

## IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE,	)	
	)	S049973
Plaintiff and Respondent,	)	
	)	Los Angeles County
v.	)	Super. Ct. No. LA015339
	)	
DOUGLAS OLIVER KELLY,	)	<b>ORDER MODIFYING OPINION</b>
	)	<b>[NO CHANGE IN JUDGMENT]</b>
Defendant and Appellant.	)	
_____	)	

### THE COURT:

The majority opinion filed December 6, 2007, and published at 42 Cal.4th 763 is modified as follows:

In the second paragraph on page 799, the second sentence, which reads, “We see nothing in *Payne v. Tennessee, supra*, 501 U.S. 808, or our own cases, that prohibits comparing the victim and the defendant,” is deleted and replaced with the following sentence: Nothing in the record, however, shows that such a comparison was made in this case.

This modification does not affect the judgment.