

Filed 10/20/21

**IN THE SUPREME COURT OF
CALIFORNIA**

THE PEOPLE,
Plaintiff and Respondent,

v.

DON'TE LAMONT MCDANIEL,
Defendant and Appellant.

S171393

Los Angeles County Superior Court
TA074274-01

**ORDER MODIFYING OPINION AND
DENYING PETITION FOR REHEARING**

THE COURT:

The majority opinion in this matter, filed on August 26, 2021, and appearing at 12 Cal.5th 97, is modified as follows:

1. The second paragraph on page 120, beginning “The prosecutor explained that,” is deleted in its entirety and replaced with the following paragraph:

The prosecutor noted that Prospective Juror No. 46 believed that life without parole and the death penalty “are essentially the same because life in prison is not a life.” The prosecutor also explained that the prospective juror did not believe the death penalty was a deterrent,

“which is not an attitude that I considered to be a fair attitude.” He was also concerned that Prospective Juror No. 46 listened to a “very liberal political radio station where they frequently have specials and guest speakers and interviews that are anti-death penalty advocates.”

2. The second sentence of the second full paragraph on page 124, beginning “Comparing the final composition,” is modified to add “, while not in itself decisive,” after “pool” so that the sentence now reads:

Comparing the final composition of the jury to the overall pool, while not in itself decisive, reveals that Black jurors were overrepresented on the jury, even factoring in the disallowed strike of Prospective Juror No. 46.

This modification does not affect the judgment.

The petition for rehearing is denied. Defendant’s request for modification of the opinion is denied.