

Motion for Relief from Default by ADI staff attorney Lynelle Hee in *People v. Jeffrey Roe* (E034157)

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

JEFFREY ROE,

Defendant and Appellant.

Court of Appeal
No. E034157

Superior Court
No. FBV3410

Appeal from the Superior Court of San Bernardino County

Honorable John P. Vander Feer, Judge

**APPELLANT'S MOTION REQUESTING RELIEF FROM
DEFAULT UNDER RULE 45(C)**

TO THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE
JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

JEFFREY ROE, defendant and appellant, respectfully petitions this Court for relief from default under California Rules of Court, rule 45(c) for failure to timely file a petition for review after the issuance of the unpublished opinion by the Fourth District, Division Two, in *People v. Jeffrey Roe*, filed on May 19, 2004 (per Richli, J.).

California Rules of Court, rule 45(c) provides this court with the authority to grant relief from a failure to timely file a petition for review provided the request is made before the time expires where the court could order review on its own motion. The Court of Appeals opinion was filed on May 19, 2004, thus becoming final on June 18, 2002. Under California Rules of Court, rules 28(e)(2) and 28.2(c)(1), this court can, on its own motion, order review of the Court of Appeals opinion within 30 days of the opinion becoming final. Thus, this court has the authority to grant review on its own motion or to grant relief from failure to timely file a petition for review until July 18, 2002. (California Rules of Court, rules 28(e)(2), 28.2(c)(1), & 45(c).)

The Court of Appeal issued its unpublished opinion on May 19, 2004. On June 24, 2004, the United States Supreme Court issued its opinion in *Blakely v. Washington* (June 24, 2004, No. 02-1632) 542 U.S. ____ [2004 U.S.Lexis 4573]. During the week of June 28, 2004, counsel reviewed her pending and closed cases to determine whether any cases fell within the court's decision in *Blakely*. Counsel's notes indicated that appellant's case might fall within the *Blakely* decision, but counsel had already sent the actual transcripts to appellant. On June 12, 2004, counsel was able to obtain copies of the sentencing hearing transcripts and verify that appellant's case falls within the

court's decision in *Blakely*. Thereafter, appellant filed this motion and accompanying petition for review.

Appellant has not previously requested any extensions for filing the petition for review.

I declare under penalty of perjury that this statement, including any attached pages, is true. Executed at San Diego, California, on June 13, 2004.

Dated: _____

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IT IS SO ORDERED:

Chief Justice

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APPELLATE DEFENDERS, INC.

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