

Appendix A

**Opinion of the Court Of Appeal, Filed
March 16, 2023**

Filed 3/16/23

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

THE PEOPLE,
Plaintiff and Respondent,
v.
WAYNE JEROME JOHNSON,
Defendant and Appellant.

A166399
(Contra Costa County
Super. Ct. No. 05-
1905900)

Defendant Wayne Jerome Johnson was convicted, following a jury trial, of stalking, two counts of corporal injury to a person with whom he had a dating relationship, stalking in violation of a restraining order, and assault with a deadly weapon. The jury also found true that he personally used a deadly or dangerous weapon. The court sentenced defendant to six years in prison.

Defendant appealed, asserting he was entitled to resentencing based on statutory changes to Penal Code sections 654 and 1170. This court agreed and remanded the matter “to the trial court to determine whether the sentencing issues raised in connection with Penal Code sections 654 and 1170, as amended by Assembly Bill [No.] 518 [(2021–2022 Reg. Sess.)] and Senate Bill [No.] 567 [(2021–2022 Reg. Sess.)], respectively, are moot and, if not, to vacate and resentence defendant in accordance with those provisions.” On remand, the trial court sentenced defendant to five years.

Defendant appeals from the judgment following resentencing on remittitur. His appellate counsel filed a brief raising no issues, but asking this court for an independent review of the record to determine whether there are any issues that would, if resolved favorably to defendant, result in reversal or modification of the judgment. (*People v. Kelly* (2006) 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436.) Counsel notified defendant of his right to file a supplement brief, and defendant has filed a brief requesting “relief based upon the issues he raised during resentencing about the two strikes and their illegality.”

We conclude there are no arguable issues on appeal requiring further briefing and affirm.

BACKGROUND¹

“Jane Doe and defendant began dating after meeting at . . . a salsa dance club that they both frequented. They dated on and off for approximately seven months until Doe ended the relationship. According to Doe’s testimony, their relationship was punctuated with instances of domestic violence and harassment, which then continued after she attempted to end the relationship.” (*People v. Johnson, supra*, A159389.)

“Defendant was charged by information with stalking (Pen. Code, § 646.9, subd. (a); count 1), two counts of infliction of corporal injury on a person with whom he had a dating relationship (*id.*, § 273.5, subd. (a); counts 2 & 4), stalking in violation of a restraining order (*id.*, § 646.9, subd. (b); count 3), and assault with a deadly weapon (*id.*, § 245, subd. (a)(1); count 5).

¹ We take judicial notice of the prior opinion and record in *People v. Johnson* (May 26, 2022, A159389) [nonpub. opn.]. (Evid. Code, §§ 452, 459.)

We provide only a brief recitation of the facts, as relevant to the issues raised on appeal.

The information also asserted great bodily injury allegations (*id.*, § 12022.7, subd. (e)) as to counts 4 and 5, [a] personal gun use allegation[] (*id.*, § 12022, subd. (b)(1)) as to count 4, and that counts 3 through 5 were committed in multiple counties (*id.*, § 784.7, subd. (b)).” (*People v. Johnson, supra*, A159389.)

“A jury convicted defendant as to all counts and found true the personal use allegation[]. The court sentenced defendant to six years in prison.” (*People v. Johnson, supra*, A159389.) The sentence consisted of the upper term of four years for count 4 (injury to a spouse/cohabitant), one-third the midterm for one year for count 2 (corporal injury to a spouse/cohabitant), two concurrent two-year terms for counts 1 and 3 (stalking), and the midterm of three years for count 5 (assault with a deadly weapon), which was stayed pursuant to Penal Code section 654. The court also imposed a one-year term for the Penal Code section 12022, subdivision (b)(1) personal use enhancement as to count 4. Finally, counts 4 and 5 were designated as serious felonies.

Defendant appealed, and asserted, among other things, that he was “entitled to resentencing based on statutory changes to Penal Code sections 654 and 1170.” This court agreed and remanded the case for resentencing. (*People v. Johnson, supra*, A159389.)

The trial court set the date for resentencing in September 2022. A month before the hearing, defendant’s previous appellate counsel filed a declaration informing the court that defendant had “completed the entire sentence as of March 31, 2022,” which included “any State claim of supervision.” Therefore, the court was “without jurisdiction over any matter relating to subsequent changes in the sentencing laws or errors . . . made in sentencing,” and that in any event, “they would not benefit [defendant].”

Finally, counsel notified the court that even if it decided to “ceremonially reduce [defendant’s] sentence to a term of less than the time he actually served that would be [the court’s] prerogative but it [would] do so without [defendant’s] participation,” as neither defendant “nor any of the court appointed or retained attorneys” would appear at the rescheduled hearing.²

Two days later, the trial court issued an order regarding the issuance of an amended abstract of judgment on remand. The order acknowledged receipt of counsel’s declaration but did not address any potential issues regarding mootness. The order also enclosed a copy of a proposed amended abstract of judgment filed in accordance with this court’s opinion and directed defendant or his counsel to write with any objections. The proposed amended abstract of judgment reflected a sentence of five years in state prison with credit for 584 days, which now included a reduced midterm of three years on count 4 (corporal injury to a spouse). The rest of the imposed sentence for counts 1–3, and 5 as well as for the personal use enhancement remained the same.³ Additionally, counts 4 and 5 remained serious felonies.

Counsel for defendant objected to the proposed abstract asserting it was “in violation of the rule set for in *People v. Vargas* (2014) 59 Cal.4th 635,” “to make a finding of two ‘serious felonies’ based on one act.”

² We note that despite trial counsel’s declaration stating defendant had “completed” his “entire sentence,” including “any State claim of supervision,” the court minutes from the September 2022 hearing regarding the amended abstract of judgment state defendant was still in state prison.

³ As noted above, the court imposed one-third the midterm for a one-year term on count 2 (corporal injury to a spouse), two concurrent two-year terms for counts 1 and 3 (stalking) and imposed but stayed a three-year midterm on count 5 (assault with a deadly weapon). Finally, the court imposed a one-year term for the Penal Code section 12022 enhancement.

At the subsequent hearing, neither defendant nor any counsel on his behalf appeared. Nonetheless, the court addressed and overruled the objection to the proposed amended abstract—both at the hearing and in its later-filed order—stating *Vargas* did not “apply in this particular circumstance.” Rather, it was the court’s view that counsel had “misinterpret[ed] the holding in *Vargas*.” As the court explained, “the sentence on Count 5 was stayed pursuant to Penal Code section 654 and the defendant sentenced to 4 years (now modified to 3 years) on count 4.” “If the defendant were charged with and convicted for serious and/or violent felonies in the future, the holding in *Vargas* . . . probably would prevent his convictions on Counts 4 and 5 in the present case from counting as two separate, prior ‘strike’ convictions. However, for purposes of the present case only, both of the convictions on Counts 4 or 5 constitute convictions for serious felonies and the Amended Abstract of Judgment will reflect that fact.”

After the hearing, the court filed an order issuing the amended abstract of judgment and overruling defendant’s objections, and defendant appealed.

DISCUSSION

In his supplemental brief, defendant contends his “appointed attorney misunderstood the issues [he] asked her to address” and “requests relief based upon the issues he raised during resentencing about the two strikes and their illegality pursuant to *People v. Vargas*.” Specifically, he contends “the prosecutor claimed Appellant discharged a weapon at alleged victim from behind from a surreptitious position. That is an alleged assault. They also alleged that same act was an assault with a deadly weapon, an act of domestic violence, and one of the allegations of stalking. On top of that they charged him with an enhancement for that same act. [¶] Basically, that is four charges for one single act.” Defendant maintains, relying on *People v.*

Vargas, supra, 59 Cal.4th 635 (*Vargas*) and *In re Alejandro B.* (2015) 236 Cal.App.4th 705 (*Alejandro B.*), this was “improper under the three strikes laws to charge a person with two strikes for a single act.”

Defendant misreads *Vargas* and *Alejandro B.*

In *Vargas, supra*, 59 Cal.4th 635, our Supreme Court considered “whether two prior convictions arising out of a single act against a single victim can constitute two strikes under the Three Strikes law” and concluded they cannot. (*Id.* at p. 637.)

In *Alejandro B., supra*, 236 Cal.App.4th 705, the appellate court considered “whether the *Vargas* decision or reasoning applies to a case involving two current offenses arising out of a single act against a single victim” and concluded it does not. (*Id.* at p. 707.)

Neither *Vargas* nor *Alejandro B.* support defendant’s position—that it is improper “to charge a person with two strikes for a single act” for current offenses.

To the extent defendant appears to be making a Penal Code section 654 argument, this argument also fails. To begin with, the trial court addressed Penal Code section 654 when it first sentenced defendant and stayed count 5 as it involved “the exact same conduct as charged in Count four.” After remand, count 5 (assault with a deadly weapon) remained stayed. There was no other allegation of assault, and defendant’s conviction for count 3 (stalking) did not involve the exact same conduct as charged in count 4 as it was for his underlying conduct from December 2018 through January 2019.

Next, defendant, relying on *People v. Landry* (2016) 2 Cal.5th 52 (*Landry*), contends “presenting the enhancement to the jury should have been prohibited.” His reliance on *Landry* is misplaced. In that case, the jury convicted the defendant of, among other things, assault by a life prisoner

with malice aforethought (Pen. Code, § 4500) and found true the allegation that the defendant personally used a deadly weapon (former, Pen. Code, § 12022, subd. (b)(1)). (*Landry*, at p. 60.) The Supreme Court held the trial court erroneously imposed a one-year sentence enhancement for use of a deadly weapon on the defendant's assault count, because use of a deadly weapon was an element of the defendant's assault offense. (*Id.* at pp. 127–130.)

That is not the case here, as the Penal Code section 12022, subdivision (b)(1) enhancement was not attached to any assault charge but rather was attached to count 4 (corporal injury of a cohabitant).

Having considered defendant's supplemental brief and the having reviewed the record on appeal, we find no arguable issues that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed.

Banke, J.

We concur:

Humes, P.J.

Margulies, J.

A166399, People v. Johnson

Appendix B

**Order Re:
Issuance of Amended Abstract of
Judgment On Remand From Court of
Appeal**

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA

AUG 26 2022

K. BURKE CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA
1000 DEADERICKS DRIVE
P.O. BOX 1000
SAN JOSE, CALIFORNIA 95116-1000
408-265-2000
FAX: 408-265-2001
E-mail: kburke@scs.ca.gov
L. Anderson, Deputy Clerk

PEOPLE OF THE STATE
OF CALIFORNIA

NO. 5-190590-0

Plaintiff,
vs.
WAYNE JOHNSON,
Defendant.

ORDER Re: ISSUANCE OF
AMENDED ABSTRACT
OF JUDGMENT ON
REMAND FROM COURT
OF APPEAL

The court is in receipt of the remittitur from the First District Court of Appeal in case A159389 filed on August 1, 2022 after its consideration of the defendant's direct appeal of his conviction. On August 12, 2022 the court issued an order scheduling a date for the parties to appear for purposes of a re-sentencing hearing on September 9, 2022.

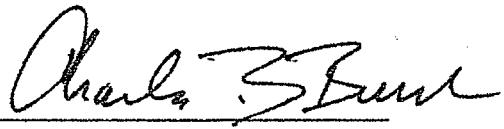
On August 24, 2022 this court received a letter from attorney Audrey Shields suggesting, but not explicitly stating, that she was acting as defendant Johnson's attorney. Her letter also suggested that an attorney Alastair McCloskey could be considered Mr. Johnson's attorney of record for purposes of further proceedings in this case in Contra Costa Superior Court. Out of an abundance of caution, this order is being served upon defendant Johnson as well as attorneys Shields and McCloskey.

Enclosed with this order is a draft of a proposed Amended Abstract of Judgment in this case which the court, at present, intends to be filed in accordance with the directives of the First District Court of Appeal in its opinion resolving the defendant's direct appeal of his conviction.

The defendant and/or his counsel are directed to file on or before September 30, 2022 in writing with the Clerk of Court any objections the defendant may have to the issuance of the enclosed Amended Abstract of Judgment. If the defendant and/or counsel desire the matter be set for a hearing in court to address defendant's objections, that request shall be included in any written objections that are filed in writing on or before September 30, 2022.

If no objections to the Amended Abstract are filed on or before September 30, 2022 the original of the Amended Abstract, identical to the enclosed copy will be filed with the Clerk of Court and become the final judgment of conviction in this case.

26 CBF
Date: August 29, 2022


Charles B. Burch
Superior Court Judge
Contra Costa County

CC:

David Bernard
Deputy District Attorney
900 Ward Street
Martinez, CA, 94553-1708

Audrey Shields, Esq.
11100 San Pablo Ave., Suite 209
El Cerrito, CA, 94530

Alastair McCloskey, Esq.
574 – 10th Street
Oakland, CA, 94607- 4038

Mr. Wayne Johnson
P.O. Box 19157
Oakland, CA, 94619

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA

CERTIFICATE OF SERVICE BY MAIL

In re: Wayne Johnson — 05-190590-0

I, the undersigned, certify under penalty of perjury that I am a citizen of the United States, over 18 years of age, employed in Contra Costa County, and not a party to the within action; that my business address is Court House, 725 Court Street, Martinez, California, 94553; that I served the attached **Order re: Issuance of Amended Abstract of Judgment on Remand from Court of Appeal** by causing to be placed a true copy thereof in a sealed envelope and served in the manner and/or manners described below to each of the parties herein and addressed as below:

DAVID BERNARD
DEPUTY DISTRICT ATTORNEY
900 WARD STREET
MARTINEZ, CA 94553-1708

AUDREY SHIELDS, ESQ.
11100 SAN PABLO AVENUE, SUITE 209
EL CERRITO, CA 94530

ALASTAIR MCCLOSKEY, ESQ.
574 – 10TH STREET
OAKLAND, CA 94607-4038

MR. WAYNE JOHNSON
P.O. BOX 19157
OAKLAND, CA 94619

BY FACSIMILE: I caused said document(s) to be transmitted to the fax number(s) of the addressee(s) designated.

BY REGULAR MAIL: I caused such envelope to be deposited in the mail at my business address, addressed to the addressee(s) designated. Said envelope was sealed and postage fully prepaid thereon, and thereafter was deposited in the United States mail at Martinez, California, on the date shown below; that there is delivery service by the United States Mail between the place of mailing and the place addressed.

I declare under penalty of perjury that the forgoing is true and correct. Executed at Martinez, California, on August 26, 2022.

K. Bieker, Clerk of the Court

By: L. Anderson
L. Anderson, Deputy Clerk

FELONY ABSTRACT OF JUDGMENT—DETERMINATE
(NOT VALID WITHOUT COMPLETED PAGE TWO OF CR-290 ATTACHED)

CR-290

SUPERIOR COURT OF CALIFORNIA, COUNTY OF:
 CONTRA COSTA

PEOPLE OF THE STATE OF CALIFORNIA vs. DOB: 03/21/1958
 DEFENDANT:
 JOHNSON, WAYNE JEROME

AKA:
 CII NO.: A21043509
 BOOKING NO.: NOT PRESENT

05-190590-0 -A

-B

-C

-D

FELONY ABSTRACT OF JUDGMENT
 PRISON COMMITMENT COUNTY JAIL COMMITMENT AMENDED ABSTRACT

DATE OF HEARING
 12/20/2019 DEPT. NO.
 23

JUDGE
 HON. CHARLES BURCH

CLERK
 E. ALVARADO/D. LYNN

REPORTER
 P. MALONE

PROBATION NO. OR PROBATION OFFICER

AUG 26 2022

By: *B. Anderson*
 B. Anderson, Deputy Clerk

COUNSEL FOR PEOPLE
 D. BERNARD

COUNSEL FOR DEFENDANT
 A. MCCLOSKEY APPOINTED

1. Defendant was convicted of the commission of the following felonies:

Additional counts are listed on attachment
 _____ (number of pages attached)

COUNT	CODE	SECTION NO.	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (MO./DATE/YR.)	JURY	COURT	PLEA	CONVICTED BY		TERM (YR., M, D)	CONCURRENT	1/3 CONSECUTIVE	CONSECUTIVE FULL TERM	INCOMPLETE SENTENCE (REFER TO Item 6)	654 STAY	SERIOUS FELONY	VIOLENT FELONY	PRINCIPAL OR CONSECUTIVE TIME IMPOSED	
									YRS.	MOS.										
4	PC	273.5(a)	INJURING SPOUSE/COHABITANT	2018	09 / 30 / 19	X			M								X		3	0
2	PC	273.5(a)	INJURING SPOUSE/COHABITANT	2018	09 / 30 / 19	X			M		X								1	0
3	PC	646.9(a)	STALKING	2018	09 / 30 / 19	X			M	X									(2	0)
5	PC	245(a)(1)	ASSAULT W/DEADLY WEAPON	2018	09 / 30 / 19	X			M							X	X		(3	0)
1	PC	646.9(a)	STALKING	2018	09 / 30 / 19	X			M	X									(2	0)
					/ /															

2. ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed, "S" for stayed, or "PS" for punishment struck. DO NOT LIST ENHANCEMENTS FULLY STRICKEN by the court.

COUNT	ENHANCEMENT	TIME IMPOSED, "S," or "PS"	ENHANCEMENT	TIME IMPOSED, "S," or "PS"	ENHANCEMENT	TIME IMPOSED, "S," or "PS"	TOTAL
4	12022(b)(1)	1YR					1 0

3. ENHANCEMENTS charged and found to be true for PRIOR CONVICTIONS OR PRISON TERMS (mainly in the PC 667 series). List all enhancements horizontally. Enter time imposed, "S" for stayed, or "PS" for punishment struck. DO NOT LIST ENHANCEMENTS FULLY STRICKEN by the court.

ENHANCEMENT	TIME IMPOSED, "S," or "PS"	ENHANCEMENT	TIME IMPOSED, "S," or "PS"	ENHANCEMENT	TIME IMPOSED, "S," or "PS"	TOTAL

4. Defendant sentenced to county jail per 1170(h)(1) or (2)

to prison per 1170(a), 1170.1(a) or 1170(h)(3) due to current or prior serious or violent felony PC 290 or PC 186.11 enhancement

per PC 667(b)-(i) or PC 1170.12 (strike prior)

per PC 1170(a)(3). Preconfinement credits equal or exceed time imposed. Defendant ordered to report to local parole or probation office.

5. INCOMPLETE SENTENCE(S) CONSECUTIVE

COUNTY	CASE NUMBER

6. TOTAL TIME ON ATTACHED PAGES:

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7. Additional indeterminate term (see CR-292).8. TOTAL TIME:

5	0
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Attachments may be used but must be referred to in this document.

CHB

PEOPLE OF THE STATE OF CALIFORNIA vs.
DEFENDANT: JOHNSON, WAYNE JEROME

05-190590-0	-A	-B	-C	-D
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9. FINANCIAL OBLIGATIONS (plus any applicable penalty assessments):

a. Restitution Fines:

Case A: \$ 600 per PC 1202.4(b) (forthwith per PC 2085.5 if prison commitment); \$ 600 per PC 1202.45 suspended unless parole is revoked.

\$ _____ per PC 1202.44 is now due, probation having been revoked.

Case B: \$ _____ per PC 1202.4(b) (forthwith per PC 2085.5 if prison commitment); \$ _____ per PC 1202.45 suspended unless parole is revoked.

\$ _____ per PC 1202.44 is now due, probation having been revoked.

Case C: \$ _____ per PC 1202.4(b) (forthwith per PC 2085.5 if prison commitment); \$ _____ per PC 1202.45 suspended unless parole is revoked.

\$ _____ per PC 1202.44 is now due, probation having been revoked.

Case D: \$ _____ per PC 1202.4(b) (forthwith per PC 2085.5 if prison commitment); \$ _____ per PC 1202.45 suspended unless parole is revoked.

\$ _____ per PC 1202.44 is now due, probation having been revoked.

b. Restitution per PC 1202.4(f):

Case A: \$ 1,000 * Amount to be determined to victim(s)* Restitution FundCase B: \$ _____ Amount to be determined to victim(s)* Restitution FundCase C: \$ _____ Amount to be determined to victim(s)* Restitution FundCase D: \$ _____ Amount to be determined to victim(s)* Restitution Fund

* Victim name(s), if known, and amount breakdown in item 13, below. *Victim name(s) in probation officer's report.

c. Fines:

Case A: \$ _____ per PC 1202.5 \$ _____ per VC 23550 or _____ days county jail prison in lieu of fine concurrent consecutive
 includes: \$ _____ Lab Fee per HS 11372.5(a) \$ _____ Drug Program Fee per HS 11372.7(a) for each qualifying offenseCase B: \$ _____ per PC 1202.5 \$ _____ per VC 23550 or _____ days county jail prison in lieu of fine concurrent consecutive
 includes: \$ _____ Lab Fee per HS 11372.5(a) \$ _____ Drug Program Fee per HS 11372.7(a) for each qualifying offenseCase C: \$ _____ per PC 1202.5 \$ _____ per VC 23550 or _____ days county jail prison in lieu of fine concurrent consecutive
 includes: \$ _____ Lab Fee per HS 11372.5(a) \$ _____ Drug Program Fee per HS 11372.7(a) for each qualifying offenseCase D: \$ _____ per PC 1202.5 \$ _____ per VC 23550 or _____ days county jail prison in lieu of fine concurrent consecutive
 includes: \$ _____ Lab Fee per HS 11372.5(a) \$ _____ Drug Program Fee per HS 11372.7(a) for each qualifying offense

d. Court Operations Assessment: \$ 80 per PC 1465.8. e. Conviction Assessment: \$ 60 per GC 70373. f. Other: \$ _____ per (specify): _____

10. TESTING: Compliance with PC 296 verified AIDS per PC 1202.1 other (specify): _____11. REGISTRATION REQUIREMENT: per (specify code section): _____12. MANDATORY SUPERVISION: Execution of a portion of the defendant's sentence is suspended and deemed a period of mandatory supervision under Penal Code section 1170(h)(5)(B) as follows (specify total sentence, portion suspended, and amount to be served forthwith):
 Total: _____ Suspended: _____ Served forthwith: _____

13. Other orders (specify): DEF. TO COMPLETE PROHIBITED PERSONS RELINQUISHMENT PACKET CR-63,

*RESTUTION IS SUBJECT TO DA TO PROVIDE SUPPORTED DOCUMENTATION. CRIMINAL PROTECTIVE ORDER ISSUED AND SERVED ON DEF.

14. IMMEDIATE SENTENCING: Probation to prepare and submit a post-sentence report to CDCR per 1203c.
 Defendant's race/national origin: BLA

15. EXECUTION OF SENTENCING IMPOSED

- a. at initial sentencing hearing
- b. at resentencing per decision on appeal
- c. after revocation of probation
- d. at resentencing per recall of commitment (PC 1170(d))
- e. other (specify): _____

17. The defendant is remanded to the custody of the sheriff forthwith after 48 hours excluding Saturdays, Sundays, and holidays.
 To be delivered to the reception center designated by the director of the California Department of Corrections and Rehabilitation
 county jail other (specify): _____

16. CREDIT FOR TIME SERVED

CASE	TOTAL CREDITS	ACTUAL	LOCAL CONDUCT
A	584	292	[] 2933 [] 2933.1 [] 4019
B			[] 2933 [] 2933.1 [] 4019
C			[] 2933 [] 2933.1 [] 4019
D			[] 2933 [] 2933.1 [] 4019
Date Sentence Pronounced 12 20 19			Time Served in State Institution DMH CDC CRC [] [] []

CLERK OF THE COURT

I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

DEPUTY'S SIGNATURE

R. Anderson

DATE

08/26/2022 - Amended

Appendix C

Denial Of Petition From California Supreme Court

SUPREME COURT
FILED

Court of Appeal, First Appellate District, Division One - No. A166399

MAY 31 2023

Jorge Navarrete Clerk

S279161

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

WAYNE JEROME JOHNSON, Defendant and Appellant.

The petition for review is denied.

The request for an order directing publication of the opinion is denied.

GUERRERO

Chief Justice