

IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE,)	
)	
Plaintiff and Respondent,)	
)	S166402
v.)	
)	Ct.App. 2/3 B195337
MICHAEL JEROME SUTTON et al.,)	
)	Los Angeles County
Defendant and Appellant.)	Super. Ct. No. BA304502
_____)	

MODIFICATION OF OPINION

THE COURT:

The opinion filed on April 5, 2010, and published at 48 Cal.4th 533, is modified as follows:

At page 546, second full paragraph, insert the following new footnote 7 after the citations that follow the first sentence and end with “*Jensen v. Superior Court* (2008) 160 Cal.App.4th 266, 271-275 [72 Cal.Rptr.3d 594.]”:

⁷/ When the prosecution fails to establish adequate justification for the delay, the circumstance that the delay is not likely to prejudice the defendant’s ability to present a defense does not, in itself, constitute good cause to avoid a dismissal under section 1382. (See, e.g., *Sykes v. Superior Court* (1973) 9 Cal.3d 83, 88-89 [“A dismissal is . . . mandated in those situations covered by the statute if, at the time a defendant moves therefor, the 60-day period has elapsed and good cause for the delay is not shown by the prosecution. In these circumstances the defendant is not required to make any further showing, and in particular he is not required to make an affirmative showing that he has

been prejudiced by the delay.”].) When the prosecution makes a prima facie showing of adequate justification for the delay, however, the circumstance that the delay is likely to prejudice the defendant’s litigating position is a relevant factor in determining whether good cause for the delay has been established. (See, e.g., *Stroud v. Superior Court*, *supra*, 23 Cal.4th 952, 971.)

The subsequent footnotes are renumbered.

This modification does not affect the judgment.