IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

JOHN SMITH,

Defendant and Appellant.

2d Crim. Z123456

(Sup.Ct.No. X123456)

Notice of Appeal filed December 25, 2003

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY

Honorable Merry Goodlaw, Judge

MOTION TO AUGMENT RECORD ON APPEAL AND REQUEST FOR EXTENSION OF TIME

JONATHAN B. STEINER Executive Director

SUZAN HIER Staff Attorney (State Bar No. 90470)

CALIFORNIA APPELLATE PROJECT 520 S. Grand Ave., 4th Floor Los Angeles, CA 90071 Telephone: (213) 243-0300

Attorneys for Appellant

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT DIVISION EIGHT

THE PEOPLE OF THE STATE OF CALIFORNIA,

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TO: THE PRESIDING JUSTICE AND THE HONORABLE ASSOCIATE JUSTICES OF THE COURT OF APPEAL OF THE SECOND APPELLATE DISTRICT, DIVISION EIGHT

Pursuant to rules 12 and 32.1(d) of the California Rules of Court, appellant John Smith respectfully requests that the record on appeal be augmented to include the following proceedings dated November 1, 2003 in Department 2 (Robin Reporter, Reporter): The hearing on the defendant's motion for a continuance.

It is further requested that appellant be given a thirty (30) day extension of time for filing the opening brief, computed from the date of the filing of the augmented record.

The requested record is of a hearing at which the defendant requested a continuance to enable him to retain counsel to replace the public defender. A criminal defendant has a right to retain counsel of choice to enable him to defend in the manner he chooses. (See *People* v. *Courts* (1985) 37 Cal.3d 784; *People* v. *Crovedi* (1966) 65 Cal.2d 199; see also *People* v. *Byoune* (1966) 65 Cal.2d 345, 348; *Chandler* v. *Fretag* (1954)

348 U.S. 3 [99 L.Ed. 4].) The requested record is needed to review whether the trial court improperly interfered with that right.

Appellant's counsel on appeal has a duty to raise all arguable issues before this Court. (*In re Smith* (1970) 3 Cal.3d 192.) Counsel has reviewed the current record on appeal and has determined that inclusion of the requested material is necessary for the effective representation of appellant. (*People v. Gaston* (1978) 20 Cal.3d 476; *People v. Silva* (1978) 20 Cal.3d 498.)

Since the transcript requested will constitute an important part of the record on appellant's appeal, it would not be possible to file an opening brief without an extension of time of thirty days from the filing of the augmented record. This is appellant's first request for extension of time.

DATED: May 3, 2004

Respectfully submitted,

CALIFORNIA APPELLATE PROJECT

JONATHAN B. STEINER Executive Director

SUZAN HIER

Attorneys for Appellant

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

JOHN SMITH,

Defendant and Appellant.

No. Z123456 (Sup.Ct.No. X123456)

DECLARATION OF SUZAN HIER IN SUPPORT OF MOTION TO AUGMENT RECORD ON APPEAL AND REQUEST FOR EXTENSION OF TIME

I, SUZAN HIER, declare under penalty of perjury:

I am the Staff Attorney at the California Appellate Project assigned to

represent appellant, John Smith, on appeal in the above-entitled matter.

All of the factual statements made in the motion to augment the record on

appeal are true and correct to the best of my knowledge. The material sought to be

included in the record is necessary for a proper determination of the appeal.

Executed on May 3, 2004 at Los Angeles, California.

SUZAN HIER Attorney for Appellant

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE OF THE STATE OF CALIFORNIA,	3	2d Crim. No. Z123456
Plaintiff and Respondent,)	(Super. Ct. No. X123456)
)	
VS.)	
)	
JOHN SMITH,)	
)	ORDER
Defendant and Appellant.)	Re: AUGMENTATION

□ Appellant's motion to augment the record on appeal is granted. The record on appeal is ordered augmented with: documents filed with the motion to augment as exhibits_____;

trial court exhibits_____;

the superior court file;

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the transcripts described below.

The clerk of the superior court is ordered to have prepared an augmented reporter's transcript of the following:

	REPORTER'S NAME	DEPT.	DATE	NATURE OF PROCEEDINGS
1.	Robin Reporter	2	November 1, 2003	Hearing on the defendant' s motion for a continuance to enable him to retain counsel.
2.				
3.				
4.				

The clerk of the superior court is ordered to prepare an augmented clerk's transcript consisting of the following:

	DATE	DOCUMENT DESCRIPTION
1.		
2.		
3.		
4.		

An original and **two** copies of the above transcripts are to be prepared within 30 days of this order. No requests for extensions of time will be granted. **THE ORIGINAL AND ALL COPIES OF SEALED PROCEEDINGS ARE TO BE SENT TO THE COURT OF APPEAL ONLY.** Otherwise, the original is to be delivered to the Court of Appeal, one copy to the Attorney General, and one copy to appellant's counsel, SUZAN HIER, at the following address:

> California Appellate Project 520 South Grand Avenue, Fourth Floor Los Angeles, California 90071

Appellant's opening brief is to be filed within 30 days of the filing of the augmented record.

DECLARATION OF SERVICE

Re: People v. John Smith

No. Z123456

I, Sally Server, declare that I am over 18 years of age, employed in the County of Los Angeles, and not a party to the within action; my business address is California Appellate Project, 520 South Grand Avenue, 4th Floor, Los Angeles, California 90071. I am employed by a member of the bar of this court.

On May 3, 2004, I served the within

MOTION TO AUGMENT RECORD ON APPEAL AND REQUEST FOR EXTENSION OF TIME

on each of the following, by placing true copies thereof in envelopes addressed respectively as follows, and depositing them in the United States Mail at Los Angeles, California:

County Clerk Criminal Courts Building 210 West Temple St., Room M-6 Los Angeles, CA 90012 FOR DELIVERY TO: Merry Goodlaw, Judge

Bill Lockyer, Attorney General 300 South Spring Street Fifth Floor, North Tower Los Angeles, CA 90013 ATTN: Ronald Responder, Deputy (hand delivered) Steve Cooley, District Attorney 18000 Criminal Courts Building 210 West Temple Street Los Angeles, CA 90012 ATTN: Peter Piper, Deputy

JOHN SMITH D-12345 Anywhere State Prison P.O. Box 123 Sacramento, CA 99999

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 3, 2004, at Los Angeles, California.

SALLY SERVER