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Under the Central California Appellate Program
Independent Case System

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA,)
) **Third District**
Plaintiff and Respondent,) **No. C040373**
) **Sacramento**
) **No. 01F03555**
vs.)
)
GARY EUGENE BRYANT,)
)
Defendant and Appellant.)
)

**APPELLANT'S APPLICATION FOR SUMMARY REVERSAL,
ACQUITTAL, AND IMMEDIATE RELEASE**

**TO THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE JUSTICES
OF THE CALIFORNIA COURT OF APPEAL, THIRD APPELLATE
DISTRICT:**

Appellant respectfully applies to this Court for a summary reversal, a judgment of acquittal, and an order of immediate release to remedy appellant's unconstitutional

conviction and unlawful incarceration in this case. (*Stogner v. California* (June 26, 2003) ___ U.S. ___, 2003 U.S. LEXIS 5011.)

Good cause supports this application.

This appeal is fully briefed.

This action was filed pursuant to the statute of limitations revival provisions of Penal Code section 803, subdivision (g).

As discussed in the briefing on file in this Court, the relevant statute of limitations ran on all of the counts of conviction in this case no later than January 18, 1992. The statute of limitations defense thus was in effect before the enactment of Penal Code section 803, subdivision (g). (See Pen. Code, §800.) (See Respondent's Brief, page 5; Appellant's Opening Brief, pages 1-5, 6-7, 17.)

As discussed in appellant's supplemental letter brief sent to this Court on June 28, 2003, as well as the additional citation letter of June 26, 2003, the United States Supreme Court in *Stogner* on June 26, 2003, held that Penal Code section 803, subdivision (g) cannot apply to charges which were already time-barred by the statute of limitations in effect at the time of the alleged offenses before section 803, subdivision (g) was enacted. Retrospectively removing a statute of limitations defense which had already ripened before the enactment of Penal Code section 803, subdivision (g) violates the Ex Post Facto Clause of the United States Constitution. (*Stogner v. California, supra*, 2003 U.S. LEXIS 5011, pages 7-8, 8-9, 11-12, 16-17, 37-38, 41, 45-46.)

The decision of the United States Supreme Court on this federal constitutional issue is binding on this Court. (*Martin v. Hunter's Lessee* (1816) 14 U.S. (1 Wheat.) 304, 328, 342-343, 352-353 [4 L.Ed. 97]; accord *Del Monte v. Wilson* (1992) 1 Cal.4th 1009, 1023.) The decisions of the United States Supreme Court are the supreme law of the law of the land on questions of the proper interpretation of federal constitutional law. (*Cooper v. Aaron* (1958) 358 U.S. 1, 18 [3 L.Ed.2d 5, 78 S.Ct. 1401]; *Marbury v. Madison* (1803) 5 U.S. (1 Cranch) 137, 177 [2 L.Ed. 60].) When the United States

Supreme Court has interpreted the federal constitution in a manner which renders a state statute unconstitutional, that ruling overturns contrary state court precedent. (*Ableman v. Booth* (1859) 62 U.S. 506, 524 [16 L.Ed. 169]; accord *Cooper v. Aaron* (1958) 358 U.S. 1, 18 [3 L.Ed.2d 5, 78 S.Ct. 1401].)

Thus, for all the reasons explained in *Stogner v. California, supra*, the prosecution of Mr. Bryant was unconstitutional. Appellant's continued incarceration is unlawful. According to the Amended Information, all the charged offenses allegedly occurred between January 19, 1982, and January 18, 1986. (Clerk's Transcript, pp. 526-538.) All those charges were thus time-barred long before Penal Code section 803, subdivision (g) was enacted. The prosecution of Mr. Bryant on these time-barred charges pursuant to the revival provision of Penal Code section 803, subdivision (g) violated the Ex Post Facto Clause of the United States Constitution. The only appropriate disposition of this matter is to reverse the judgment, order an acquittal, and order Mr. Bryant's immediate release from custody.

An order of summary reversal, with instructions to acquit and release appellant, is an appropriate remedy in this unusual situation.

The remedy of summary reversal is rarely invoked in criminal appeals. However, it is an appropriate remedy if per se prejudicial error has occurred, an expeditious disposition is appropriate, and a summary reversal would effectuate a just and speedy resolution of the matter. (*People v. Browning* (1978) 79 Cal.App.3d 320, 323; accord *People v. Geitner* (1982) 139 Cal.App.3d 252, 254-255.)

The summary reversal procedure in this State requires that the Court afford the parties an opportunity for oral argument before the disposition. (*People v. Brigham* (1979) 25 Cal.3d 283, 289; *People v. Geitner* (1982) 139 Cal.App.3d 252, 254.)

The requirement of affording the parties an opportunity for oral argument has already been met in this case. Pursuant to this Court's Notice Filed on May 20, 2003, the parties have waived oral argument by inaction. Assuming only for the sake of discussion that the parties should be afforded an additional opportunity for oral

argument on this issue, appellant is willing to waive oral argument to expedite the processing of a reversal if respondent is also willing to waive oral argument. Appellant's counsel has left respondent's counsel voicemail messages on two consecutive days with no response thus far. However, trial counsel yesterday notified appellant's counsel that the trial prosecutor is willing to stipulate to dismiss the case against Mr. Bryant to remedy the unlawful conviction and unlawful incarceration. Given the trial prosecutor's amenability to dismissal, appellant does not anticipate any opposition to a summary reversal from respondent.

For all the reasons discussed herein, appellant respectfully requests that this Court issue an order summarily reversing the judgment, ordering the entry of an acquittal, and ordering appellant's immediate release from the custody of the Department of Corrections.

Dated: July 1, 2003

Respectfully Submitted,
Law Office of A.M. Weisman

By: /s/



A.M. Weisman
Attorney For Appellant
Gary Eugene Bryant

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, A. M. Weisman, am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is P.O. Box 4236, Diamond Bar, California 91765-0236. On July 1, 2003, I served the foregoing **Appellant's Application For Summary Reversal, Acquittal, And Release** on Interested Parties in this action, **People v. Bryant, Third District No. C040373**, by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

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Sacramento County Superior Court
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I caused such envelopes with postage thereon fully paid to be deposited in the United States Mail at Diamond Bar, California. I declare under penalty of perjury that the foregoing is true and correct. Executed on July 1, 2003, at Diamond Bar, California.

By: /s/


A.M. Weisman