

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

DANIEL FREDERICKSON,

Defendant and Appellant.

Capital Case No. S067392

Orange County Superior Court
No. 96CF1713

**SUPREME COURT
FILED**

DEC - 2 2016

APPELLANT'S SUPPLEMENTAL REPLY BRIEF

Jorge Navarrete Clerk

Deputy

Appeal from the Judgment of the Superior Court
of the State of California for the County of Orange
Honorable William R. Froeberg, Judge

DOUGLAS WARD
State Bar No. 133360
P.M.B. #199
350 Bay Street
San Francisco, California 94133
Phone (415) 494-9252

Attorney for Appellant

DEATH PENALTY

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES.....	ii
ARGUMENT.....	1
THE ATTORNEY GENERAL IS CORRECT THAT THE RESTITUTION FINE WAS IMPROPERLY IMPOSED, AND THAT THE ABSTRACT OF JUDGMENT SHOULD BE AMENDED ACCORDINGLY.....	1
CONCLUSION.....	3
CERTIFICATE AS TO LENGTH OF BRIEF	4

TABLE OF AUTHORITIES

Page(s)

State Cases

<i>In re Candelario</i> (1970) 3 Cal.3d 02.....	2
<i>Johnson & Johnson v. Superior Court</i> (1985) 38 Cal.3d 243	2
<i>People v. Mesa</i> (1975) 14 Cal.3d 466.....	2

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

DANIEL FREDERICKSON,

Defendant and Appellant.

Capital Case No. S067392

Orange County Superior Court
No. 96CF1713

APPELLANT'S SUPPLEMENTAL OPENING BRIEF

ARGUMENT

**THE ATTORNEY GENERAL IS CORRECT THAT THE
RESTITUTION FINE WAS IMPROPERLY IMPOSED, AND THAT
THE ABSTRACT OF JUDGMENT SHOULD BE AMENDED
ACCORDINGLY**

At the oral pronouncement of judgment in this case, the trial court made no mention of a restitution fine pursuant to Penal Code section 1202.4, subdivision (b). (16 RT 3230-3252.) However, the abstract of judgment states that appellant is to “pay restitution fine of \$10,000. (4 CT 1179.) The clerk’s minute order for the sentencing hearing also states that a restitution fine in the amount of \$10,000 was imposed. (4 CT 1196.)

One month later, after appellant had arrived at San Quentin, he sent a letter to the trial court complaining that the \$10,000 restitution fine had been imposed “in absentia.” (I Supp CT 44-45.) On March 13, 1998, during a record correction hearing at which appellant was not present, the restitution issue was addressed by the trial court. (March 13, 1998 RT 3254.) The minute order for the March 13, 1998, hearing states: the “Court clarified record and

orders Restitution fine of \$10,000 which was ordered at time of sentencing but not on record.” (I Supp. CT 52.)

In a supplemental opening brief, appellant argued, inter alia, that the trial court’s attempt to impose a restitution fine by way of the abstract of judgment and subsequent minute order was invalid as it violated appellant’s rights to adequate notice and a meaningful opportunity to be heard, and his right to be present and contest the imposition and amount of the fine.

Respondent, in its supplemental brief, agrees with appellant’s conclusion. It argues that the trial court’s actions were essentially an attempt to correct the oral pronouncement of judgment by means of a nunc pro tune order. It correctly observes, however, that “a nunc pro tune order cannot declare that something was done which was not done.” (Resp. Supp. Brief, at p. 3, citing *Johnson & Johnson v. Superior Court* (1985) 38 Cal.3d 243, 256.) Continuing in this vein, respondent notes that although a trial court has the “inherent power to correct clerical errors in its records so as to make these records reflect the true facts,” judicial error cannot be corrected by amendment.” It also correctly states that the distinction between clerical error and judicial error is “whether the error was made in rendering the judgment, or in recording the judgment rendered.” (Resp. Brief, at p. 3, citing *In re Candelario* (1970) 3 Cal.3d 702, 705.) Finally, it observes that “the oral pronouncement of judgment controls over and must be accurately reflected in the minute orders and abstract of judgment.” (Resp. Brief, at p. 3, citing *People v. Mesa* (1975) 14 Cal.3d 466, 471.)

In light of this reasoning, respondent concludes that (1) the trial court’s attempt to impose a restitution order, whether set forth in the abstract of judgment, the minute order for sentencing, or the subsequent order issued on March 13, 1988, was invalid; and (2) “the restitution fine was improperly imposed, and the judgment, minute orders and abstract of judgment should be

amended accordingly.” (Resp. Brief, at pp. 3-4.)

Appellant is in full agreement with and hereby joins in respondent’s arguments, reasoning, and conclusion, as complimentary to and consistent with the arguments raised in appellant’s supplemental opening brief.

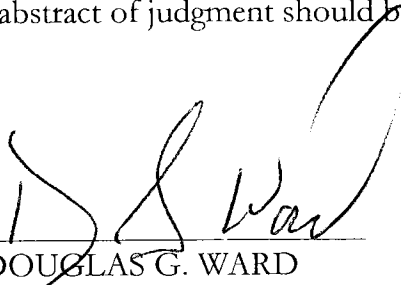
//

//

CONCLUSION

The parties agree that the \$10,000 restitution fine imposed by the trial court was improperly imposed, and that the abstract of judgment should be amended accordingly.

DATED: December 1, 2016.



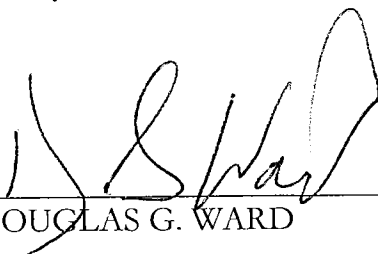
DOUGLAS G. WARD
State Bar No. 133360

Attorney for Appellant
DANIEL FREDERICKSON

CERTIFICATE AS TO LENGTH OF BRIEF

Pursuant to California Rules of Court, rule 8.630(b)(2), I hereby certify that I have verified, through the use of my word processing software, that this brief, excluding the tables, contains approximately 600 words.

DATED: December 1, 2016.



DOUGLAS G. WARD

Attorney for Appellant
DANIEL FREDERICKSON

DECLARATION OF SERVICE

Re: People v. Frederickson, No. S054372

I, the undersigned, declare as follows:

I am a citizen of the United States over the age of 18 years, and not a party to the within action; my business address is 363 Dimaggio Ave, Pittsburg, California 94565.

On December 2, 2016, I served a copy of the following document:

APPELLANT'S SUPPLEMENTAL REPLY BRIEF

by placing one copy of the document in a sealed envelope addressed to each person or entity listed below, placing first class postage on each envelope, and depositing said envelopes with the United States Postal Service in Pittsburg, California.

The Honorable Kamala Harris
Attorney General of the State of California
Attn. Ms. Tami Falkenstein Hennick
110 W. "A" Street, Suite 1100
San Diego, California 92101

Mr. James Tanizaki
Orange County District Attorney
P.O. Box 808
Santa Ana, California 92702

California Appellate Project
Attn.: Ms. Sarah Chester
101 Second Street, #600
San Francisco, California 94105

Habeas Corpus Resource Center
303 Second Street, Suite 400 South
San Francisco, California 94107

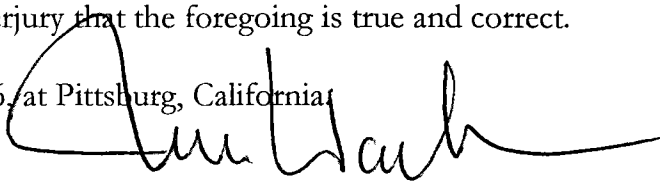
Clerk of the Superior Court
Attn: Death Penalty Appeals
Superior Court of Orange County
700 Civic Center Drive West
Santa Ana, California 92702

Mr. Daniel Frederickson
K-81800
San Quentin State Prison
Tamal, California 94974

Office of the State Public Defender
Attn.: Mr. Peter Silten
1111 Broadway, 10th Floor
Oakland, California 94607

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

Signed on December 2, 2016, at Pittsburg, California



NEVA WANDERSEE