

CAVEAT: This sample is provided to demonstrate style and format

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

THE PEOPLE OF THE STATE OF CALIFORNIA,))
Plaintiff and Respondent,) 2d Crim. No.
v.) B _____
APPELLANT'S NAME,) Sup.Ct.No.
Defendant and Appellant.) XX _____
_____)

APPEAL FROM THE SUPERIOR COURT OF
_____ COUNTY

Honorable JUDGE'S NAME, Judge

**APPELLANT'S OPENING BRIEF
REQUEST FOR INDEPENDENT REVIEW OF RECORD
(PEOPLE V. WENDE (1979) 25 CAL.3D 436)**

ATTORNEY'S NAME
(STATE BAR NUMBER)

ATTORNEY'S ADDRESS
Telephone Number:
Fax:
Email Address:

Attorneys for Appellant

TABLE OF CONTENTS

	<u>Pages</u>
TABLE OF CONTENTS	2
TABLE OF AUTHORITIES	3
APPELLANT'S OPENING BRIEF REQUEST FOR INDEPENDENT REVIEW OF RECORD (<i>PEOPLE V. WENDE</i> (1979) 25 CAL.3D 436)	4
STATEMENT OF APPEALABILITY	4
STATEMENT OF THE CASE	5
STATEMENT OF FACTS	7
Prosecution Case	7
Defense Case	7
ARGUMENT	9
APPELLANT REQUESTS THAT THIS COURT INDEPENDENTLY EXAMINE THE ENTIRE RECORD ON APPEAL	9
DECLARATION OF ATTORNEY'S NAME IN SUPPORT OF REQUEST FOR INDEPENDENT JUDICIAL REVIEW OF THE ENTIRE APPELLATE RECORD	10
WORD COUNT CERTIFICATION	11
PROOF OF SERVICE	12

TABLE OF AUTHORITIES

Page(s)

STATE CASES

Pursuant to People v. Wende (1979)
25 Cal.3d 436 4, 5, 9

STATE STATUTES

Penal Code sections:

1237..... 4
11352..... 5

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**APPELLANT'S OPENING BRIEF
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[STATEMENT OF APPEALABILITY]

This appeal is from a final judgment of conviction after jury trial, and is authorized by Penal Code section 1237.]

The brief must include a statement establishing that the appeal is authorized. This can be done in a separate section like this, or can be done by simply adding a sentence (e.g. "The appeals lies.") with citation to authority showing it is authorized as done below.

STATEMENT OF THE CASE

This section outlines procedural facts with citation to the record. In a *Wende* brief, it might be more detailed than in a brief raising issues. Below is a sample.

An information charged appellant with sale of cocaine base in violation of Health and Safety Code section 11352 (CT 19-24). Appellant was tried by jury (CT 38).

Prior to the introduction of evidence, the court held an *in camera* hearing on the appellant's motion for disclosure of the observation point from which police had seen appellant taking possession of the cocaine. The court denied the motion on the grounds that the public interest in confidentiality outweighed the defendants' need for disclosure. (CT 38; RT 29, 108-109, 121-135.) The court then overruled the appellant's objections to limitations placed on his cross-examination of the observing officer, denied a defense request that the jury be informed that the officer had exercised the privilege of confidentiality, and denied a defense request for mistrial (RT 136-139).

Two more defense motions for mistrial were denied after the court overruled defense objection to People's Exhibit 7, a police information card" (RT 295-296), and allowed the prosecutor, over defense objection, to utilize certain documents provided in discovery to impeach a witness who testified for the codefendant (RT 305-307).

Appellant was found guilty as charged (CT 83-85). At probation and sentencing proceedings conducted on October 26, 1995, the court suspended imposition of appellant's sentence and placed him on three years probation with the condition, *inter alia*,

that he serve 365 days in county jail. Appellant was also ordered to pay a a \$50 lab fee and a \$2,000 restitution fine or, in the alternative, provide 250 hours community service. He was credited with 169 days of presentence custody. (CT 87.)

Appellant filed a timely Notice of Appeal (CT 91).

[The appeal lies. (Pen. Code, § 1237.)]

STATEMENT OF FACTS

Prosecution Case

On July 6, 1995, NAME, a police officer, was stationed at an observation post near an area of blatant narcotics activity. His duties were to observe street narcotics transactions and report them to "chase cars" in the area. (RT 156-158.)

At about 3:45 p.m., NAME, looking through 10 x 50 binoculars, saw appellant from a distance of 75 to 100 feet. Appellant paced the street for a few minutes and then was approached by a man with whom appellant engaged in conversation. Appellant showed the man a number of rock-like objects.¹ The man plucked several of the objects out of appellant's palm, gave appellant some bills, and then walked west on Seventh Street. (RT 159-163.)

OFFICER'S NAME notified the chase units of what he had seen, providing a description of appellant (RT 165, 171-175, 215-216). The chase units arrived within seconds (RT 166-167). OFFICER'S NAME watched one of the responding officers take appellant into custody (RT 167-168).

Appellant was searched and had white rocks in his pocket. (RT 227-242.) The white rocks were later determined to contain .46 grams of cocaine base (RT 260-267), which was stipulated to be usable amount (RT 271).

¹ The officer first testified there were 15 to 20 (RT 161-162); he later amended that to 10 to 15 (RT 182).

Defense Case

WITNESS'S NAME testified on behalf of appellant. At the time of the incident, WITNESS and appellant were roommates living in the area. That day, the two roommates left their home at noon. They cashed a check, then walked to neighborhood to shop. There, they put \$50 down for a gold chain at a jewelry store, proceeded to Kentucky Fried Chicken for lunch, then walked back home, arriving there a little after 3:30 p.m. (RT 277-286.)

WITNESS paid their rent, while appellant stayed outside talking to a male friend; he was visible to WITNESS through a window. When WITNESS finished paying the rent, he and appellant walked to a store to buy a soda. As appellant was crossing the street just after exiting the store, a police officer stopped and arrested him. (RT 287-293.)

ARGUMENT

**APPELLANT REQUESTS THAT THIS COURT
INDEPENDENTLY EXAMINE THE ENTIRE
RECORD ON APPEAL**

Pursuant to *People v. Wende* (1979) 25 Cal.3d 436, counsel requests that this court independently review the entire record on appeal for arguable issues.

Present counsel has written to appellant, advising him that he may file a supplemental brief with the court within 30 days and may request the court to relieve present counsel. Present counsel remains available to brief any issue(s) upon invitation of the court. (See Declaration attached hereto.)

DATED: [DATE]

Respectfully submitted,

ATTORNEY'S NAME

Attorney for Appellant

**DECLARATION OF ATTORNEY'S NAME IN SUPPORT OF
REQUEST FOR INDEPENDENT JUDICIAL REVIEW OF
THE ENTIRE APPELLATE RECORD**

I, ATTORNEY'S NAME, declare as follows:

I am the attorney appointed by this Court to represent appellant, APPELLANT'S NAME, on appeal following his judgment of conviction for violation of Health and Safety Code section 11352, sale of cocaine base.

I have reviewed the entire record on appeal, consisting of the Clerk's Transcript (1 vol.) and the Reporter's Transcript (2 vols.), and discussed appellant's case with trial counsel. The superior court file has been reviewed.

On _____, I wrote to appellant at the most current address I then had for him, APPELLANT'S ADDRESS, explaining my evaluation of the record on appeal and my intention to file this pleading. Today, I again wrote to appellant and informed him that the brief was being filed and of his right to file a supplemental brief. I enclosed the transcripts of the record on appeal and a copy of this brief. [NOTE: THIS SHOULD BE MODIFIED IF ONLY A SINGLE LETTER WAS SENT WITH THE WENDE BREIF.]

I do not at this time move to withdraw as counsel of record for appellant, and I remain available to brief any issues that the Court requests. I have also advised appellant that he may request this court to relieve me.

I declare under penalty or perjury that the foregoing is true and correct and that I signed this declaration on [DATE], at _____, California.

ATTORNEY'S NAME

WORD COUNT CERTIFICATION
People v. APPELLANT'S NAME

I certify that this document was prepared on a computer using word processing software which indicates that this document contains _____ words.

ATTORNEY'S NAME