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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**  
**FIRST APPELLATE DISTRICT, DIVISION ONE**

**PEOPLE OF THE STATE OF  
CALIFORNIA,**

Plaintiff and Respondent,

v.

**RAMIRO JACK LONG,**

Defendant and Appellant.

No. A101486

(San Mateo County Superior Court  
No. SCO51252)

**APPELLANT'S MOTION FOR SUMMARY REVERSAL;  
DECLARATION OF COUNSEL RENÉE E. TORRES; REQUEST  
FOR IMMEDIATE ACTION**

Appellant, through counsel, requests that the Court summarily reverse the judgment of conviction in his case on the grounds that the United States Supreme Court's landmark opinion in *Stogner v. California* (June 26, 2003) 03 C.D.O.S. 5575, holding that prosecutions under Penal Code section 803, subdivision (g) violate the federal Constitution's *Ex Post Facto Clause*, requires reversal in this case. Appellant further requests that the remittitur issue forthwith.

**A. Statement of Relevant Procedural Facts**

On April 5, 2002 the San Mateo County Superior Court filed a 30 count information charging Ramiro Jack Long with violations of section 288, subdivision (a), *all occurring between January 1, 1970 and May 13, 1972.*<sup>1</sup> (CT 2)<sup>2</sup> The information further alleged that the prosecution was undertaken pursuant to Penal Code section 803, subdivision (g)(3)(III) in that, among other things, “the limitation period specified in section 800 or 801 has expired as to the charged crimes.” (CT 12)

Jury trial commenced October 16, 2002. (CT 62) On October 23, 2002, at the close of the prosecution’s case, 20 of the 30 counts were dismissed for insufficient evidence on the prosecutor’s motion. (CT 94-95) On October 25, 2002 the jury returned guilty verdicts on the remaining 10 counts and found true the special allegation concerning the statute of limitations. (CT 190-192) On January 3, 2003 appellant was sentenced under the Indeterminate Sentencing Law extant in 1972 to ten consecutive terms of one-year-to-life. (CT 309-310, 314)

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<sup>1</sup> An earlier complaint was filed March 8, 2002. (CT 14)

<sup>2</sup> “CT” refers to the Clerk’s Transcript on Appeal filed April 4, 2003.

A timely notice of appeal was filed January 27, 2003. (CT 217)  
The record on appeal was filed April 4, 2003. Counsel on appeal was appointed May 29, 2003.

**B. Motion for Summary Reversal**

Although “[s]ummary determination of a criminal appeal is very rare,” it is proper when the parties are given the opportunity for oral argument. (*People v. Geitner* (1982) 139 Cal. App.3d 252, 254; see also *People v. Brigham* (1979) 25 Cal.3d 283.) Summary reversal is appropriate where the result is determined by controlling authority and speedy determination of the appeal is needed, thus saving time and expense. See *People v. Browning* (1978) 79 Cal. App.3d 320, 323. Given the unusually clear mandate of the *Stogner* opinion, appellant waives oral argument if the Attorney General will do the same.

1. The Statute of Limitations Bar is Jurisdictional and Can Be Raised for the First Time on Appeal.

Our state Supreme Court has recently reaffirmed the well-settled principle that because the statute of limitations is jurisdictional, its bar can be interposed at any time, including for the first time on appeal. (*People v. McGee* (1934) 1 Cal.2d 611, 613; *In re Demillo* (1975) 14 Cal.3d 598, 601; *People v. Chadd* (1981) 28 Cal.3d 739, 757 *People v. Williams* (1999) 21 Cal.4th 335, 341.) “[W]hen the charging document indicates on its face

that the action is time-barred, a person convicted of a charged offense may raise the statute of limitations at any time.” (*Id.*, at p. 341)

Here, there was good reason not to raise the statute of limitations in the trial court: the California Supreme Court, in *People v. Frazer* (1999) 21 Cal.4th 737, had ruled that section 803(g)’s resuscitation of expired statutes of limitations did not violate the ban against *ex post facto* laws and was constitutionally applicable to cases, such as appellant’s, in which the statute of limitations had long since run out. In the absence of United States Supreme Court action, *Frazer* was binding on all California courts.

Objection would have been futile.

## 2. The Stogner Opinion

In *Stogner v. California*, *supra*, the United States Supreme Court held that application of California’s Penal Code section 803, subdivision (g), enacted in 1994 and amended in 1996, to Stogner’s case and to those like Stogner’s, violated the federal constitution’s *Ex Post Clause*. ( 03 C.D. O.S. at pp. 5575, 5580.) Section 803, subdivision (g), “authorizes prosecution for criminal acts committed many years beforehand –and where the original limitations period has expired – as long as prosecution begins within a year of a victim’s first complaint to the police.” (*Id.*) Like Stogner, appellant was charged with crimes alleged to have been committed

in the early 1970's and, like Stogner, “California could not have prosecuted” appellant, inasmuch as the then-applicable six-year statute of limitations governing the crimes of which appellant was accused (and convicted) had expired 25 *years* or more “before the present prosecution was brought.” (*Id.*)

The United States Supreme Court ruled that section 803(g) “threatens the kind of harm that, in this Court’s view, the *Ex Post Facto Clause* seeks to avoid. Long ago the Court pointed out that the *Clause* protects liberty by preventing governments from enacting statutes with ‘manifestly unjust and oppressive’ retroactive effects. . . . [E]xtending a limitations period after the State has assured ‘a man that he has become safe from its pursuit .. seems to most of us unfair and dishonest.’ [citation omit.] In such a case, the government has refused ‘to play by its own rules,’ [cit. omit.]. It has deprived the defendant of the ‘fair warning,’ [cit. omit.] that might have led him to preserve exculpatory evidence. [cit. omit.]. And a Constitution that permits such an extension, by allowing legislatures to pick and choose when to act retroactively, risks both ‘arbitrary and potentially vindictive legislation,’ and erosion of the separations of powers. [cit. omit.]” (*Id.*, at p. 5576)

The *Stogner* Court found its interpretation of the *Clause* as applying to the resurrection of expired statutes of limitations “literally within the categorical descriptions of *ex post facto* laws set forth by Justice Chase more than 200 years ago in *Calder v. Bull*” [(1798) 3 Dall. 386, 1 L.Ed. 648]” and in the virtually unanimous opinions of “numerous legislators, [state] courts and commentators” dating back to the Civil War. (*Id.*, at pp. 5576-5577) It found the California Supreme Court’s *Frazer* opinion to be the anomaly, pointedly observing that “[t]he dissent refers to no case, outside of California, that has held, or even suggested,” that laws resurrecting time-barred prosecutions are **not** *ex post facto*. (*Id.*, at p. 5580)

After *Stogner*, there can be question that appellant is entitled to immediate relief, and release from his unlawful imprisonment.

3. Time is of the Essence

Not only is the error clear, but time is of the essence. Appellant was sentenced on January 3, 2003. As of that date, he had served 302 days in presentence custody. (CT 315) As of the filing of this motion on June 30, 2003, he has served an additional 178 actual days in state prison custody, for a total of 480 actual days of custody. Every additional day he spends in custody is “manifestly unjust and oppressive,” and an affront to the *Ex Post Facto Clause*. (*Calder v. Bull, supra; Stogner v. California, supra*) For

these reasons, this court should act as expeditiously as possible to reverse the judgment and issue the remittitur in this case.

**Conclusion**

For the foregoing reasons, appellant requests that the Court summarily reverse the judgment of conviction and issue the remittitur forthwith.

Dated: June 30, 2003

Respectfully submitted,

MATTHEW ZWERLING  
Executive Director  
First District Appellate Project

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RENÉE E. TORRES  
Staff Attorney  
Attorney for Appellant

**DECLARATION OF RENÉE E. TORRES**

I, Renée E. Torres, declare:

1. I am a member of the Bar of the State of California and a staff attorney with the First District Appellate Project. I was appointed by this Court to represent appellant Ramiro Jack Long on appeal on May 29, 2003.
  
2. I have spoken to trial counsel, Barry Rekoon, Esq., and he has informed me he intends to file a habeas petition in the superior court as soon as possible to secure the release of appellant Long. However, as of the time of the filing of this motion, no such petition has been filed. I am filing this motion in this court because the appeal is pending in this court and at the present time such a motion appears to be the most expeditious route to relief for my client.
  
3. I will inform the court immediately if and when a habeas petition is filed, or is granted.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 30, 2003, at San Francisco, California.

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RENEE E. TORRES  
Staff Attorney