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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,
Plaintiff and Respondent,
v.
FAUSTINO PEREZ,
Defendant and Appellant.

A131866

(San Francisco County
Super. Ct. No. 201068)

**ORDER MODIFYING OPINION,
AND DENYING PETITION FOR
REHEARING
[NO CHANGE IN JUDGMENT]**

THE COURT:

It is ordered that the opinion filed herein on December 11, 2012, be modified as follows:
Add footnote 5, on page 18 just before the Disposition, after the words “should be determined in a hearing, as provided under section 1368.”

⁵ This is not an appropriate case for a remand directing the trial court to determine whether holding a retrospective competency hearing is feasible. (See *People v. Lightsey* (2012) 54 Cal.4th 668, 708 [retrospective competency hearing not an appropriate remedy where “there is by definition a shortcoming in the evidence” due to trial court’s failure to hold a section 1368 hearing in the face of substantial evidence of incompetence and any “retrospective competency hearing would have to rely on after-the-fact opinions and evidence in the record (such as the defendant’s courtroom behavior) that might only circumstantially assist in determining the defendant’s mental state at the time of trial”].)

The Petition for Rehearing, filed December 18, 2012 is denied.

DATE:

MCGUINESS, P.J.*

* Justice Jenkins and Justice Siggins concur.