

REQUEST FOR DISMISSAL OF REVIEW  
IN LIGHT OF *People v. Sanders* (2003) 31 Cal.4th 318

TO THE HONORABLE CHIEF JUSTICE AND THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Appellant respectfully requests that this Court dismiss review of appellant's case pursuant to California Rules of Court, rule 8.528(b), as briefing was deferred pending this Court's decision in *People v. Sanders* S094088, which has now been decided in favor of appellant Sanders on July 31, 2003, is now final.

The following facts support appellant's request. On March 22, 2002, the Fifth District Court of Appeal decided appellant's case, *People v. Black* (2002) 96 Cal.App.4th 1389, holding that appellant's probation status, which was unknown to the officers when they conducted a search of his apartment, could not be used to validate the search, thereby reversing the denial of appellant's suppression motion.

On June 12, 2002, this court granted respondent's petition for review to consider that issue and deferred further action in the case pending consideration and disposition of a related issue on *People v. Sanders*, S094088.

On July 31, 2003, this court decided *Sanders*, holding that an otherwise unlawful search of the residence of a parolee could not be justified by the circumstance that the suspect was subject to a probation search condition of which the law enforcement officers were unaware when the search was conducted. (*People v. Sanders, supra*, 31 Cal.4th at pp. 331-332.)

Appellant's case is directly controlled by *Sanders*. Appellant was subject to an otherwise unlawful search of his residence that could not be justified by the circumstance that he was subject to a search condition of which the officers were unaware at the time of the search.

The Court of Appeal's decision here is in accord with *Sanders*, as it too held that a search condition unknown to the officers at the time of the apartment search could not be used to validate the search after-the-fact. (*People v. Black, supra*, 96 Cal.App.4th at p. 1404.)

In light of the lower appellate court's decision in *Black* that is in accord with this court's decision in *Sanders*, appellant requests that this court dismiss review of appellant's case. Expedient resolution of his appeal is necessary as appellant has served the majority of his six-year sentence, as he is due to be released on January 14, 2004, and resolution of this appeal will likely result in reversal of his conviction and remand to the trial court. (See *People v. Black, supra*, 96 Cal.App.4th at p. 1405.)

Dated: September 5, 2003

Respectfully Submitted,