

CERTIFIED FOR PUBLICATION
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

QUANG MINH TRAN,

Defendant and Appellant.

G036560

(Super. Ct. No. 01WF0544)

ORDER DENYING REHEARING AND
MODIFYING OPINION; NO CHANGE
IN JUDGMENT

The petition for rehearing is DENIED.

The opinion filed August 31, 2009 is hereby modified in the following ways:

1. Strike the last sentence of the incomplete paragraph that appears at the top of page 22 of the slip opinion (the sentence ending in the words “two answers”, and also strike the first full paragraph immediately beneath that sentence. Strike the first

sentence in the second full paragraph on page 22, and in its place substitute the following sentence: “The rationale of *Black II*, however, necessarily includes recidivist aggravating factors even with balancing mitigating factors, at least when the mitigating factor, as it is here -- performance on parole -- is *inherently* linked to the aggravating factor -- here, prior prison terms.”

2. On page 7 of the slip opinion, strike the first sentence of the second full paragraph and in its place substitute the following sentence: “The gang expert also testified -- over defense objections that the testimony was too inflammatory -- that in 1993 and 1994 Tran ‘began series of extortions’ in connection with the shakedown of Vietnamese businesses in Los Angeles for “protection money.”

3. On page 9 of the slip opinion, strike the last sentence of the incomplete paragraph that appears at the top of the page.

4. On page 16 of the slip opinion, strike the first sentence of the second complete paragraph and in its place substitute the following sentence: “Tran argues the trial court erred in denying his motion to strike Ly’s testimony that he was afraid to testify because his sister had been ‘executed,’ and otherwise erred in denying his motions for a mistrial and a new trial based on the admission of that testimony.”

5. On page 4 of the slip opinion, insert the following new footnote 4 after the word “sister” at the top of the page: “Obviously, since we find no evidentiary error, there was no denial of a fair trial because of any hypothetical cumulative prejudice from more than one evidentiary error.” All footnotes after new footnote 4 should, of course, be correspondingly renumbered.

These modifications do not affect the judgment.

SILLS, P. J.

WE CONCUR:

BEDSWORTH, J.

MOORE, J.