

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

VINCENT HENRY SANCHEZ,

Petitioner,

v.

THE SUPERIOR COURT OF VENTURA  
COUNTY,

Respondent;

THE PEOPLE,

Real Party in Interest.

2d Civil No. B160255  
(Super. Ct. No. 2001900034)  
(Ventura County)

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

THE COURT:

It is ordered that the opinion filed herein on October 18, 2002, be modified as follows:

1. On page 3, the second full paragraph under Discussion is modified to read as follows:

Murder is divided into two degrees. Willful, deliberate, and premeditated murder, and murder "committed in the perpetration of, or attempt to perpetrate" rape, kidnapping and other listed felonies, is murder of the first degree. All other murder is of the second degree. (§ 189.) Here, the accusatory pleading charges Sanchez with first degree murder, not murder without the specification of degree. (§ 187.) The felony

information expressly charges first degree murder and, based on its allegations, the charge can only be murder in the first degree.

2. On page 4, the second full paragraph is modified to read as follows:

We reject this contention. We conclude that section 1192 is not intended to prevent the People from charging first degree murder by specifying the facts underlying that charge when such a charge is supported by the evidence at a preliminary hearing or indictment. When the language of the charge can only be first degree murder, an accusatory pleading does not charge a crime "distinguished or divided into degrees" and, therefore, section 1192 does not apply.

3. On page 8, the first full paragraph is modified to read as follows:

Moreover, *Mendoza's* rejection of the strict and literal interpretation of section 1157 compels rejection of the similar interpretation of section 1192 in *Balinton* and other cases that preclude the "implication" of a first degree murder charge based on an allegation of special circumstances. Even if the words "first degree" had not been included in the pleading against Sanchez, the charge would be first degree murder as a matter of law based on any of the "special allegations" 1 through 3 and on the special circumstance allegations.

4. On page 8, the third full paragraph is modified to read as follows:

Sanchez argues that, because section 190.4 requires a conviction of first degree murder separate from a determination of the special circumstances, section 1192 can be reconciled with the current statutory scheme. We agree that apparently conflicting statutes should be reconciled if possible, and our conclusions preserve the intended role of section 1192. Section 1192 remains applicable where murder is charged in an unspecified degree, as well as to other crimes that are divided into degrees.

5. On page 8, the last paragraph is deleted.

6. On page 9, the first full paragraph is deleted.

7. On pages 9 and 10, the Conclusion section is deleted in its entirety and replaced by the following:

## CONCLUSION

Sanchez may plead not guilty or guilty to the charged offense of first degree murder. (*People v. Ernst* (1994) 8 Cal.4th 441, 447 [People cannot prevent guilty plea by refusing to waive jury trial].) If Sanchez pleads guilty to first degree murder, the plea will constitute an admission of all elements of that offense. Nothing in this opinion, however, compels Sanchez, as part of the plea, to admit the truth of any special circumstance or "special allegations" 1 through 3 in the information. In accepting the plea, the trial court should determine a factual basis for the plea based on allegations in the information, but this determination will not constitute an admission of the facts relied on by the court in its determination. (*People v. Hoffard* (1995) 10 Cal.4th 1170, 1181, 1183-1184 [determining factual basis of plea encouraged but not required when plea is not conditioned upon a particular sentence or other exercise of the court's powers].)

If Sanchez pleads guilty to first degree murder, the trier of fact will then determine the truth of the special circumstance allegations. As with a plea of not guilty, if one or more of the special circumstances is found true, the case will proceed to its penalty phase.

We do not suggest that Sanchez is compelled to plead guilty to first degree murder or any other charge of which he stands accused. Should he not wish to do so, he can put the People to their proofs by demanding a trial on the charge.

The alternative writ is discharged and the petition for peremptory writ of mandate is denied.

There is no change in the judgment.

Petitioner's petition for rehearing is denied.