

IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE,)	
)	
Plaintiff and Respondent,)	
)	S040527
v.)	
)	Orange County
TIMOTHY LEE DEPRIEST,)	Super. Ct. No. C-90616
)	
Defendant and Appellant.)	
_____)	

MODIFICATION OF OPINION

THE COURT:

The opinion, which appears at 42 Cal.4th 1, is modified to delete language on page 28, footnote 7, reading:

“To warrant dismissal of the case on due process grounds, preindictment delay must cause ‘substantial prejudice’ and serve as an ‘intentional device to gain tactical advantage.’ (*Marion, supra*, 404 U.S. 307, 324; cf. *United States v. Lovasco* (1977) 431 U.S. 783, 795-796.) Defendant has not shown that the challenged delay was intended to gain such advantage. Nor, for reasons we have explained, has he shown prejudice.”

Substitute the following for the deleted language in footnote 7:

“To warrant dismissal of the case on due process grounds, existing law requires a showing that the state’s conduct in deferring prosecution ‘deviate[d] from “fundamental conceptions of justice” ’ (*United States v. Lovasco* (1977) 431 U.S. 783, 790-791), and that the ability to mount a defense has thereby suffered ‘substantial prejudice.’ (*Marion, supra*, 404 U.S. 307, 324; see *Lovasco, supra*, at pp. 790-791.) Here, defendant has not shown that any delay

attributable to the prosecution — delay intended only to allow a sister jurisdiction to complete its own criminal proceedings — violated such fundamental concepts. Nor, for reasons we have explained, has he shown actual prejudice. (See, e.g., *Horning, supra*, 34 Cal.4th 871, 895.)

This modification does not effect a change in the judgment.