

[date]

Honorable Diana Herbert  
Clerk Administrator  
Court of Appeal  
First Appellate District  
350 McAllister Street  
San Francisco, CA 94102-3600

Re: **\_\_\_*People v. [case name]*, [case number] (Division [division #])**  
Request for Re-Issuance of Original Opinion, With Modification, Upon  
Remand From United States Supreme Court

Dear Ms. Herbert:

On [date], the United States Supreme Court issued an order in this case granting certiorari, vacating the judgment, and remanding to this Court for further consideration in light of *Cunningham v. California* (2007) 549 U.S. \_\_\_, 127 S.Ct. 856. (*[case name] v. California* (2007) 549 U.S. \_\_\_\_ (no. [SCT#], Order Filed [date of GVR].) For the following reasons, appellant respectfully requests that the Court reissue its original opinion in this case dated [date], vacating the sentence and remanding for resentencing, with perhaps a minor modification acknowledging *Cunningham*.

In its original opinion, dated [date], this Court held that the imposition of the upper term sentence in this case violated appellant's federal constitutional rights to a jury trial and proof beyond a reasonable doubt because the sentencing court relied upon aggravating factors which were neither proven to a jury, nor admitted by appellant. (*People v. [case name]*, ([date filed], [case#]) [nonpub. opn.] [*[case name] I*] at p. [page#].) In light of this error, the Court vacated the sentence and remanded for resentencing. (*Id.* at [page#].) The California Supreme Court subsequently granted review in this case and ultimately remanded for reconsideration in light of *People v. Black* (2005) 35 Cal.4th 1238, in which that Court had held there is no constitutional right to a jury trial or proof beyond a reasonable doubt on aggravating factors. On [date], this Court issued a new opinion in this case, affirming the sentence and holding that, in light of *Black*, appellant's sentence was not unconstitutional. (*People v. [case name]* , ([date filed], [case#]) [nonpub. opn.]

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[[*case name*] II at p. [page#].) In light of *Cunningham*, the United States Supreme Court has now vacated [*case name*] II, and remanded to this Court for further consideration.

In its first opinion in this case, this Court analyzed the case, considering all the arguments of both parties, with an understanding that there is a right to a jury trial and proof beyond a reasonable doubt on aggravating factors. This Court's original analysis applies again, now that the United States Supreme Court rejected the *Black* analysis in *Cunningham*. Accordingly, it appears that further briefing is not necessary and appellant requests that the Court re-issue its original opinion, [*case name*] I, dated [date], with, perhaps, a minor modification noting the subsequent case history and that the new opinion is issued in light of *Cunningham*.

Although it does not appear necessary at this stage, appellant is available to provide any additional briefing requested by the Court.

Please distribute this letter to the panel assigned to decide this appeal.

Sincerely,

[attorney name]

State Bar no. [bar#]

Counsel for Appellant [client name]

Proof of Service attached