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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION _____

<p>PEOPLE OF THE STATE OF CALIFORNIA,</p> <p>Plaintiff and Respondent,</p> <p>v.</p> <p>_____ ,</p> <p>Defendant and Appellant.</p>	<p>A _____</p> <p>(_____ County</p> <p>Superior Court</p> <p>No. _____)</p>
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APPLICATION FOR LEAVE TO FILE A
SUPPLEMENTAL OPENING BRIEF

TO THE PRESIDING JUSTICE OF THE COURT OF APPEAL,
DIVISION _____:

Appellant, through counsel, requests leave to file a supplemental opening brief to raise the issue that the trial court's imposition of the aggravated term was unauthorized under *Blakely v. Washington* (June 24, 2004, 02-1632) 542 U.S. ___, 124 S.Ct. 2531, 04 C.D.O.S. 5539, 5540. The supplemental brief is submitted contemporaneously with this application.

California Rules of Court, Rule 13(a)(4) provides: “No other brief may be filed except with the permission of the presiding justice, unless it qualifies under (b) or (c)(6).” In any event, “It is beyond dispute that “Courts have inherent power, as well as power under section 187 of the Code of Civil Procedure¹, to adopt any suitable method of practice, both in ordinary actions and special proceedings, if the procedure is not specified by statute or by rules adopted by the Judicial Council. (*Tide Water Assoc. Oil Co. v. Superior Court*, 43 Cal.2d 815, 825.)” (*Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119, quoting *Citizens Utilities Co. v. Superior Court* (1963) 59 Cal.2d 805, 812-813 [other citations omitted].)

Permitting appellant leave to file a supplemental brief appears to be in the interest of justice because it affords him meaningful review of a meritorious issue which this Court would otherwise not reach: The trial court’s imposition of the aggravated term was unauthorized under *Blakely v. Washington* (June 24, 2004, 02-1632) 542 U.S. ___, 124 S.Ct. 2531, 04 C.D.O.S. 5539, 5540, and in violation of the Sixth Amendment, because

¹ Code of Civil Procedure section 187 provides: “When jurisdiction is, by the Constitution or this Code, or by any other statute, conferred on a Court or judicial officer, all the means necessary to carry it into effect are also given; and in the exercise of this jurisdiction, if the course of proceeding be not specifically pointed out by this Code or the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this Code.”

appellant was entitled to a jury determination of those additional facts exposing him to the possibility of a sentence greater than the maximum allowed by a jury's findings (in California: the middle term) by proof beyond a reasonable doubt. As *Blakely* was decided after appellant submitted his opening brief, the issue could not be raised at that time the opening brief was filed..

Further, as the supplemental opening brief is submitted with this application, and the respondent's brief is not yet filed, any delay in resolution of this case is minimized.

For all the foregoing reasons, appellant respectfully requests leave to file a supplemental opening brief.

Dated: _____, 2004

Respectfully submitted,

Attorney for Appellant