

Opposition to the AG's Motion to Correct Record

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

PEOPLE OF THE STATE OF CALIFORNIA,)
)
) Plaintiff and Respondent,) Crim. _____
)
) ([County]
) Superior Court
) No. [county no.]
)
) v.)
)
) APPELLANT, NAME.,)
)
) Defendant and Appellant.)
)

**APPELLANT'S OPPOSITION TO RESPONDENT'S MOTION TO CORRECT
THE REPORTER'S TRANSCRIPT ON APPEAL**

On [DATE], respondent filed a motion to correct the reporter's transcript on appeal. In that motion, respondent argued that this court should allow it to "correct" the record, specifically [DESCRIBE, i.e., the transcript of the oral pronouncement of judgment which imposes a concurrent term of three years on appellant, based on his plea of guilty to count four of the charges against him, does not reflect the consecutive sentence reflected in the abstract of judgment.] Appellant submits that this court

should deny respondent's motion for the following reasons:

First, the motion is not timely filed. Respondent has filed its motion for correction after the opening and respondent's briefs on appeal have been filed, and bases the motion on an ex parte communication with a court reporter who, at best, is confused about what occurred at the sentencing hearing at issue here. If there is to be a correction, it is the abstract of judgment that ought to be corrected. As between conflicting court minutes and abstracts of judgment and the oral pronouncements of a court, the oral pronouncements are deemed to reflect the actual judgment and sentence imposed. (*In re Candelario* (1970) 3 Cal.3d 702, 706.)

Second, the only evidence respondent has offered in support of its motion is an ex parte declaration of the court reporter. That alone is insufficient to support this court's granting the relief requested in the motion. Should this court determine to consider respondent's motion, it ought to be denied unless the application is supported not only by an ex parte declaration of the reporter, but also by a declaration of the trial judge. (*People v. Williams* (1957) 153 Cal.App.2d 21, 24.)

For these reasons, appellant submits that respondent's motion should be denied.

Date:

Respectfully submitted,

YOUR NAME and SBN
Attorney for Appellant