

*****CAVEAT: This sample is provided to demonstrate style and format. It is not intended as a model for the substantive argument, and therefore counsel should not rely on its legal content which may be outdated.*****

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR**

**PEOPLE OF THE STATE OF
CALIFORNIA,**
Plaintiff and Respondent,

v.

[APPELLANT'S NAME],
Defendant and Appellant.

Case No. B_____

Superior Court No.

**FROM THE JUDGMENT OF THE LOS ANGELES
COUNTY SUPERIOR COURT**
Honorable _____, Judge Presiding

APPELLANT'S OPENING BRIEF
(People v. Delgadillo (2022) 14 Cal.5th 216)

[ATTORNEY NAME]
(State Bar No. ____)

[ATTORNEY'S ADDRESS]
Telephone: _____
Fax: _____
Email: _____

Attorney for Appellant

**** include a Table of Contents and a Table of Authorities**

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PEOPLE OF THE STATE OF CALIFORNIA,
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STATEMENT OF APPEALABILITY

This timely appeal is from the denial of a Petition for Resentencing filed pursuant to Penal Code¹ section 1172.6 (formerly section 1170.95, recodified without substantive change by Stats. 2022, ch. 58, § 10, eff. June 30, 2022). Such an order is appealable pursuant to section 1237, subdivision (b), as an order after judgment affecting the substantial rights of the defendant.

¹

All further undesignated statutory references are to the Penal Code.

STATEMENT OF THE CASE

[Because the Court of Appeal will not be required to independently review the record, counsel should describe the relevant procedural background of the case.]

Appellant filed a timely notice of appeal. (2CT 456.)

STATEMENT OF FACTS

[Describe the relevant factual background of the case.]

Some options for prima facie denials:

Option: [No facts were adduced.]

Option: [“Because this matter was resolved at the prima facie stage of the proceedings under Penal Code section 1172.6, the record contains no appropriate summary of the facts underlying the charges. The admissible portion of a prior appellate opinion is limited to “the procedural history of the case” (Pen. Code, § 1172.6, subd. (d)(3).) This limitation applies at the prima facie stage. (*People v. Flores* (2022) 76 Cal.App.5th 974, 988, fn. 9.)”]

Option: [Because the court may only deny a petition for resentencing at the prima facie stage if the defendant is ineligible for relief as a matter of law, the facts underlying the conviction are not relevant to the issue presented herein. However, to provide context to the appeal, appellant provides a brief recitation of the facts of the [murder/attempted murder, etc.] conviction taken from [cite source]. The reliance on these facts in this context is not a concession that they are facts which were proven at trial or that they are the only facts proven at trial.]

Option: [A brief summary of facts if available.]

ARGUMENT

APPELLANT REQUESTS THE COURT TO FOLLOW THE PROCEDURES OUTLINED IN *PEOPLE v. DELGADILLO* (2022) 14 Cal.5th 216.

Present counsel has reviewed the entire record and found no arguable issues to raise on appeal from the denial of appellant’s Penal Code section 1172.6 petition for resentencing. Appellant requests that this court follow the procedures outlined in *People v. Delgadillo* (2022) 14 Cal.5th 216 (*Delgadillo*), and permit him to file a supplemental brief raising any issues he wishes the Court to consider.

On December 19, 2022, the California Supreme Court decided *Delgadillo*, in which it outlined the procedures an appellate court should follow when appointed counsel files a “no issue” brief in an appeal from the denial of a section 1172.6 petition. (*Id.* at pp. 231-232.) In such situations, “the court should send, with a copy of counsel's brief, notice to the defendant, informing the defendant of the right to file a supplemental letter or brief and that if no letter or brief is filed within 30 days, the court may dismiss the matter.” (*Id.* at pp. 231-232.) If the defendant files a supplemental brief or letter, “the Court of Appeal is required to evaluate the specific arguments presented in that brief and to issue a written opinion.” (*Id.* at p. 232.)

[OPTIONAL – Appellate counsel asks that this court follow these procedures. Appellant further requests that this court exercise its discretion to conduct an independent review of the

record as permitted by *Delgadillo*. (*Id.* at pp. 231-232.)]

Present counsel has written to _____ and advised him that he may file a supplemental brief with this Court within 30 days, and that if he does not do so, the court may dismiss his appeal.

Counsel has also today sent appellant the transcripts of the record on the current appeal and a copy of this brief.

Present counsel remains available to brief any issues, upon the court's request. (See declaration attached hereto.)

Dated:

Respectfully submitted,

/s/
[Attorney name]

Attorney for Appellant

DECLARATION OF [attorney name]

I, _____, hereby declare as follows:

I am the attorney appointed to represent _____ case on this appeal.

I have reviewed the entire record on appeal and have not found any arguable issues to raise on appeal. An attorney at the California Appellate Project has also reviewed this case.

I have written to appellant and explained my evaluation of the record on appeal and my intention to file this pleading. I have also informed appellant of his right to file a supplemental brief. I have advised appellant that if he does not file a supplemental brief, this Court may dismiss his appeal.

I have also today sent the transcripts of the record on the current appeal and a copy of this brief to appellant at the following address:

[Client's name and CDCR number]

[Client's address]

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

Executed under penalty of perjury pursuant to the laws of the State of California on February 20, 2023.

/s/
[Attorney name]

Attorney for Appellant

CERTIFICATE OF COMPLIANCE

The text of this brief consists of ---- words as counted by the WordPerfect program used to generate this brief.

Dated:

Respectfully submitted,

/s/
[Attorney name]

Attorney for Appellant

DECLARATION OF MAIL AND ELECTRONIC SERVICE

I, the undersigned, declare:
I am over eighteen (18) years of age, an active member of the State Bar of California and not a party to the within cause; my business address is _____; that on **February 20, 2023**, I served a copy of the within:

APPELLANT’S OPENING BRIEF

on the interested parties by placing them in an envelope(s) addressed respectively as follows:

[client]

[trial court]

[defense counsel, if any]

Each said envelope was then, on **February 20, 2023**, sealed and deposited in the United States mail at Los Angeles, California, the county in which I maintain my office, with postage fully prepaid.

I further declare that, on the same date, I electronically served a copy of the same above document to the following electronic notification addresses:

1. Attorney General - docketingLAawt@doj.ca.gov
2. District Attorney’s Office - Truefiling@da.lacounty.gov

I declare under penalty of perjury that the foregoing is true and correct. Executed on **February 20, 2023**, at Los Angeles, California.

/s/ _____