is appellant's position that Penal Code section 1170.12, subd. (a)(6) does not preclude the imposition of concurrent sentences under the facts of this case. In its original opinion, the Court of Appeal disagreed. (Exhibit A, pp. 8-9.) However, the court then modified its opinion to delete its prior analysis and instead found that appellant's argument had been waived. (Exhibit B, pp. 1-2.) In the meantime, the Fourth District has issued an opinion

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1. The Court of Appeal took judicial notice of the record in H020227. (Exhibit A, p. 1, fn. 1.)

which upholds appellant's position. (*People v. Casper* (Feb. 3, 2003, D038550) ___ Cal.App.4th ___ [03 DAR 1367, 1367-1369].)

Given these circumstances, it is apparent that the law is unsettled as to whether a trial court may impose concurrent sentences when one of two counts is removed from the ambit of the Three Strikes law. Thus, this court should grant review on this important question.

The final issue raised in this petition relates to this court's decision in *People v. Scott, supra*, 9 Cal.4th 331. There, this court held that claims of sentencing error are waived by a failure to object in the trial court when the issue concerns "the manner in which the trial court exercise[d] its sentencing discretion . . . ." (*Id*., at p. 356.) Following *Scott*, at least two Court of Appeal opinions have held that the waiver rule does not apply to sentencing issues where the trial court failed to exercise discretion or where a pure issue of law is involved. (*People v. Aguirre* (1997) 56 Cal.App.4th 1135, 1139; *In re Justin S.* (2001) 93 Cal.App.4th 811, 814-815.)

In the case at bar, the Court of Appeal refused to follow the cited cases and held that the failure to exercise sentencing discretion falls within the *Scott* rule. (Exhibit B, pp. 1-2.)[2] Insofar as the published opinion in this case is

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2. In his opening brief, appellant cited both *Aguirre* and *Justin S.* (AOB 5-6.) The Court of Appeal's original opinion made no mention of the cases. This omission was noted in appellant's petition for rehearing. (Petition for Rehearing, pp. 2-3.) In its modified opinion, the Court of Appeal did not

inconsistent with other published cases, this court should grant review in order to settle the conflict.

STATEMENT OF THE CASE AND FACTS

On April 14, 1998, appellant was arrested on this case. (CT in H020227, p. 200.) He remained in custody while his case was pending in the Superior Court. (CT 201.)

On October 26, 1998, an information was filed charging appellant with two counts of vehicle theft (Vehicle Code section 18051). (CT in H020227, p. 61.) It was also alleged that appellant had three prior serious felony convictions within the meaning of Penal Code section 1170.12. (CT 62-63.)

On February 22, 1999, a jury convicted appellant on both counts. (CT in H020227, p. 86.) On February 23, 1999, the prior conviction allegations were found true. (CT 148.)

On May 27, 1999, the court imposed two consecutive terms of 25 years to life. (CT in H020227, p. 256.) Subsequently, the court recalled the sentence pursuant to Penal Code section 1170, subd. (d). (RT in H020227, p. 226.)

On June 28, 1999, appellant was resentenced to 25 years to life on count one and a consecutive term of 8 months on count two. (RT in H020227,

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cite *Aguirre* or *Justin S.* (Exhibit B, pp. 1-2.)

p. 232.) With respect to the second count, the court exercised its discretion to dismiss the prior serious felony convictions. (RT 229-232.) The court awarded 436 days of custody credit (404 days in jail and 32 days in prison). (RT 233.) The court awarded 202 days of conduct credit pursuant to Penal Code section 4019. (RT 233.)

On November 23, 1999, appellant's attorney wrote to the court and noted that the amount of presentence credits listed in the abstract of judgment was in error. (CT 1-2.) Counsel advised the court that appellant had been in custody for: (1) 409 days between April 14, 1998 and May 27, 1999; and (2) 32 days between May 27, 1999 and June 28, 1999). (CT 1.) Counsel concluded that 645 days of credit should be awarded: (1) 441 actual days; and (2) 204 days of section 4019 credit. (CT 1-2.)

On December 10, 1999, the court issued an amended abstract of judgment. (CT 5.) The amended abstract reflected an award of 645 days of presentence credit (441 actual days and 204 days of conduct credit). (CT 5.)

On July 27, 2001 and August 24, 2001, CDC wrote to the trial court and noted that appellant's sentence was illegal since a full term determinate sentence had not been imposed on count two. (CT 36-37.) As a result, a resentencing hearing was calendared.

On November 8, 2001, the court once again imposed a sentence of 25

years to life on count one. (CT 39.) A consecutive sentence of 16 months was imposed on count two. (CT 40.) The court awarded 1381 actual days of custody credit and no conduct credit. (CT 41, RT 7.)

On January 17, 2003, the Court of Appeal filed its opinion. (Exhibit A.) The court directed the trial court to recalculate appellant's custody and conduct credits. (Exhibit A, p. 18.)

On January 23, 2003, appellant filed a petition for rehearing. On February 13, 2003, the Court of Appeal denied rehearing and issued a modification of its opinion. (Exhibit B.) There was no change in the judgment. (Exhibit B.)

I.

CONTRARY TO THE VIEW OF THE COURT OF APPEAL, *PEOPLE v. BUCKHALTER, SUPRA*, 26 CAL.4TH 20 SUPPORTS THE CONCLUSION THAT APPELLANT IS ENTITLED TO PENAL CODE SECTION 4019 CREDIT FOR THE PERIOD UP TO AND INCLUDING JUNE 28, 1999.

On May 27, 1999, appellant was sentenced. (CT 1.) On June 28, 1999, appellant was sentenced again following the trial court's recall of the sentence pursuant to Penal Code section 1170, subd. (d). (CT 2, RT in H020227, p. 226.)

Appellant has contended that he is entitled to Penal Code section 4019 credit for the entire period up to and including June 28, 1999. The Court of

Appeal partially agreed with appellant and held that he is entitled to section 4019 credit for those days between May 27, 1999 and June 28, 1999 when he was physically present in the county jail. (Exhibit A, pp. 9-18.) As will now be demonstrated, the Court of Appeal's analysis is in error.

As a starting point, it is essential to note that the Court of Appeal found that a section 1170, subd. (d) recall vacates the initial judgment in its entirety. (Exhibit A, pp. 15-16.) This holding is manifestly correct since section 1170, subd. (d) specifically provides that the subsequent sentencing hearing is to be held "in the same manner as if [the defendant] had not previously been sentenced, ..." Thus, by definition, a section 1170, subd. (d) resentencing is deemed to be the full equivalent of the initial sentencing hearing. Such being the case, it necessarily follows that section 4019 credit should be awarded for the entire time preceding the subsequent sentencing hearing.

The logic of *People v. Buckhalter, supra*, 26 Cal.4th 20 supports this conclusion. In *Buckhalter*, this court held that section 4019 credit should not be awarded for the time following the original sentencing hearing when the judgment is reversed only for sentencing error. In reaching this result, this court reasoned that a reversal in this circumstance does not vacate the original sentence and therefore a "full resentencing" is not required. (*Buckhalter, supra*, 26 Cal.4th at pp. 34-35.)

In contrast, a section 1170, subd. (d) recall does result in a "full resentencing." As was noted above, section 1170, subd. (d) specifically provides that the resentencing hearing is to be conducted "in the same manner" as the original sentencing hearing. Thus, since section 1170, subd. (d) requires an entirely new sentencing hearing, the original sentence is deemed vacated within the meaning of *Buckhalter*. Under these circumstances, section 4019 credit must be awarded for the time between the original sentencing hearing and the subsequent hearing.

In its opinion, the Court of Appeal held that appellant is not entitled to section 4019 credit for the time during which he was in prison between May 27, 1999 and June 28, 1999. (Exhibit A, pp. 14-17.) The court advanced two reasons in support of this result: (1) *Buckhalter* states a policy concern that time spent in prison cannot be deemed presentence time since the defendant is actually in the custody of the state prison; and (2) section 4019 does not by its terms allow for credit for time spent in prison. (Exhibit A, pp. 16-17.) Neither of these reasons survives scrutiny.

The Court of Appeal quite simply misread *Buckhalter*. The ratio decidendi of *Buckhalter* is that a limited remand for resentencing does not vacate the original sentence. (*Buckhalter, supra*, 26 Cal.4th at pp. 34-35.) Here, the effect of section 1170, subd. (d) is to vacate the sentence. Thus,

Buckhalter does not support the Court of Appeal's reasoning.

With respect to the Court of Appeal's second reason, it is of no consequence that section 4019 does not specifically mention state prison as a place where credit may be earned. As appellant argued below (ARB 9-10), principles of equal protection require that section 4019 be interpreted to provide for credit when the defendant's original sentence is recalled. (*Buckhalter, supra*, 26 Cal.4th at p. 30, fn. 6; "it has been held that equal protection requires application of section 4019 credits to presentence confinement in a state facility if the circumstances of the confinement are essentially penal. [Citations]")

In short, the merit of the Court of Appeal's analysis is, at the very least, debatable. Thus, since an issue of first impression is raised, review should be granted.

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II.

THIS COURT SHOULD GRANT REVIEW IN ORDER TO ADDRESS THE UNDECIDED ISSUE OF WHETHER PENAL CODE SECTION 1170.12, SUBD. (A)(6) ALLOWS FOR A CONCURRENT SENTENCE WHEN ONLY ONE OF TWO COUNTS IS BEING SENTENCED UNDER THE THREE STRIKES LAW.

On June 27, 1999, appellant appeared for sentencing having suffered three felony convictions which fell under the Three Strikes law. Employing the newly decided case of *People v. Garcia, supra,* 20 Cal.4th 490, the trial court dismissed all of appellant's strike priors as to count two. (RT in H020227, pp. 229-231.) The court then imposed a consecutive sentence on count two under the belief that such a sentence was required by law.

> "A sentence of 25 years to life is more than appropriate and but for the constraints of three strikes law, I would have ordered the eight months to be served concurrently, the defendant's total sentence on both counts is now 25 years and eight months to life." (RT in H020227, p. 233.)

At the resentencing hearing held on November 8, 2001, the court once again announced that a concurrent sentence was appropriate.

> "I will repeat what I said at the earlier sentencing, that a sentence of 25 years to life is more than enough for those offenses. However, because of the mandates of the three strikes law, I cannot order the term in count two to be served concurrently with that in count one." (RT 5.)

As will be demonstrated below, the trial court erred in its belief that it had no authority to impose a concurrent term. Since there is presently only a

single new Court of Appeal case on point, this court should grant review in order to so hold.

The trial court believed that Penal Code section 1170.12, subd. (a)(6) required the imposition of consecutive sentences. (RT in H020227, RT 229, 232-233; RT 5.) Section 1170.12, subd. (a)(6) provides:

> "If there is a current conviction for more than one felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to this section."

The term "current conviction" is not expressly defined in section 1170.12. However, it appears that the term "current conviction" refers to a conviction which is being punished under the Three Strikes law. This conclusion is supported by a reading of the entire Three Strikes statute.

At the outset, it is indisputable that section 1170.12, subd. (a)(6) does not apply when the granting of a *Romero*[3] motion serves to dismiss all of the defendant's strike priors as to all counts. In such a case, there is no "current conviction" to which section 1170.12 might apply.

Following this reasoning to its logical conclusion, section 1170.12, subd. (a)(6) cannot apply when all of the defendant's strike priors are dismissed as to one of two counts. In this situation, there is only one "current conviction." Thus, section 1170.12, subd. (a)(6) is inapplicable since there is

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3. *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

not a "current conviction for more than one felony count . . . ."

Reference to other parts of section 1170.12 supports this conclusion. The punishment for two and three strikes offenders is found in section 1170.12, subds. (c)(1) and (c)(2). There, the statute provides for two and three strike sentences for the "current felony conviction." Given this usage, it is reasonable to conclude that "current felony conviction" refers to a conviction which is being punished under the strikes law.

Importantly, a recent case from the Fourth District supports the foregoing analysis. (*People v. Casper, supra*, 03 DAR 1367.) In *Casper*, the court concluded that Penal Code section 667, subd. (c)(6)[4] does not require consecutive sentences when the court has granted *Garcia* relief and dismissed the defendant's serious felony prior convictions as to all but one count.

> "Because *Garcia* removed the length of sentence for a conviction on which the strike allegation has been dismissed from the Three Strikes sentencing scheme, we conclude that it also removed mandatory consecutive sentencing from that scheme. *Garcia* stated that a conviction on which the strike allegation is dismissed could be sentenced as though the conviction occurred in a separate proceeding. In a separate proceeding, the mandatory consecutive sentencing required by section 667, subdivisions (c)(6) and (c)(7) is inapplicable. Because there is no sentencing under section 667, subd. (e) [length of sentence], there is likewise no mandatory consecutive sentencing under section 667, subdivisions (c)(6) and (c)(7);

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4. Penal Code section 667, subd. (c)(6) was enacted by the Legislature prior to the electorate's passage of Penal Code section 1170.12, subd. (a)(6). The two provisions are materially the same.

> those provisions are applicable to sentences imposed under section 667, subdivision (e)." (*Casper, supra*, 03 DAR at p. 1368.)

It should be noted that the original Court of Appeal opinion in this case reached a result contrary to *Casper*. (Exhibit A, pp. 8-9.) Although the court later deleted its analysis (Exhibit B, p. 2), it is reasonable to assume that the holding in *Casper* will be the subject of controversy. Thus, this court should grant review in order to definitively decide an issue which is likely to arise frequently.

III.

THIS COURT SHOULD GRANT REVIEW IN ORDER TO DETERMINE WHETHER THE WAIVER RULE OF *PEOPLE v. SCOTT, SUPRA*, 9 CAL.4TH 331 APPLIES WHEN THE TRIAL COURT FAILED TO EXERCISE SENTENCING DISCRETION SINCE IT WAS UNAWARE THAT IT HAD SUCH DISCRETION.

As was noted above, the trial court expressly stated its belief that it had no discretion to impose concurrent sentences. (RT in H020227, p. 233; RT 5.) Insofar as defense counsel registered no objection to the court's view, the Court of Appeal held that appellant had waived his claim of sentencing error. (Exhibit B, pp. 1-2.) As will now be explained, this court should grant review since the Court of Appeal's analysis is the subject of debate in existing case law.

In *People v. Scott, supra*, 9 Cal.4th 331, this court held that claims of

sentencing error are waived absent a contemporaneous objection in the trial court as to those "claims involving the trial court's failure to properly make or articulate its discretionary sentencing choices." (*Id*., at p. 353, accord, *People v. Mancebo* (2002) 27 Cal.4th 735, 749-750, fn. 7.) The policy underlying this rule is that "[r]outine defects in the court's statement of reasons are easily prevented and corrected if called to the court's attention." (*Scott, supra*, 9 Cal.4th at p. 353.)

As is readily apparent, the case at bar falls outside the *Scott* rule since the trial court did not make a discretionary ruling. Rather, the trial court failed to exercise any discretion whatsoever. Since this record presents a pure question of law, the *Scott* rule should not apply here. Indeed, this court has so hinted in a footnote.

In *People v. Aguirre, supra,* 56 Cal.App.4th 1135, the defendant argued on appeal that the trial court had erred by denying him certain presentence credits. Although there was no objection in the trial court, the Court of Appeal held that the issue was cognizable on appeal.

> "He made no objection at trial. Nonetheless, he asserts he may appeal the issue because waiver of sentencing only occurs when the alleged error involved an exercise of discretion. We agree. Because the calculation of credits is purely mathematical, and because Aguirre's argument involves a statutory interpretation of first impression, we hold his failure to object at trial does not

> waive the issue on appeal. [Citations.]" (*Aguirre, supra*, 56 Cal.App.4th at p. 1139.)

Subsequent to *Aguirre*, this court granted review in order to address a presentence credits issue. (*People v. Cooper* (2002) 27 Cal.4th 38.) As in *Aguirre,* there was no objection in the trial court. Nonetheless, this court cited *Aguirre* and found that the issue was cognizable on appeal. (*Id*., at p. 41, fn. 3.)

The same result has been reached with respect to another pure issue of law. (*In re Justin S., supra,* 93 Cal.App.4th 811.) In *Justin S.*, the minor sought to challenge certain probation conditions even though he had not objected in the trial court. The Court of Appeal found that the waiver doctrine did not apply since "appellant's constitutional claims present 'pure questions of law that can be resolved without reference to the particular sentencing record developed in the trial court' [citation] . . . ." (*Id*., at p. 815.)

In its opinion, the Court of Appeal ignored the foregoing authorities. [5] Instead, relying solely on *Scott*, the Court of Appeal held:

> "The rationale of *People v. Scott* supports application of the waiver rule in this case. An alleged error consisting of a failure to exercise discretion that does not result in an unauthorized sentence is similar to an abuse of discretion that

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5. In his petition for rehearing, appellant reminded the court that he had cited both *Aguirre* and *Justin S.* in his opening brief. (Petition for Rehearing, pp. 2-3.) The court's modified opinion makes no reference to the cases. (Exhibit B, pp. 1-2.)

> does not result in an unauthorized sentence. Both are claims involving 'sentences which, though otherwise permitted by law, were imposed in a procedurally or factually flawed manner.' (*Scott, supra*, 9 Cal.4th at p. 354.) '[A] sentence is generally "unauthorized" where it could not lawfully be imposed under any circumstance in the particular case.' (*Ibid*.) Imposition of a consecutive term on count two was not an unauthorized sentence in this case." (Exhibit B, pp. 1-2.)

With all due respect for the Court of Appeal, its analysis evinces a profound confusion concerning this court's analysis in *Scott*. The holding in *Scott* is that the waiver doctrine applies to "discretionary sentencing choices." (*Scott, supra*, 9 Cal.4th at p. 353.) Within this context, an exception to the waiver rule is that no objection is required as to sentences which are "unauthorized." (*Id*., at p. 354.) However, since the instant error does not fall under *Scott* in the first instance, appellant is under no obligation to establish that his sentence is "unauthorized."

In any event, even if appellant is obligated to establish that his sentence is "unauthorized," he can do so.[6] An "unauthorized sentence" includes a judgment which can be challenged for the first time via a habeas petition. (*Scott, supra*, 9 Cal.4th at p. 354.) The instant error can be raised by way of a habeas petition. (*People v. Belmontes* (1983) 34 Cal.3d 335, 348, fn. 8;

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6. In his opening brief, appellant argued that his sentence was "unauthorized." (AOB 6.) The Court of Appeal failed to acknowledge this argument. The omission was brought to the court's attention. (Petition for Rehearing, pp. 1-3.)

"[w]here a court may have been influenced by an erroneous understanding of the scope of its sentencing powers, habeas corpus is a proper remedy to secure reconsideration of the sentence imposed. [Citations.]") Thus, even under the Court of Appeal's holding, appellant's claim of error is cognizable on appeal since the trial court was clearly unaware of its authority to impose concurrent sentences.

In short, there is an uncertainty in the existing case law regarding whether the *Scott* rule applies to sentencing issues which do not involve discretionary choices. This court should grant review in order to resolve this important point.[7]

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7. Although the Court of Appeal opinion fails to note this fact, the People made no waiver argument. (See RB 4-7.) For this reason, appellant did not file a habeas petition in the Court of Appeal in order to advance a claim of ineffective assistance of trial counsel. Out of an excess of caution, a habeas petition has been contemporaneously filed in this court along with the instant petition.

It should also be noted that the original Court of Appeal opinion held that appellant's claim had been waived since it was not raised on his prior appeal. (Exhibit A, pp. 7-8.) In his petition for rehearing, appellant argued that he was entitled to brief this issue under Government Code section 68081 since it had not been raised by the People. (Petition for Rehearing, pp. 3-4.) In its amended opinion, the Court of Appeal clarified that it was not relying on this ground. (Exhibit B, p. 2.) Nonetheless, in a further exercise of caution, appellant has advanced a claim of ineffective assistance of appellate counsel in his contemporaneously filed habeas petition.

CONCLUSION

For the reasons expressed above, review should be granted.

Dated: February __, 2003

Respectfully submitted,

DALLAS SACHER
Attorney for Appellant,
MICHAEL RAY JOHNSON

CERTIFICATE OF COUNSEL

I certify that this brief contains 4554 words.

____

DALLAS SACHER
Attorney for Appellant,
MICHAEL RAY JOHNSON

EXHIBIT A

EXHIBIT B

PROOF OF SERVICE

I declare that I am over the age of 18, not a party to this action and my business address is 100 N. Winchester Blvd., Suite 310, Santa Clara, California 95050. On the date shown below, I served the within APPELLANT'S PETITION FOR REVIEW to the following parties hereinafter named by:

X Placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Santa Clara, California, addressed as follows:

Attorney General's Office
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Michael R. Johnson
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I declare under penalty of perjury the foregoing is true and correct. Executed this ___ day of February, 2003, at Santa Clara, California.

____
Sue Yarbrough