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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

A112455

v.

**(Solano County
Super. Ct. No. 178226)**

MARY E. POTEATE,

Defendant and Appellant.

_____ /

The United States Supreme Court has remanded this case to us with directions to reconsider our decision in light of *Cunningham v. California* (2007) ___ U.S. ___ [127 S.Ct. 856]. Both parties have submitted formal briefs that discuss *Cunningham*. In addition, both parties have submitted letter briefs that discuss the California Supreme Court's recent decision in *People v. Sandoval* (2007) 41 Cal.4th 825. The parties agree that under *Sandoval*, this case must be remanded to the trial court for a new sentencing hearing.¹ We agree.²

¹ While appellant agrees this court must remand her case to the trial court pursuant to *Sandoval*, (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455) she is careful to preserve her argument that *Sandoval* was decided incorrectly.

² Appellant also asks us to order the trial court to consider all mitigating circumstances at sentencing and to conduct a full sentencing hearing. We can and must presume the court will follow the law appropriately.

The trial court is ordered to conduct a new sentencing hearing in accordance with *People v. Sandoval, supra*, 41 Cal.4th 825. In all other respects, our decision filed on August 18, 2006, remains in effect.

Jones, P.J.

We concur:

Simons, J.

Bruiniers, J.*

Judge of the Superior Court of Contra Costa County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.