

IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE,)	
)	
Plaintiff and Respondent,)	
)	S026040
v.)	
)	
RICHARD JOHN VIEIRA,)	Stanislaus County
)	Super. Ct. No. 261617
Defendant and Appellant.)	MODIFICATION OF OPINION
_____)	

THE COURT:

The opinion in this case, filed on March 7, 2005 and appearing at 35 Cal.4th 264, is modified as follows:

- 1. The first paragraph on page 305 is modified to read:

“Defendant is not entitled to benefit from the 1992 amendment; it was repealed in 1994. (Stats. 1994, ch. 1106, § 3, pp. 6548-6550.) However, a defendant generally is entitled to benefit from amendments that become effective while his case is on appeal. Here, the question of restitution should be considered under the current version of Penal Code section 1202.4, which provides detailed guidance to the trial court in setting a restitution fine, including consideration of a defendant’s ability to pay. ‘The key date is the date of final judgment. If the amendatory statute lessening punishment becomes effective prior to the date the judgment of conviction becomes final then, in our opinion, it, and not the old statute in effect when the prohibited act was committed, applies.’ (*In re Estrada* (1965) 63 Cal.2d 740, 744.) ‘In *Pedro T.* we cited with approval a case holding that, for the purpose of determining retroactive application of an amendment to a criminal statute, a judgment is not final until the time for petitioning for a writ of certiorari in the United States Supreme Court has passed. (*In re Pedro T.* (1994) 8 Cal.4th 1041, 1046, citing *In re Pine* (1977) 66 Cal.App.3d 593, 594; see also *Bell v. Maryland* (1964) 378 U.S. 226, 230 [“The rule applies to any

such [criminal] proceeding which, at the time of the supervening legislation, has not yet reached final disposition in the highest court authorized to review it”].)’ (*People v. Nasalga* (1996) 12 Cal.4th 784, 789, fn. 5.)”

2. The second paragraph on page 305 is modified by adding a new second and third sentence that read as follows:

“We also remand to the trial court for reconsideration of the question of a restitution fine under the currently applicable statute. If the People choose not to contest the matter on remand, defendant’s restitution fine shall be reduced to the statutory minimum.”

This modification changes the judgment.