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Counsel for the Appellant

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
[THIRD/FIFTH] APPELLATE DISTRICT

THE PEOPLE OF THE STATE)
OF CALIFORNIA,)
)
Plaintiff and Respondent,) [Docket No.]
)
vs.) [County of Trial] County Superior Court
) No. [Trial Court #]
[APPELLANT’S NAME],)
)
Defendant and Appellant.)
_____)

**REQUEST TO EXPAND APPOINTMENT TO FILE PETITION FOR
CERTIORARI IN THE UNITED STATES SUPREME COURT**

TO THE HONORABLE JUSTICES OF THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA, [THIRD/FIFTH] APPELLATE DISTRICT:

Appellant [appellant’s name], through [his/her] appointed counsel, respectfully requests expansion of counsel’s appointment to include filing a petition for a writ of certiorari *in forma pauperis* in the United States Supreme Court. Appellant requests an authorization of up to [number of hours requested] to prepare and file the petition and accompanying documents, and for reasonable expenses of counsel, as set forth below.

On [date of Court of Appeal opinion], this court rejected appellant’s argument that he was entitled to a Sixth and Fourteenth Amendment jury determination regarding his sentencing, made under *Blakely v. Washington* (2004) 542 U.S. 296. [optional:

briefly elaborate with greater particularity on appellant’s argument, for example: “Appellant argued that he was entitled to a jury trial with respect to the aggravating factors used by the trial court to impose the upper term of __ years in prison.”]

On **[date of petition for review]**, appellant filed a petition for review, which was denied by the California Supreme Court on **[date of denial of review]**. **[if applicable: *The denial of review was without prejudice to any relief to which defendant might be entitled upon {state or summarize the rest of any CASC “without prejudice” order applicable to the denial of review in your case}*]**

The remittitur in this case was ordered on **[date of remittitur]**. The deadline to file a petition for certiorari in the United States Supreme Court is **[date that is 90 days after date of denial of review]**.

On February 21, 2006, the U.S. Supreme Court granted certiorari in *Cunningham v. California* (No. 05-6551) ___ U.S. ___ [2006 U.S. LEXIS 1136]. The grant of certiorari followed the First District Court of Appeal’s opinion rejecting Cunningham’s *Blakely* argument, and the California Supreme Court’s denial of review “without prejudice to any relief to which defendant might be entitled upon finality of *People v. Black* (2005) 35 Cal.4th 1238, regarding the effect of *Blakely v. Washington* (2004) 542 U.S. 296 [159 L. Ed. 2d 403, 124 S.Ct. 2531], and *United States v. Booker* (2005) 543 U.S. ___ [160 L. Ed. 2d 621, 125 S.Ct. 738], on California law.” (*People v. Cunningham* (No. S133971, June 29, 2005) 2005 Cal. LEXIS 7128.)

Appellant contends that a reversal in *Cunningham* by the U.S. Supreme Court would govern **[his/her]** case, and require that sentencing relief be granted as appellant has argued to this court and to the California Supreme Court. Appellant has reviewed the Central California Appellate Program’s [“CCAP’s”] website, explaining this court’s policy that CCAP may approve up to four hours of compensation plus reasonable expenses for a certiorari petition of this nature in light of *Cunningham*, and that no motion for expansion of appointment is required to file a certiorari petition in those

circumstances. This is based on the sample certiorari petition and accompanying documents posted on the CCAP website, and the assumption that the samples can be edited into case-specific documents which can then be filed and served within four hours.

After careful consideration, appellant's counsel is of the opinion that the sample petition on the CCAP website would be inadequate to present appellant's legal arguments supporting a petition for certiorari to the U.S. Supreme Court in the current case, and that further research and writing would be required in order to do so adequately and appropriately. As a result, appellant requests expansion of the appointment of counsel for the purpose of filing a petition for certiorari to the U.S. Supreme Court.

Appellant makes this request on the following basis:

[state case-specific reasons to support request for expanded appointment]

Accordingly, for all of the reasons above, appellant respectfully requests expansion of counsel's appointment to include filing a petition for certiorari *in forma pauperis* in the U.S. Supreme Court, with an authorization of up to **[number of hours]** plus reasonable expenses of counsel.

Dated: _____

Respectfully submitted,

[name of counsel]
Counsel for the Appellant
By Appointment of the Court of Appeal
Under the California Appellate Program
[Independent/Assisted] Case System