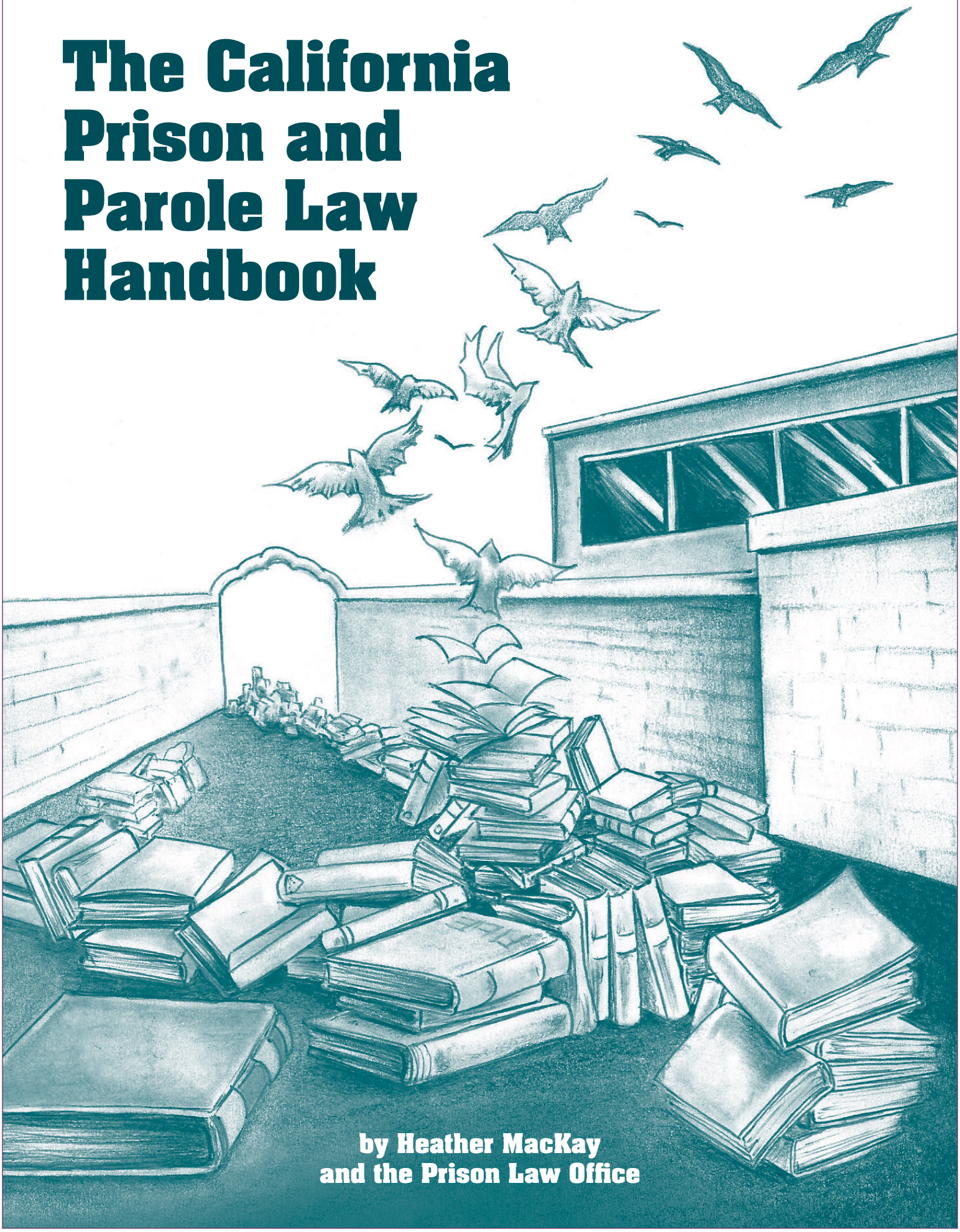
The California Prison and Parole Law Handbook



by Heather MacKay
and the Prison Law Office

THE CALIFORNIA PRISON & PAROLE LAW HANDBOOK

BY HEATHER MACKAY
&
THE PRISON LAW OFFICE

ISBN: 978-0-692-95526-0

Content Editor: Ritika Aggarwal

Production & Style Editor: Brandy Iglesias

Cover Art: Justus Evans

Cover Design: Tara Eglin

Assistance with Chapter 9: Kony Kim, former Staff Attorney at UnCommon Law, a non-profit that represents people at Board of Parole Hearings proceedings, challenges unjust parole policies and decisions, and provides training and information to people serving life terms and their advocates.

Assistance with Chapter 11: Anne Mania, former Staff Attorney at the Prison Law Office and Rosen, Bien, Galvan and Grunfeld, where she worked on ensuring due process for people undergoing parole violation processes.

Assistance with Chapter 13: Theo Cuison, Deputy Director and Clinical Supervisor in the Immigration Unit of the East Bay Community Law Center (EBCLC), a clinic of U.C. Berkeley School of Law.

The Prison Law Office is a non-profit public interest law firm that strives to protect the rights and improve the living conditions of people in state prisons, juvenile facilities, jails and immigration detention in California and elsewhere. The Prison Law Office represents individuals, engages in class actions and other impact litigation, educates the public about prison conditions, and provides technical assistance to attorneys throughout the country.

Order forms for *The California Prison and Parole Law Handbook* are available at: www.prisonlaw.com or by writing to:

Prison Law Office
General Delivery
San Quentin, CA 94964

In addition, many self-help information packets on a variety of topics are available free of charge on the Resources page at www.prisonlaw.com or by contacting the Prison Law Office at the address above.

***

YOUR RESPONSIBILITY WHEN USING THIS HANDBOOK

When we wrote *The California Prison and Parole Law Handbook*, we did our best to provide useful and accurate information because we know that people in prison and on parole often have difficulty obtaining legal information and we cannot provide specific advice to everyone who requests it. However, the laws are complex change frequently, and can be subject to differing interpretations. Although we hope to publish periodic supplements updating the materials in the Handbook, we do not always have the resources to make changes to this material every time the law changes. If you use the Handbook, it is your responsibility to make sure that the law has not changed and is applicable to your situation. Most of the materials you need should be available in a prison law library or in a public county law library.

CHAPTER 14
DIRECT APPEALS OF CRIMINAL CONVICTIONS

14.1 Introduction

Any person convicted of a crime in California has a right to a direct appeal from the final judgment, which is generally the commitment to prison or other sentencing order. Direct appeals can also be filed by people who have been civilly committed as Mentally Disordered Offenders (MDOs) or Sexually Violent Predators (SVPs) (see Chapter 12).[1] A direct appeal can also be made from post-judgment orders affecting the "substantial rights" of the defendant; this includes appeals from orders revoking or modifying parole, Post-Release Community Supervision (PCRS), or probation.[2] In a direct appeal, the person who was the defendant (now the "appellant") asks higher level state courts to consider whether there were any legal errors during the proceedings that might have affected the outcome of the plea, trial, revocation hearing, or sentence. A direct appeal is usually the first means of challenging a criminal conviction, civil commitment, or revocation of supervised release. Moreover,

1 Penal Code § 1237(a)

2 Penal Code § 1237(b); *People v. Osorio* (2016) 235 Cal.App.4th 1408, 1412 [185 Cal.Rptr.3d 881] (parole revocation); *People v. Gonzales* (2017) 7 Cal.App.5th 370, 380 [212 Cal.Rptr.3d 575 (PRCS revocation); *People v.; Vickers* (1972) 8 Cal.3d 451, 453, fn. 2 [105 Cal.Rptr.305] ([probation revocation); *People v. Simon* (1983) 144 Cal.App.3d 761, 764 [193 Cal.Rptr. 28] (probation revocation); *People v. Romero* (1991) 235 Cal.App.3d 1423 [1 Cal.Rptr.2d 468] (probation modification)

if an issue can be raised by direct appeal, a defendant who does not pursue a direct appeal will often be barred from bringing other types of legal actions presenting the issue.[3]

The state of California can also appeal if the lower court made decisions that were favorable to the defendant. For example, the state can appeal when a trial court dismisses charges prior to a jury decision or modifies a verdict entered by a jury. The state can also appeal if the trial court imposed a sentence that was not authorized by the law.[4] In a state's appeal, the state will be the "appellant"; the person in prison will be the "respondent" and will have to defend the trial court's decisions.

This chapter provides a general summary of direct appeal procedures for California felony cases. Most of the information also applies to appeals from civil commitments or from parole or PRCS revocations. However, there are different rules and procedures for misdemeanor appeals, which are not addressed in this chapter.

The state of California has appellate programs that oversee the representation of criminal appellants who do not have money to pay for representation. The attorneys who work for these programs select, train, and supervise panels of private attorneys who are appointed to represent people who are appealing from criminal convictions. These programs are a good source of information about the appellate process; a list of the programs is in Appendix 14-A.

In addition, more detailed information on direct appeals can be found in *California Criminal Law: Procedure and Practice* and *Appeals and Writs in Criminal Cases*, which are published and updated regularly by the Continuing Education of the Bar (CEB) (2100 Franklin St., Suite 500, Oakland, CA 94612).

14.2 Filing a Notice of Appeal (and Request for a Certificate of Probable Cause)

The rules of court require a trial judge to advise a defendant who has been convicted of a felony of the right to appeal, the time limits for filing a notice of appeal, and the right to have an appellate attorney appointed by the court if the defendant cannot afford to pay for one.[5]

A defendant who wants to appeal must start the process by filing a notice of appeal. The notice can be signed by the defendant or their attorney, and must identify the case name and number and the judgment being appealed.[6] A defendant who wants to challenge the validity of their guilty or no contest plea (or an admission to a parole or probation violation) will also have to file a completed request for a certificate of probable cause (see § 14.5).[7] A defendant's trial or plea attorney should file these documents if there are any arguably good grounds for appeal or if the defendant tells the attorney that they want to appeal.[8] However, if the attorney does not file a notice of appeal and (if appropriate)

---

3 *In re Harris* (1993) 5 Cal.4th 813, 826-827 [21 Cal.Rptr.2d 373].

4 Penal Code § 1238.

5 California Rules of Court, rule 4.305; but see *People v. Serrano* (1973) 33 Cal.App.3d 331, 337-338 [109 Cal.Rptr. 30] (rule does not apply if the defendant was convicted by a plea of guilty or no contest).

6 California Rules of Court, rule 8.304(a); *People v. Scott* (1998) 64 Cal.App.4th 550, 563-564 [75 Cal.Rptr.2d 315].

7 Penal Code § 1237.5; California Rules of Court, rule 8.304(b).

8 Penal Code § 1240.1.

a request for a certificate of probable cause, the defendant should attempt to prepare and file the documents.

There is a standard notice of appeal form, which includes a box that can be checked to request appointment of counsel and space for requesting a certificate of probable cause. (Judicial Council Form CR-120, see Appendix 14-B.) Alternatively, a defendant can write up their own notice of appeal, request for a certificate of probable cause and request for appointment of counsel.

The notice of appeal and any request for a certificate of probable cause must be filed with the clerk of the superior court that held the trial, took the plea and entered the judgment. To be timely, the notice of appeal and any request for a certificate of probable cause must be filed within 60 days after the date of the final judgment or order being appealed.[9] (A list of all of the California state courts is included as Appendix 15-A.) If the defendant is in custody, the documents should be deemed timely if the envelope shows they were mailed within the 60-day period or delivered to prison or jail staff for mailing within the 60-day period.[10]

The superior court clerk should notify the court of appeal and the attorneys for the state that a notice of appeal has been filed.[11] If request for certificate of probable cause has been filed the superior court has 20 days to either issue or deny the certificate; the superior court should notify the court of appeal and defendant whether the certificate has been granted or denied.[12] The court must certify any issue which is not clearly without any possible merit.[13] If the court refuses to issue a certificate, the defendant can file a petition for a writ of mandate with the court of appeal.[14] An attorney who assisted in filing the notice of appeal should also assist the defendant in filing a petition for writ of mandate challenging denial of a certificate of probable cause.[15]

14.3 Requesting Permission for Constructive Filing of a Late Notice of Appeal (and/or Request for a Certificate of Probable Cause)

No court may extend the time to file a notice of appeal (or request for a certificate of probable cause), except for short extensions in the case of public emergencies like earthquakes or fires.[16] A court clerk who receives a late notice of appeal must notify the appellant that the notice was received

---

9 California Rules of Court, rule 8.308(a).

10 *In re Jordan* (1992) 4 Cal.4th 116, 128-130 [13 Cal.Rptr. 878].

11 California Rules of Court, rule 8.304(c).

12 California Rules of Court, rule 8.304(b)-(c).

13 *People v. Holland* (1978) 23 Cal.3d 77, 84 [15 Cal.Rptr. 625]; *People v. Hoffard* (1995) 10 Cal.4th 1170, 1178-1179 [43 Cal.Rptr.2d 827].

14 *People v. Castelan* (1995) 32 Cal.App.4th 1185 [38 Cal.Rptr.2d 574]; *In re Brown* (1973) 9 Cal.3d 679, 683 [108 Cal.Rptr. 801]; *People v. Holland* (1978) 23 Cal.3d 77, 85 n.6 [15 Cal.Rptr. 625].

15 *In re Brown* (1973) 9 Cal.3d 679, 683 [108 Cal.Rptr. 801]; *People v. Santos* (1976) 60 Cal.App.3d 372, 377 [131 Cal.Rptr. 426].

16 California Rules of Court, rule 8.308(a); California Rules of Court, rule 8.66.

but not filed because it was late. The clerk must also forward the notice to the appellate project for that court district.[17]

The 60-day time deadline is a strict rule.[18] There are only a few situations in which a person may be allowed to file an appeal or request for a certificate of probable cause after 60 days have passed under the principle of "constructive filing." The constructive filing doctrine may be applied in the following situations:

- The person timely delivered their notice of appeal or request for a certificate of probable cause to prison staff for mailing, but prison staff delayed in mailing the notice;[19]
- The person relied upon the assurance of their attorney that the notice of appeal or request for a certificate of probable will be filed, but the attorney neglected to fulfill the promise, and the person then showed diligence in seeking to perfect the appeal.;[20]
- The person's attorney provided ineffective assistance in violation of the U.S. Constitution's Sixth Amendment right to counsel by failing to properly and timely file the notice of appeal or request for a certificate of probable cause;[21]
- The trial court failed to advise the defendant of the right to appeal and the defendant was actually unaware of that right.[22]

If a superior court clerk rejects a notice of appeal or request for a certificate of probable cause as untimely, the person can file a motion with the court of appeal asking the court to allow constructive filing.[23] Alternatively, the person can file a petition for writ of habeas corpus.[24] The appellate program for the court of appeal district (see Appendix 14-A) may be able to help a defendant get their notice of appeal filed.

14.4 Issues that Can be Raised on Appeal After a Trial

Many different types of legal issues can be raised on appeal following a trial and sentencing, civil commitment, or revocation. These can include arguments that the trial court or the prosecutor violated the defendant's federal constitutional rights or state law rights set out in statutes like the Penal

---

17 California Rules of Court, rule 8.308(d).

18 *In re Chavez* (2003) 30 Cal.4th 643 [134 Cal.Rptr.2d 54]; *People v. Mendez* (1999) 19 Cal.4th 1084, 1098-1099 [81 Cal.Rptr.2d 301].

19 *In re Jordan* (1992) 4 Cal.4th 116, 128-130 [13 Cal.Rptr. 878].

20 *In re Benoit* (1973) 10 Cal.3d 72 [109 Cal.Rptr. 785]; *People v. Zarazua* (2009) 179 Cal.App.4th 1054 [101 Cal.Rptr. 902]; but see *In re Chavez* (2003) 30 Cal.4th 643, 657-658 [134 Cal.Rptr.2d 54] (no constructive filing where defendant did not receive any assurances that attorney would file a request for a certificate of probable cause).

21 *Roe v. Flores-Ortega* (2000) 528 U.S. 470, 483 [120 S.Ct. 1029; 145 L.Ed.2d 985]; see also *People v. Byron* (2009) 170 Cal.App.4th 657, 666-667 [88 Cal.Rptr.3d 386] (untimely appeal treated as petition for writ of habeas corpus in interests of judicial economy due to possible viable ineffective assistance of counsel claim).

22 *Castro v. Superior Court (*1974) 40 Cal.App.3d 614 [115 Cal.Rptr. 312].

23 *People v. Zarazua* (2009) 179 Cal.App.4th 1054 [101 Cal.Rptr. 902].

24 See *People v. Lyons* (2010) 178 Cal.App.4th 1355 [101 Cal.Rptr.3d 241].

Code or in court cases. A complete summary of possible appellate issues is beyond the scope of this chapter, but this section summarizes a few of the general rules that govern what sort of issues can be raised and how they will be considered.

Direct appeal issues must be based on only the evidence and proceedings in the superior court. The only facts that can be cited in the appeal briefs are those that are in the "record" because they were recorded by a court reporter during court proceedings or presented in written documents that were placed in the superior court file.[25] If the appellant wants to raise issues that rely on information that was never presented to the superior court, they will have to bring a legal action other than a direct appeal, such as a state court petition for writ of habeas corpus (see Chapter 15). For example, information that is not in the record might include private conversations between the defendant and their attorney, declarations by potential witnesses who were never called to testify, police reports that were not admitted into evidence, or information that became available after the appellant was convicted and sentenced.

Appellants may face a hurdle if no motion, objection, or argument concerning the issue was raised during the superior court pre-trial, trial, or sentencing proceedings. In such circumstances, the court of appeal may find that the claim of error was forfeited and refuse to address it. An appellant will have to argue that either the issue was not forfeited or that the court of appeal should consider the issue anyway because the issue is of constitutional importance, can fairly be resolved based on the facts already in the record, or because an objection in the superior court would have been futile. Alternately, the appellant may be able to argue that the issue should be considered because their trial attorney provided ineffective assistance of counsel by failing to object or argue the issue.

The court of appeal should review whether the defendant got a fair trial and sentencing in which all of the proper legal rules and procedures were filed. For many types of issues, the court of appeal will defer to the trial court's decisions unless the appellant can show that the trial court abused its discretion by acting arbitrarily or capriciously or not applying the correct legal standards. Other issues are subject to *de novo* review, meaning that the court of appeal can independently apply the laws to the facts and reach its own decision. Some types of issues are analyzed using a mix of these standards.

Courts of appeal generally do not re-weigh the evidence. Nonetheless, courts of appeal can find that that there was insufficient evidence to support the jury's verdict on one or more points if the appellant can show that, viewing the evidence in the light most favorable to the prosecution, no rational juror could have found the essential elements of the crime true beyond a reasonable doubt.[26]

Finally, there are only a few types of "structural" legal errors that will result in automatic reversal of all or part of a criminal judgment.[27] For most types of federal constitutional errors, the burden will be on the state to show that the error was harmless beyond a reasonable doubt.[28] For most state law errors, the appellant will have to meet the burden of showing that it is reasonably probable

---

25 In limited situations, the court of appeal can agree to take judicial notice of additional official documents. Evidence Code §§ 452-459; California Rules of Court, rule 8.252.

26 See *Jackson v. Virginia* (1979) 443 U.S. 307, 319 [99 S.Ct. 2781; 61 L.Ed.2d 560]; *People v. Johnson* (1990) 26 Cal.3d 557, 558 [162 Cal.Rptr. 431].

27 *Arizona v. Fulminante* (1991) 499 U.S. 279, 310 [111 S.Ct. 1246; 113 L.Ed.2d 302].

28 *Chapman v. California* (1967) 386 U.S. 18, 24 [87 S.Ct. 824; 17 L.Ed.2d 705].

that a more favorable result would have been reached in the absence of the error.[29] For ineffective assistance of counsel claims, the appellant will have to show that there is a reasonable probability that, but for their attorney's unprofessional errors, the result of the trial or sentencing would have been different.[30]

14.5 Issues that Can be Raised on Appeal After a After a Guilty or No Contest Plea

A defendant who pleads guilty or no contest has a right to appeal, unless they specifically give up that right as part of the plea agreement.[31] However, in addition to the general rules for appeals discussed in § 14.4, there are limits on the appeal issues that can be raised after a conviction by a guilty or no contest plea. There are three categories: (1) issues that cannot be raised at all, (2) issues that can be raised only if the appellant gets a certificate of probable cause (see § 14.2), and (3) issues that can be raised even without a certificate of probable cause.

Some issues *cannot* be raised on appeal if the defendant entered a guilty or no contest plea.[32] These include complaints about procedural matters related to the charges, such as a delay in filing charges or prosecuting the case,[33] denial of a continuance,[34] or refusal to sever charges from each other.[35] The defendant also cannot raise issues that involve questions of guilt or innocence or most types of issues about the evidence the prosecution could have presented at trial. For example, the defendant cannot challenge denial of a motion to disclose an informant's identity,[36] the unfairness of a pretrial line-up,[37] or an illegally obtained confession,[38] and cannot argue that there was insufficient evidence of the offense or of prior convictions that were admitted as part of the plea.[39] In addition,

---

29 *People v. Watson* (1956) 46 Cal.2d 818, 836.

30 *Strickland v. Washington* (1984) 466 U.S. 668 [104 S.Ct. 2052; 80 L.Ed 674].

31 The waiver will preclude the defendant from appealing any error made before or as part of the plea bargain. *People v. Charles* (1985) 171 Cal.App.3d 552 [217 Cal.Rptr. 402]; *People v. Vargas* (1995) 13 Cal.App.4th 1653 [17 Cal.Rptr.2d 445]. However, unless the waiver specifically covers future errors, the person may still be able to appeal errors that occur after the plea. *People v. Vargas* (1993) 13 Cal.App.4th 1653, 1661-1662 [17 Cal.Rptr.2d 445]; *People v. Panizzon* (1996) 13 Cal.4th 68, 80-86 [51 Cal.Rptr.2d 851].

32 *People v. Hoffard* (1995) 10 Cal.4th 1170, 1177-1178 [43 Cal.Rptr.2d 827]. There may be exceptions when a defendant can show that the trial court assured them that an issue would be preserved for appeal. *People v. Haven* (1980) 107 Cal.App.3d 983, 986 [167 Cal.Rptr. 376]; *People v. Geitner* (1982) 139 Cal.App.3d 252 [188 Cal.Rptr. 486].

33 *People v. Hernandez* (1992) 6 Cal.App.4th 1355 [8 Cal.Rptr.2d 324]; *People v. Hayton* (1979) 95 Cal.App.3d 413 [156 Cal.Rptr. 426]; *People v. Padfield* (1982) 136 Cal.App.3d 218, 226 [185 Cal.Rptr. 903].

34 *People v. Kaanehe* (1977) 19 Cal.3d 1, 8-9 [136 Cal.Rptr. 409].

35 *People v. Haven* (1980) 107 Cal.App.3d 983, 986 [167 Cal.Rptr. 376]; *People v. Sanchez* (1982) 131 Cal.App.3d 323 [182 Cal.Rptr. 430].

36 *People v. Hunter (*2002) 100 Cal.App.4th 37, 42 [122 Cal.Rptr.2d 229]; *People v. Castro* (1974) 42 Cal.App.3d 960, 965 [117 Cal.Rptr. 295]; *People v. Barkins* (1978) 81 Cal.App.3d 30, 33 [145 Cal.Rptr. 926].

37 *People v. Stearns* (1973) 35 Cal.App.3d 304, 306 [110 Cal.Rptr. 777].

38 *People v. DeVaughn* (1977) 18 Cal.3d 889, 896 [135 Cal.Rptr. 786]; *People v. Massey* (1976) 59 Cal.App.3d 777, 780 [130 Cal.Rptr. 581].

39 *People v. Batista* (1988) 201 Cal.App.3d 1288, 1291-1292 [248 Cal.Rptr. 46]; *People v. Warburton* (1970) 7 Cal.App.3d 815, 821 [86 Cal.Rptr.894]; *People v. Thomas* (1986) 41 Cal.3d 837, 844 [226 Cal.Rptr. 107]; *People v. Pinon* (1979) 96 Cal.App.3d 904, 910 [158 Cal.Rptr. 425].

courts will not correct a sentence that is not authorized by the law, so long as the sentence was within the terms of a plea bargain from which the defendant received substantial benefits.[40]

A few types of issues can be raised on appeal after a guilty or no contest plea *without* a certificate of probable cause. These fall into two general categories. First, an appellant can challenge the denial of a motion to suppress illegally-obtained evidence.[41] Second, an appellant can raise issues that arose after entry of the plea and do not challenge the plea's validity. These include claims that the court or prosecutor violated the plea bargain.[42] Also, if the bargain specifies a maximum sentence, the appellant may challenge the court's sentencing errors or improper use of sentencing discretion even if the sentence is under that maximum.[43] In addition, an appellant can challenge the denial of a post-judgment motion to vacate the plea that was based on information obtained after entry of the plea[44] or a denial of a post-plea request for a new attorney.[45]

Many issues can be raised on appeal from a guilty or no contest plea *only* if the appellant asks for a certificate of probable cause and sets forth reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings, and a court grants the certificate.[46] A certificate of probable cause can allow an appellant to challenge a sentence that was illegal or an abuse of discretion but was within the terms of the plea bargain.[47] The other issues that require a certificate of probable cause are those in which the appellant is arguing that the plea agreement was not lawfully made. Appellants who want to attack their guilty or no contest pleas should be aware that if they are

---

40 *People v. Hester* (2000) 22 Cal.4th 290 [92 Cal.Rptr.2d 641]; *People v. Couch* (1996) 48 Cal.App.4th 1053 [56 Cal.Rptr.2d 220]; *People v. Ellis* (1987) 195 Cal.App.3d 334 [240 Cal.Rptr. 708]*; People v. Otterstein* (1987) 189 Cal.App.3d 1548 [235 Cal.Rptr. 108]; *People v. Jones* (2013) 217 Cal.App.4th 735, 743 [158 Cal.Rptr.3d 786].

41 Penal Code § 1538.5(m); *People v. Kaanehe* (1977) 19 Cal.3d 1, 7-8 [136 Cal.Rptr. 409].

42 *Santobello v. New York* (1971) 404 U.S. 257, 261-262 [92 S.Ct. 495; 30 L.Ed. 2d 427] (constitutional due process right to enforce plea agreement); *People v. Kaanehe* (1977) 19 Cal.3d 1, 11-12 [136 Cal.Rptr. 409] (prosecutor broke promise not to argue for a prison term); *People v. Mancheno* (1982) 32 Cal.3d 855, 861-862 [187 Cal.Rptr. 441] (judge broke promise to order diagnostic study prior to deciding whether to impose prison term); *People v. Olea* (1997) 59 Cal.App.4th 1289 [69 Cal.Rptr.2d 722] (court violated reasonable expectation that no registration requirement for people with sex offenses would be imposed). A defendant forfeits the right to challenge the sentence as exceeding the terms of the plea bargain if (a) the court advised the defendant per Penal Code § 1192.5 of the right to withdraw the plea if the court withdraws approval of the terms before sentencing *and* (2) the defendant did not object when the sentence was entered. *People v. Villalobos* (2012) 54 Cal.4th 177, 182 [141 Cal.Rptr.3d 491]. Note that if plea negotiations do not address statutorily mandated requirements like restitution fines or parole terms, those penalties may violate the right to be advised of the direct consequences of the plea, but do not violate the terms of the plea bargain. *People v. Villalobos* (2012) 54 Cal.4th 177, 185-186 [141 Cal.Rptr.3d 491] (restitution fine of more than minimum amount); *People v. Crandell* (2007) 40 Cal.4th 1301, 1308 [57 Cal.Rptr.3d 349] (restitution fine); *In re Moser* (1993) 6 Cal.4th 342, 357 [24 Cal.Rptr.2d 723] (length of parole term); *People v. McClellan* (1993) 6 Cal.4th 367, 379-380 [24 Cal.Rptr.2d 739] (sex offender requirement). Also, later changes in the law that change the impact of a plea do not violate the plea agreement. *Doe v. Harris* (2013) 57 Cal.4th 64 [158 Cal.Rptr.3d 290] (registration changes for people with sex offenses); *People v. Gipson* (2004) 117 Cal.App.4th 1065, 1068-1070 [12 Cal.Rptr.3d 478] (new laws related to recidivism).

43 *People v. Buttram* (2003) 30 Cal.4th 773 [134 Cal.Rptr.2d 571].

44 *People v. Harvey* (1984) 151 Cal.App.3d 660, 663 n.2 [198 Cal.Rptr. 858]; *People v. Kaanehe* (1977) 19 Cal.3d 1, 8-9 [136 Cal.Rptr. 409].

45 *People v. Vera* (2004) 122 Cal.App.4th 970 [18 Cal.Rptr.3d 896].

46 Penal Code § 1237.5; California Rules of Court, rule 8.304.

47 *People v. Cuevas* (2008) 44 Cal.4th 374, 376 [79 Cal.Rptr.3d 303]; *People v. Shelton* (2006) 37 Cal.4th 759 [37 Cal.Rptr.3d 354]; *People v. Panizzon* (1996) 13 Cal.4th 68, 75 [51 Cal.Rptr.2d 851].

successful in un-doing the plea, they likely will be back facing the same set of original charges (and possibly new additional charges) as before they entered their plea. Thus, an appellant should weigh their chances of a better outcome against the risk of ending up with a more serious conviction and a longer sentence. If an appellant does want to challenge their plea and obtains a certificate of probable cause, they may be able to make arguments such as:

- the plea was not knowing and voluntary because when the appellant entered the plea, they did not know about their constitutional trial rights and that they were giving up those rights.[48]

- the plea was not knowing and voluntary because the appellant did not understand the direct consequences of the plea, such as the maximum prison or jail term, probation ineligibility, restitution and other fees, the parole term, or a registration requirement for people with sex offenses. The appellant must also show that it is reasonably probable that they would not have entered the plea if they knew about the consequences.[49] Note that such claims may have been waived if the appellant or their attorney did not object when the sentence was imposed.[50]

- the court did not advise of immigration/deportation consequences of the plea, and it is reasonably probable that if the appellant had been fully advised they would not have entered the plea.[51]

---

[48] These rights are the right to a jury trial, the right to confront and cross-examine the state's witnesses, the right to present evidence, and the privilege against self-incrimination. See *In re Tahl* (1969) 1 Cal.3d 122, 132 [81 Cal.Rptr. 577]; *Boykin v. Alabama* (1969) 395 U.S. 238, 242-243 [89 S.Ct. 1709; 23 L.Ed.2d 274]. Even if the appellant was not advised of their constitutional rights, a court may still find that they actually understood the rights they were giving up. *People v. Allen* (1999) 21 Cal.4th 424, 439, fn. 4 [87 Cal.Rptr.2d 682]; *People v. Howard* (1992) 1 Cal.4th 1132, 1175 [5 Cal.Rptr.2d 268]; *People v. Christian* (2005) 125 Cal.App.4th 688, 697-699 [22 Cal.Rptr.3d 861].

[49] *People v. McClellan* (1993) 6 Cal.4th 367, 378 [24 Cal.Rptr.2d 739] (registration for people with sex offenses); *In re Moser* (1993) 6 Cal.4th 342, 357 [24 Cal.Rptr.2d 723] (length of parole term); *People v. Zaidi* (2007) 147 Cal.App.4th 1470, 1481 [55 Cal.Rptr.3d 566] (sex offender registration). Some consequences of pleas are "indirect" or "collateral"; failure to advise a defendant of an indirect consequence will not make the plea invalid. *People v. Gurule* (2002) 28 Cal.4th 557, 633-634 [123 Cal.Rptr.2d 325] (possible use of the conviction to increase penalty for future crime); *People v. Barella* (1999) 20 Cal.4th 261, 263, 272 [84 Cal.Rptr.2d 128] (limit on prison credit earning); *People v. Moore* (1998) 69 Cal.App.4th 626, 630 [81 Cal.Rptr.2d 658] (potential future SVP civil commitment).

[50] *People v. Villalobos* (2012) 54 Cal.4th 177, 181-182 [141 Cal.Rptr.3d 491].

[51] Penal Code § 1016.5; *People v. Superior Court (Zamudio)* (2000) 23 Cal.4th 183, 210 [96 Cal.Rptr.2d 463]. It is *not* necessary to show that the appellant would likely have obtained a more favorable outcome by not taking the plea. *People v. Martinez* (2013) 57 Cal.4th 555, 559 [160 Cal.Rptr.3d 37].

- the plea was invalid because their attorney provided ineffective assistance, and the appellant would not have pled guilty or no contest if they had received competent legal advice.[52]

- the plea was invalid due to their mental incompetence,[53]

- the plea was not voluntary and intelligent due to misrepresentation by a public official; the appellant need not show that they would not have taken the plea if they had not been misinformed.[54]

- the court acted in excess of its jurisdiction by allowing them to plead to a legally impossible crime.[55]

- the court failed to ascertain that there was a factual basis for the plea.[56]

If a certificate of probable cause is obtained, an appellant may raise all issues challenging the validity of the plea or sentence, even if some of the issues were not included in the certificate request.[57] If the appellant fails to request a certificate of probable cause, and then raises a mix of issues, the court may address only the issues that do not require a certificate of probable cause.[58]

---

52 *People v. Johnson* (2009) 47 Cal.4th 668, 678-679 [101 Cal.Rptr.3d 332]; see *Hill v. Lockhart* (1985) 474 U.S. 52 [106 S.Ct. 366; 88 L.Ed.2d 203] (standard for evaluating claims of ineffective assistance in plea bargain cases); *Padilla v. Kentucky* (2010) 559 U.S. 356 [130 S.Ct. 1473; 176 L.Ed.2d 284] (ineffective assistance in failure to give correct advice about immigration consequences of plea); *Henderson v. Morgan* (1976) 426 U.S. 637 [96 S.Ct. 2253; 49 L.Ed.2d 108] (ineffective assistance where attorney failed to advise about what prosecution would need to prove at trial and defendant had never indicated he acted with intent required for the charge). A defendant may also be able to overturn a conviction where a plea bargain offer lapsed or was rejected due to ineffective assistance of counsel that resulted the defendant later entering into a less favorable plea agreement or getting convict at trial. The defendant must show that (1) there is a reasonable probability that he would have accepted the plea offer if he had not received incompetent advice from his attorney; (2) the prosecutor would not have withdrawn the offer before the judgment become final, *and* (3) the trial court would have accepted the agreement. *Missouri v. Frye* (2012) 566 U.S. 134 [132 S.Ct.1399; 182 L.Ed.2d 379]; *Lafler v. Cooper* (2012) 566 U.S. 156 [132 S.Ct. 1376; 182 L.Ed.2d 398].

53 *People v. Mendez* (1999) 19 Cal.4th 1084 [81 Cal.Rptr.2d 301].

54 *People v. Collins* (2000) 26 Cal.4th 297, 306-310 [109 Cal.Rptr.2d 863] (judge misled defendant that he would receive "some benefit" for waiving his right to trial); *People v. DeVaughn* (1977) 18 Cal.3d 889, 896 [135 Cal.Rptr. 786] (misinformation about whether defendant could appeal certain issues following plea); *People v. Bonwit* (1985) 173 Cal.App.3d 828, 833 [219 Cal.Rptr. 297] (similar).

55 *People v. Soriano* (1992) 4 Cal.App.4th 781, 784 [6 Cal.Rptr.2d 138] (court had no power to allow defendant to enter plea to attempting to file a forged "instrument," where the document was by law not an instrument); but see *People v. Ellis* (1987) 195 Cal.App.3d 334, 342-343 [240 Cal.Rptr. 708] (although defendant incorrectly admitted that prior conviction was a serious felony, he was not allowed to undo the plea because of other benefits he obtained); *People v. Miller* (2012) 202 Cal.App.4th 1450, 1452, 1458 [136 Cal.Rptr.3d 529] (although it was error to allow defendant to plead guilty to a felony when the charge was only a misdemeanor, defendant was not allowed to vacate plea because of other benefits he received).

56 *People v. Holmes* (2004) 32 Cal.4th 432, 436 [9 Cal.Rptr.3d 678]. Penal Code section 1192.5 requires that before the court accepts a guilty or no contest plea bargain, it must satisfy itself that there is a factual basis for the plea The requirement does not apply to "open pleas" where there is no benefit promised to the defendant. *People v. Hoffard* (1995) 10 Cal.4th 1170, 1181 [43 Cal.Rptr.2d 827].

57 *People v. Hoffard* (1995) 10 Cal.4th 1170 [43 Cal.Rptr.2d 827].

58 *People v. Mendez* (1999) 19 Cal.4th 108, 1099 [81 Cal.Rptr.2d 301].

14.6 Right to Appellate Counsel and Court Transcripts

A person who has been convicted and who has little or no money has the right to be appointed counsel on appeal.[59] Each court of appeal district in California has an "appellate program" office that is responsible for appointing, training, and supporting appellate attorneys who handle criminal cases. A list of these offices is included as Appendix 14-A.

A person appealing a criminal case is also entitled to have transcripts of the superior court proceedings provided at state expense.; however, rhe trascripts will usually be kept by the person's attorney while the appeal is in process[60] Once the notice of appeal is filed, the court clerks and reporters who kept records of the proceedings will prepare the transcripts and send them to the court of appeal and the attorneys for both sides.

14.7 Release on Bail Pending Appeal

For most felony convictions, a court has the discretion to set bail while the appeal is pending. The exception is that bail may not be granted for a crime punishable by death.[61] Unless released on bail, an appellant with a short sentence will often serve all or most of their sentence before the appeal is decided. However, in reality, release on bail pending appeal happens in very few felony cases. Even if a court were to set bail, it can be very difficult to raise the large amount of funds needed to pay bail.

An appellant who might be able to pay bail may want to consider filing a motion for release on bail pending appeal. There is no time limit within which such a motion must be filed. The motion should be filed with the trial judge, and the appellant must give notice of the bail application to the county district attorney.[62]

To get bail pending appeal, a felony appellant has the burden of demonstrating by clear and convincing evidence that they:

- are not likely to flee; the court should consider the strength of the person's ties to the community, record of appearance at past court hearings, and the length of the current sentence;
- do not pose a danger to anyone in the community; and
- have an appellate issue that raises a substantial legal question which, if decided in favor of the appellant, is likely to result in reversal.[63]

---

59 *Griffin v. Illinois* (1956) 351 U.S. 12 [76 S.Ct. 585; 100 L.Ed. 891]; *Douglas v. California* (1963) 372 U.S. 353 [83 S.Ct. 814; 9 L.Ed.2d 811]; A discussion of provisions for appointment of appellate counsel and the requirement of competent appellate counsel is set forth in *People v. Scott* (1998) 64 Cal.App.4th 550, 563-564 [75 Cal.Rptr.2d 315]. An appellant in a criminal case has no right to represent themselves on appeal. *Martinez v. Court of Appeal* (2000) 528 U.S. 152, 163 [120 S.Ct. 684; 145 L.Ed.2d 597]; *People v. Scott* (1998) 64 Cal.App.4th 550, 579 [75 Cal.Rptr.2d 315].

60 *In re Henderson* (1964) 61 Cal.2d 541, 542 [39 Cal.Rptr. 373].

61 Penal Code § 1272.

62 Penal Code § 1274.

63 Penal Code § 1272.1.

The trial court must state its reasons for denying a motion for bail pending appeal.[64]

If the trial court denies an application for bail pending appeal, the appellant can challenge that decision by applying for review of the decision in the court of appeal. The application should be sent to the court of appeal, with copies served on the district attorney and the attorney general.[65] The appellate court will not disturb the trial court's ruling unless there was an abuse of discretion.[66]

14.8 Record Correction and Augmentation

The appellate attorney should review the transcripts provided by the superior court to be sure it is complete. The rules of court set forth what reporter's transcripts and court documents are required to be in the "record" presented to the court of appeal. The exhibits presented to the court during trials or hearings are officially part of the record, but they do not automatically get sent to the court of appeal or the appellate attorneys.[67] The appellate attorney can usually obtain the exhibits from trial counsel or go to the superior court to view the exhibits file. In order for the court of appeal to view the exhibits, one of the attorneys usually must make a request that the needed exhibits be transferred to the court of appeal.[68] Occasionally, the appellate attorney will file a motion to augment (add to) the record asking that some exhibits be transmitted to the court of appeal and copies provided to the appellate attorneys; a request is more likely to be granted if the attorney lives far away from the superior court, is unable to get a copy of the exhibits from trial counsel, and/or needs to spend a lot of time reviewing the exhibits.

If items are missing from the record, the attorney should send a letter to the superior court notifying the clerk that additional items must be produced.[69] If the attorney thinks there are additional transcripts or documents from the trial court proceedings that will be helpful, but that are not normally part of the record on appeal, the attorney can file a motion to augment the record with those items.[70] Sometimes documents will have been "sealed" or deemed confidential by the superior court and the appellant's attorney must make a special request to view them.[71] Occasionally, documents are lost entirely; in order to get the information before the court of appeal, the parties have to present an agreed statement or get an order from the superior court to file a settled statement.[72]

---

64 *In re Pipinos* (1983) 33 Cal.3d 189, 197 [187 Cal.Rptr. 730].

65 California Rules of Court, rule 8.312.

66 *In re Pipinos* (1983) 33 Cal.3d 189, 197 [187 Cal.Rptr. 730].

67 California Rules of Court, rule 8.320.

68 California Rules of Court, rule 8.224.

69 California Rules of Court, rule 8.340(b).

70 California Rules of Court, rules 8.115, 8.324, 8.340(c).

71 California Rules of Court, rules 8.45-8.47.

72 California Rules of Court, rules 8.344, 8.346.

14.9 Appellate Briefing

After reviewing the record, attorneys for each side will file written briefs in the court of appeal.[73]

First, the appellant will file an opening brief containing a statement about why the court or appeal has jurisdiction to hear the case, a history of the case proceedings, a summary of the evidence, and legal arguments about what legal errors occurred during the superior court proceedings and what action the court of appeal should take to remedy those errors. Depending on the issues, the brief might ask the court to reverse all or part of the conviction or to reduce the conviction to a lesser offense. The person could also ask that the length of the sentence be reduced or that fee, fines, restitution, credits or other others be modified or stricken. In many circumstances, part of the requested remedy will be to have the case remanded (sent back) to the superior court for further proceedings.

The respondent will then file a brief. The state of California is the respondent in felony appeals from criminal convictions, parole revocations, or civil commitments. The respondent's brief will be prepared by an attorney from the state Office of the Attorney General.

The appellant then has an opportunity to file a reply brief addressing the arguments that were raised in the respondent's brief.

Either side may request permission to file an additional "supplemental" brief if new issues come to light or there are new legal developments while the case is pending. The court of appeal can also ask the attorneys to file supplemental briefing if it wants more information about some aspect of the case.[74]

There are deadlines for filing each round of briefing, but the Court of Appeal commonly grants requests for extensions of time.[75] In practice, completing the briefing in a criminal case can take anywhere from a few months to over a year after the record is filed, depending on the length of the superior court proceedings, complexity of the issues, and workloads of the attorneys.

14.10 No Issue "*Wende*" Briefs

In some cases, an attorney will review the record and find that there are no issues that can reasonably be argued on appeal. When that happens, the attorney will notify the appellant that they intend to file a "no issue" brief, commonly called a "*Wende*" brief. A *Wende* brief sets forth the facts of the case and asks the court of appeal to review the whole case record to determine whether there were any prejudicial legal errors during the superior court proceedings.[76]

---

73 California Rules of Court, rule 8.360.

74 California Rules of Court, rule 8.200(a)(4).

75 California Rules of Court, rule 8.360(c) (timelines); California Rules of Court, rule 8.60 (extensions of time).

76 *People v. Wende* (1979) 25 Cal.3d 436 [158 Cal.Rptr. 839] (establishing the duties of counsel in a case that appears to be without merit); *Smith v. Robbins* (2000) 528 U.S. 259 [120 S.Ct. 746; 146 L.Ed.2d 756] (California's *Wende* brief procedure is constitutional); but see *People v. Kisling* (2015) 239 Cal.App.4th 288 [190 Cal.Rptr.3d 800 (*Wende* procedure does not apply in appeals from SVP commitments).

After a *Wende* brief is filed, the appellant may personally file a supplemental brief raising any issues that they feel should be addressed; the court of appeal usually will give the appellant 30 days to file any supplemental brief.[77] Also, when the court of appeal reviews the case, it may identify potential legal issues and ask the appellant's attorney to write a brief addressing those issues.

When the court of appeal decides a *Wende* case, it must consider any issues raised in an appellant's supplemental brief. The court must also state its reasons for affirming the judgment, including reasons for rejecting the appellant's arguments.[78]

If there are non-frivolous issues that could have been raised in the appeal, an attorney's decision to file a *Wende* brief may be challenged in a petition for writ of habeas corpus alleging ineffective assistance of appellate counsel.[79]

14.11 Abandonment of Appeal

When reviewing the record, an appellate attorney will sometimes discover errors that the superior court made that were in favor of the person who was convicted and sentenced. These can be mistakes in calculating or recording the sentence or failure to make orders that were legally required. If the deputy attorney general who handles the case or court of appeal notices the error, and the court of appeal corrects it, the appellant will be in a worse position than before the appeal. These situations are referred to as "adverse consequences of appeal."

If an attorney notices a possible adverse consequence, the attorney should notify the appellant, advise them about the potential benefits versus the risks of continuing the appeal, and ask the appellant to decide whether they want to abandon the appeal. In making a decision, the appellant should consider how serious the adverse consequences could be, how likely it is that the court or deputy attorney general will notice the error, how strong the appeal issues are, and how much the appellant could benefit from a favorable decision on those issues. The appellant should also consider that some types of errors are likely to be noticed by CDCR legal processing or case records staff regardless of whether the they pursue an appeal; the CDCR could then ask the superior court to correct the error (see § 8.25).

An appellant who decides that the risk of adverse consequences outweighs the possible benefits of continuing the appeal can abandon the appeal. The appellant and their attorney must sign a notice of abandonment and file it in the court of appeal.[80] By filing a notice of abandonment, the appellant gives up the right to pursue an appeal. The appeal process is then over.

14.12 Supplemental Briefing

Sometimes there is a difference of opinion between the appellant and their attorney as to what issues should be included on appeal. Generally, the attorney is entitled to make the legal decisions

---

77 *People v. Wende* (1979) 25 Cal.3d 436, 439 [158 Cal.Rptr. 839].

78 *People v. Kelly* (2006) 40 Cal.4th 106 [51 Cal.Rptr.3d 98].

79 *Delgado v. Lewis* (9th Cir. 2000) 223 F.3d 976; *Smith v. Robbins* (2000) 528 U.S. 259, 285-289 [120 S.Ct. 746; 146 L.Ed.2d 756].

80 California Rules of Court, rule 8.316.

about what issues to raise and how to present them.[81] An appellant does not have a right to personally file a brief on their own except in "*Wende*" cases where the attorney finds no issues (see § 14.10).[82]

Some courts refuse to accept briefs directly from appellants who are represented by an attorney. However, there is no absolute bar and it is possible that a court could grant permission for an appellant to file a supplemental brief on their own behalf. Courts of appeal can also consider an appellant's motion complaining about the performance of appellate counsel and asking for appointment of a new attorney.[83] A person who wishes to file their own supplemental brief or a motion for a new attorney should first contact the appellate program for advice on how to proceed.

14.13 Oral Argument

After all the briefs are filed, the court of appeal will issue a notice asking the attorneys whether they want to present oral argument in the case.[84] There is no deadline for holding oral argument, and it may be take may months for the court to issue the oral argument notice. Sometimes the notice will indicate that the justices believe that the issues have been fully presented in the briefs and that oral argument is unnecessary. Other times, the court will indicate that it wants to hear oral arguments; the court may even identify particular issues is wants the attorneys to address.

Appellate attorneys generally do not present oral argument in every case. An attorney's decision whether to orally argue the case will depend on factors such as the strength and complexity of the issues, the thoroughness of the briefing, and whether there have been any new developments in the law while the case has been pending.

If either side requests oral argument, the court will schedule a day and time for the case to be heard. Oral argument will be heard by the panel of three judges who will decide the case. Oral arguments are brief, usually lasting no more than 15 minutes per side. The main goal of the attorneys will be to find out what questions or doubts the court has about the case and address those concerns. The appellant has no right to attend the oral argument; this means that an appellant who is in custody will not be transported to court for the argument.[85]

14.14 The Court of Appeal Decision

After the presentation or waiver of oral argument, the court of appeal will issue an opinion. There is no set timeline in which a court must issue the opinion, but usually the opinion will be issued within 90 days after any oral argument. There are many types of possible outcomes. The court may affirm the superior court's judgment completely, which means the conviction and sentence will not be changed. If the case involved convictions on multiple crimes, the court may reverse some of the counts and affirm the rest. The court might also modify the judgment by reducing a conviction or

---

81 *Jones v. Barnes* (1983) 463 U.S. 745, 751 [103 S.Ct. 3308; 77 L.Ed.2d 987]; *People v. Davis* (1987) 189 Cal.App.3d 1177, 1188 n. 7 [234 Cal.Rptr. 859].

82 *People v. Mattson* (1959) 51 Cal.2d 777, 798 [336 P.2d 937]; *People v. Clark* (1992) 3 Cal.4th 41, 173 [10 Cal.Rptr.2d 554].

83 *People v. Clark* (1992) 3 Cal.4th 41, 173 [10 Cal.Rptr.2d 554].

84 California Rules of Court, rule 8.256.

85 *Price v. Johnson* (1948) 334 U.S. 266, 285 [68 S.Ct. 1049, 1060; 92 L.Ed. 1356]; *In re Walker* (1976) 56 Cal.App.3d 225, 228 [128 Cal.Rptr. 291].

sentence. In a very few cases, the court of appeal will reverse the judgment in its entirety. Often, the court of appeal will order that the case be remanded to the superior court for further proceedings, which might include an opportunity for the district attorney to refile charges on counts that have been reversed or modified.[86]

The court of appeal may publish its decision in the California Appellate Reports (Cal.App.) and California Reporter (Cal.Rptr.) if it establishes a new legal rule, applies a rule to facts that are significantly different from prior published cases, or addresses disputed or unusual issues.[87] The published decision will also be temporarily available on the court's website. If the court does not publish the decision, it will not be available in the official case books but may be available on the court's website for a short time or through on-line legal research services like Westlaw or Nexis.

The decision of the court of appeal will become final 30 days after the decision was filed, unless the court decides to rehear the case before that time period expires (see § 14.15).[88]

14.15 Petition for Rehearing in the Court of Appeal

After the court of appeal issues its opinion, either the respondent or appellant may file a petition asking the court of appeal to rehear the case; the court may also independently to rehear the case. If an appellant has a court-appointed attorney, the attorney appointment includes filing a petition for rehearing if the attorney believes there are grounds to do so. A petition for rehearing must be filed within 15 days after the opinion is filed. The court may ask the other party to submit an answer brief. Generally, a court of appeal will rehear a case only if the opinion contains an important error of fact or law, the opinion overlooked well-established law or controlling authority, or relevant new law has been published since the case was decided. The court of appeal usually will decide whether to grant or deny rehearing within a few weeks. If the court of appeal does not rule on the petition for rehearing by the time the opinion becomes final, then the petition is considered denied.[89]

14.16 Petition for Review in the California Supreme Court

Either the appellant or respondent can file a petition for review in the California Supreme Court if they are dissatisfied with the court of appeal decision; the Supreme Court also has the power to independently grant review without a request from either side. If an appellant is represented by an appointed attorney in the court of appeal, the attorney is authorized to file a petition for review on the appellant's behalf. If the attorney does not think there is any reason to file a petition for review, the attorney should inform the appellant about how they can to file a petition on their own behalf.

A petition for review must be filed within 10 calendar days after the court of appeal decision becomes final. Usually, the court of appeal decision becomes final in 30 days and a petition for review is due within 40 days after the opinion was filed.[90] The petition for review should clearly state the issues in the case and discusses why review should be granted. The court of appeal decision must be

---

86 Penal Code §§ 1260-1263.

87 California Rules of Court, rule 8.1105.

88 California Rules of Court, rule 8.264(b).

89 California Rules of Court, rule 8.268.

90 California Rules of Court, rule 8.264(b); California Rules of Court, rule 8.500(e).

attached as an appendix to the petition for review.[91] Copies of the petition must be served on superior court, court of appeal, and the Attorney General's office.[92] When the petition is filed, the court of appeal will automatically transfer the full case record to the California Supreme Court.[93]

The Supreme Court does not have to review a case and in practice the Supreme Court grants only a very small number of the petitions that it receives. The Supreme Court generally will review a case only when review is necessary to ensure uniformity of court decisions or settle an important question of law, the court of appeal had no jurisdiction to decide the case, or the court of appeal decision was not supported by a majority of the qualified judges on the panel. The court usually will not review of issues that were not raised in the court of appeal and will not consider new evidence or arguments.[94]

An appellant who wants to preserve their right to raise their issues in federal court should always file a petition for review with the California Supreme Court, even if it is very unlikely that review will be granted. This is because someone who does not "exhaust state court remedies" by seeking California Supreme Court review will almost always be barred from bringing a federal habeas corpus petition on the issues (see § 16.5). The California Supreme Court has adopted a streamlined procedure for petitions for review that are filed only to "exhaust state court remedies." The only meaningful difference between the normal and the streamlined procedures is that the petitioner need not explain why there are grounds for the California Supreme Court to grant review.[95]

The California Supreme Court must rule on the petition for review within 60 days after it has been filed. However, the court may extend the deadline for good cause in 30-day periods up to a total of 90 additional days.[96]

If review is granted, the parties will usually have an opportunity to file further briefing and present oral arguments in the California Supreme Court.[97] An indigent person who had an appointed attorney in the court of appeal should be appointed an attorney for the California Supreme Court proceedings. Usually the appellate attorney will be given an opportunity to continue handling the case.

If the California Supreme Court denies review, the state direct appeal process is over. The appellant may then seek relief on any federal constitutional claims by filing a federal petition for writ of habeas corpus in a federal district court (see Chapter 16).

14.17 Petition for Writ of Certiorari in the United States Supreme Court

In very rare cases, an appellant may want to consider filing a petition for writ of certiorari in the U.S. Supreme Court when the state appeal proceedings are concluded. A writ of certiorari is an order saying that the U.S. Supreme Court will consider the issues raised in the appeal. The U.S.

---

91 California Rules of Court, rule 8.504(b).

92 California Rules of Court, rule 8.500(f).

93 California Rules of Court, rule 8.512.

94 California Rules of Court, rule 8.500.

95 California Rules of Court, rule 8.508; see also California Rules of Court, rule 8.504(b).

96 California Rules of Court, rule 8.512.

97 California Rules of Court, rules 8.520, 8.524.

Supreme Court considers only a very few cases that raise issues of great federal constitutional importance.

A petition for writ of certiorari must be filed within 90 days after the petition for review was denied by the California Supreme Court. A person who has little or no money must also file a motion to proceed "*in forma pauperis*" so that they can be allowed to file the petition without having to pay court fees or comply with the regular rules for formatting and printing the petition. The Court can supply instructions and forms for people who want to file petitions for writ of certiorari and *in forma pauperis* applications.[98]

If an appellant files a petition for writ of certiorari and the U.S. Supreme Court denies the petition, the appellant can still file a petition for writ of habeas corpus in a federal district court (see Chapter 16).

[98] The instructions and forms are on the Court's website at: www.supremecourt.gov/filingandrules/rules_guidance.aspx or by writing to Clerk, Supreme Court of the United States, Washington, DC 20543.

Addresses for Appellate Program Offices

If you were convicted in the county of Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo, Solano, or Sonoma, write to:

APPELLATE PROGRAM	COUNTY OF CONVICTION
First District Appellate Project 475 14th Street Suite 650 Oakland, CA 94612	Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo, Solano, Sonoma
Sixth District Appellate Program 95 South Market Street Suite 570 San Jose, CA 95113	Monterey, San Benito, Santa Clara, Santa Cruz
Central California Appellate Program 2150 River Plaza Drive Suite 300 Sacramento, CA 95833	Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Fresno, Glenn, Kern, Kings, Lassen, Madera, Mariposa, Merced, Modoc, Mono, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, Yuba
California Appellate Project –LA 520 S. Grand, 4th Floor Los Angeles, CA 90071	Los Angeles, San Luis Obispo, Santa Barbara, Ventura
Appellate Defenders, Inc. 555 West Beech Street Suite 300 San Diego, CA 92101	Imperial, Inyo, Orange, Riverside, San Bernardino, San Diego

CR-120

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: (___)-___-____ FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	*FOR COURT USE ONLY*
SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
PEOPLE OF THE STATE OF CALIFORNIA **VS.** Defendant: Date of birth: _____ Cal. Dept. of Corrections and Rehabilitation No. (if any): _____	
NOTICE OF APPEAL—FELONY (DEFENDANT) **(Pen. Code, §§ 1237, 1237.5, 1538.5(m); Cal. Rules of Court, rule 8.304)**	CASE NUMBER:

NOTICE

- **You must file this form in the SUPERIOR COURT WITHIN 60 DAYS after the court rendered the judgment or made the order you are appealing.**
- **IMPORTANT:** If your appeal challenges the validity of a guilty plea, a no-contest plea, or an admission of a probation violation, you must also complete the Request for Certificate of Probable Cause on page 2 of this form. (Pen. Code, § 1237.5.)

1. Defendant appeals from a judgment rendered or an order made by the superior court.
   NAME of defendant:
   DATE of the order or judgment:
2. **Complete either item a. or item b. Do not complete both.**
   a. *If this appeal is after entry of a plea of guilty or no contest or an admission of a probation violation, check all that apply:*
      (1) ☐ This appeal is based on the sentence or other matters occurring after the plea that do not affect the validity of the plea. (Cal. Rules of Court, rule 8.304(b).)
      (2) ☐ This appeal is based on the denial of a motion to suppress evidence under Penal Code section 1538.5.
      (3) ☐ This appeal challenges the validity of the plea or admission. *(You must complete the Request for Certificate of Probable Cause on page 2 of this form and submit it to the court for its signature.)*
      (4) ☐ Other basis for this appeal *(you must complete the Request for Certificate of Probable Cause on page 2 of this form and submit it to the court for its signature) (specify):*

   b. *For all other appeals, check one:*
      (1) ☐ This appeal is after a jury or court trial. (Pen. Code, § 1237(a).)
      (2) ☐ This appeal is after a contested violation of probation. (Pen. Code, § 1237(b).)
      (3) ☐ Other *(specify)*:
3. ☐ Defendant requests that the court appoint an attorney for this appeal. Defendant ☐ was ☐ was not represented by an appointed attorney in the superior court.
4. Defendant's mailing address is: ☐ same as in attorney box above.
   ☐ as follows:

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF DEFENDANT OR ATTORNEY)

Form Approved for Optional Use
Judicial Council of California
CR-120 [Rev. January 1, 2017]

NOTICE OF APPEAL—FELONY (DEFENDANT)
(Criminal)

Penal Code, §§ 1237, 1538.5(m);
Cal. Rules of Court, rule 8.304
www.courts.ca.gov

PEOPLE OF THE STATE OF CALIFORNIA vs. Defendant:	CASE NUMBER:

REQUEST FOR CERTIFICATE OF PROBABLE CAUSE

I request a certificate of probable cause. The reasonable constitutional, jurisdictional, or other grounds going to the legality of the guilty plea, no-contest plea, or probation violation admission proceeding are *(specify):*

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

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT OR ATTORNEY)

COURT ORDER

This Request for Certificate of Probable Cause is *(check one):* ☐ granted ☐ denied.

Date:

JUDGE

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form Save this form Clear this form