

Filed 3/8/07

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

GABRIEL PEREZ,

Defendant and Appellant.

C051800

(Super. Ct. No.
04F09167)

ORDER MODIFYING
OPINION; NO CHANGE IN
JUDGMENT

THE COURT:

It is ordered that the opinion filed in this case on March 7, 2007, be modified in the following particulars:

1. Modify the first sentence of the fourth paragraph of the opinion (which extends from page 2 to 3 of the opinion), to delete the words at the end of the sentence, "showing of good cause for that relief," and replace those words with "sufficient showing for that relief under *In re Benoit* (1973) 10 Cal.3d 72" so that the sentence reads:

Nevertheless, for reasons that follow, we conclude that a Court of Appeal may grant a motion for the "constructive filing" in the superior court of a late statement of reasonable grounds for appeal, provided the defendant makes a sufficient showing for that relief under *In re Benoit* (1973) 10 Cal.3d 72.

2. On page 13, first sentence within the paragraph under part II, the citation date "(1973)" is changed to "*supra*" so that the sentence reads:

Alternatively, defendant asks us to construe his proposed statement of reasonable grounds for appeal as timely pursuant to the "constructive filing doctrine" of *In re Benoit, supra*, 10 Cal.3d 72 (hereafter *Benoit*) because his trial attorney was ineffective for failing to file such a statement.

These modifications do not change the judgment.

FOR THE COURT:

_____ SCOTLAND _____, P.J.

_____ HULL _____, J.