

**IN THE SUPREME COURT OF CALIFORNIA**

THE PEOPLE, )  
 )  
 Plaintiff and Respondent, )  
 )  
 v. )  
 )  
 DOUGLAS OLIVER KELLY, )  
 )  
 Defendant and Appellant. )  
 \_\_\_\_\_ )

S049973

Los Angeles County  
Super. Ct. No. LA015339

**ORDER MODIFYING OPINION  
[NO CHANGE IN JUDGMENT]**

**THE COURT:**

The majority opinion filed December 6, 2007, and published at 42 Cal.4th 763 is modified as follows:

In the second paragraph on page 799, the second sentence, which reads, “We see nothing in *Payne v. Tennessee, supra*, 501 U.S. 808, or our own cases, that prohibits comparing the victim and the defendant,” is deleted and replaced with the following sentence: Nothing in the record, however, shows that such a comparison was made in this case.

This modification does not affect the judgment.