

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISIONS ONE, TWO, THREE

F I L E D
Stephen M. Kelly, Clerk

FEB 02 2007

Court of Appeal Fourth District

In re: Order of the Administrative Presiding
and the Presiding Justices

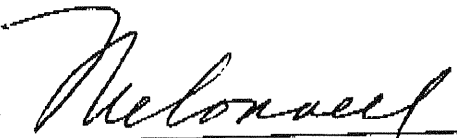
Misc. Order No. 020207

Any party to a pending appeal in which an appellant's opening brief was filed prior to the date of this order, and in which an opinion has not yet become final, shall not be required to file an application for leave to file a supplemental brief before filing a supplemental letter brief arguing, based on the decision of the United States Supreme Court in *Cunningham v. California* (Jan. 22, 2007, No. 05-6551) __ U.S. __ [2007 WL 135687; 2007 U.S. LEXIS 1324; 2007 D.A.R. 1003], that imposition of the upper term is unconstitutional.

If the matter has been submitted as of the date of this order, the submission order will be vacated for the purpose of this supplemental briefing upon the filing of appellant's supplemental brief under this order. The matter will be resubmitted at the end of the day on which the final supplemental reply brief is due.

Any such supplemental brief submitted by an appellant pursuant to this order shall be served and filed by February 26, 2007. It must be titled a "Supplemental Brief filed pursuant to *Cunningham v. California* (Jan. 22, 2007, No. 05-6551) __ U.S. __." If an appellant's supplemental brief is filed pursuant to this order, the time for filing respondent's brief, if one has not been filed as yet, shall be extended by 15 days. If a respondent's brief has already been filed in the case, the respondent shall have leave to file a supplemental brief within 15 days of the filing of the appellant's supplemental brief; and any appellant's supplemental reply brief shall be served and filed within 10 days of the filing of the supplemental respondent's brief.

Any party to a pending criminal appeal, which is set for oral argument prior to February 23, 2007, must be prepared to discuss the applicability and effect of the *Cunningham* decision at that scheduled argument. If requested by the Court at that time, the parties may submit supplemental briefs on that issue to be filed within two weeks of the argument date.


JUDITH MCCONNELL
Administrative Presiding Justice