

CERTIFIED FOR PUBLICATION

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

In re JIMMY RICHARDSON

on Habeas Corpus.

C062684

(Super. Ct. No.
07F11128)

ORDER MODIFYING
OPINION AND DENYING
REHEARING
[NO CHANGE IN
JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on June 13, 2011, be modified as follows:

After the first full paragraph on page 28, insert the following new paragraph:

Even if the Supreme Court were ultimately to limit the scope of *Woodell* and determine under the rule of *Trujillo* that appellate opinions are not part of the record of proceedings to the extent they rely on a probation report as the basis for their statement of facts, our opinion on the appeal of

defendant's 1992 evasion conviction would satisfy the higher standard. At the trial court hearing in that case to accept defendant's no contest plea, and before the trial court accepted defendant's plea, defense counsel agreed on the record that the victims of that crime were not accomplices. To establish the factual basis for defendant's plea, the prosecutor stated:

"[W]hile driving a vehicle in excessive speed in the county of Sacramento, the defendant was chased by marked units with red lights and sirens. He crashed. As a result of the crash, debris caused injury to two victims in a residence." The court then asked defense counsel whether he wished to comment on the factual basis, and he replied he did not. The court determined this was a sufficient factual basis to support defendant's plea and defendant did not object. This exchange before defendant entered his plea is evidence in the record of proceedings that supported the statement of facts in our earlier opinion, and thereby rendered that opinion part of the record of proceedings as well.

This modification does not change the judgment.

The petition for rehearing is denied.

THE COURT:

NICHOLSON, Acting P. J.

HULL, J.

ROBIE, J.