

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION \_\_\_\_\_

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

vs.

Defendant and Appellant.

Court of Appeal  
No.

Superior Court  
No.

APPEAL FROM THE SUPERIOR COURT OF

\_\_\_\_\_ COUNTY

Honorable \_\_\_\_\_, Judge

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**BRIEF SUBMITTED ON BEHALF OF  
APPELLANT IN ACCORDANCE WITH  
THE PROCEDURES OUTLINED IN  
*PEOPLE v. WENDE* (1979) 25 Cal.3d 436  
AND *ANDERS v. CALIFORNIA* (1967) 386  
U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493]**

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**Attorney Name, Bar No.**

**Address**

**Phone number**

**Attorney for Defendant and  
Appellant**

**By Appointment of the Court of  
Appeal Under the Appellate  
Defenders, Inc. Independent/Assisted  
Program**

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**STATEMENT OF APPEALABILITY**

This appeal is from a final judgment following a plea of guilty and issuance of a certificate of probable cause, as prescribed by California Rules of Court, rule 8.304(b)(1) and (2). It is authorized by Penal Code section 1237.5.

## STATEMENT OF THE CASE

On \_\_\_\_\_, a felony complaint was filed in the Superior Court of \_\_\_\_\_ County charging appellant with one count of assault with a deadly weapon other than a firearm (Pen. Code, § 245, subd. (a)(1)).<sup>1</sup> (C.T. p. 1.) The complaint further alleged that, in the commission of the aforementioned assault, appellant personally used a deadly and dangerous weapon, to wit: a knife, within the meaning of sections 12022, subdivision (b)(1), and 1192.7, subdivision (c)(23), and that appellant personally inflicted great bodily injury upon the person of another within the meaning of sections 12022.7, subdivision (a), and 1192.7, subdivision (c). (C.T. p. 1.)

Pursuant to a plea bargain, appellant pleaded guilty to assault with a deadly weapon. (C.T. pp. 11-12 , 13-14; R.T. pp. 3-4.) The parties agreed to a prison term lid of three years. (C.T. p. 14.)

On June 20, 2008, appellant requested probation. The court denied his request and sentenced him to the low term of two years; the remaining charges and allegations were dismissed in accordance with the plea bargain. (C.T. pp. 15-16; R.T. pp.8-9.) Two hundred dollars of restitution fines

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<sup>1</sup>All future statutory references are to the Penal Code unless otherwise indicated.

pursuant to sections 1202.4, subdivision (b), and 1202.45 and a \$20 court security fee pursuant to section 1465.8 were imposed. The court ordered custody and good time credits in the amount of 15 days. (RT 8.)

Appellant filed a notice of appeal and a request for a certificate of probable cause on \_\_\_\_\_. (C.T. pp. 21-22.) On \_\_\_\_\_, the trial court granted the request for a certificate of probable cause. (C.T. p. 22.)

## STATEMENT OF FACTS<sup>2</sup>

On \_\_\_\_\_, appellant willfully and unlawfully committed an assault upon John Doe with a knife. (R.T., p. 4.)

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<sup>2</sup> The plea in this case was taken before the preliminary hearing, and thus, before an adjudication of facts; therefore, this factual statement was taken from appellant's statements at the guilty plea, which the court accepted as the factual basis for the plea. (R.T. p. 4.)

## ARGUMENT

**THE APPLICABLE LAW IN THIS CASE IS *PEOPLE v. WENDE* (1979) 25 Cal.3d 436, AND *ANDERS v. CALIFORNIA* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493].**

When counsel files a brief which sets forth a summary of the proceedings and facts with citations to the transcript, but raises no specific issues, the Court of Appeal must conduct a review of the entire record to determine whether the record reveals any issues which would, if resolved favorably to the appellant, result in reversal or modification of the judgment. (*Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493]; *People v. Wende* (1979) 25 Cal.3d 436; *People v. Feggans* (1967) 67 Cal.2d 444; see also *People v. Johnson* (1981) 123 Cal.App.3d 106.)

This brief, with the attached declaration of appellate counsel, is filed in accordance with the procedures outlined in *People v. Wende, supra*, 25 Cal.3d 436, and *People v. Feggans, supra*, 67 Cal.2d 444, as interpreted by the court in *People v. Johnson, supra*, 123 Cal.App.3d 106.

The following information about claims appearing in the record is provided pursuant to *Anders v. California, supra*, to assist the court in conducting its independent review of the record.

**A. IS APPELLANT'S GUILTY PLEA CONSTITUTIONALLY VALID?**

(C.T. pp. 13-14 [change of plea form]; R.T. p. 3.) (*Boykin v. Alabama* (1969) 395 U.S. 238 [89 S.Ct. 1709, 23 L.Ed. 274] [guilty plea must reflect knowing and voluntary waiver of (1) privilege against compulsory self-incrimination, (2) right to trial by jury, and (3) right to confront one's accusers]; *Bunnell v Superior Court* (1975) 13 Cal.3d 592, 605 [at submission of case on transcripts or plea of guilt, defendant must be advised of direct consequences of plea, including permissible range of punishment provided by statute, registration requirements, and in appropriate cases, possible commitment under Welfare and Institutions Code sections 3050, 3051, and 6302]; *In re Yurko* (1974) 10 Cal.3d 857 [Boykin requirements apply to prior conviction allegations]; *In re Tahl* (1969) 1 Cal.3d 122, 132 [court must specifically enumerate each of three constitutional rights waived by guilty plea and obtain express waiver of these rights before plea is accepted]; see also *People v. Howard* (1992) 1 Cal.4th 1132, 1178 [failure to secure express waiver of *Boykin* rights is not reversible per se, test is whether admission was voluntary and intelligent under the totality of the circumstances].)

**B. IS THERE A PROPER FACTUAL BASIS FOR THE PLEA?**

(R.T. p. 4.) (*People v. Holmes* (2004) 32 Cal.4th 432 [factual basis may come from defendant or reference to documents such as police reports]; *People v. Hoffard* (1995) 10 Cal.4th 1170 [factual basis required for conditional plea]; *People v. Coulter* (2008) 163 Cal.App.4th 1117 [factual basis inquiry may be made at sentencing hearing]; §1192.5.)

**C. DID THE TRIAL COURT ABUSE ITS DISCRETION IN RENDERING JUDGMENT?**

(C.T. pp. 13-16; R.T. pp. 3, 8; *People v. Golliver* (1990) 219 Cal.App.3d 1612, 1616 [court must state reasons for sentencing choices under section 1170, subdivision (c); sentencing choice reviewed for abuse of discretion].)

Dated:

Respectfully Submitted,

Attorney for Appellant and  
Defendant

**DECLARATION OF \_\_\_\_\_**

I, the undersigned, declare the following:

1. On \_\_\_\_\_, I was appointed by the Court of Appeal to represent \_\_\_\_\_ in Court of Appeal case number \_\_\_\_\_.

2. I have thoroughly reviewed the record in this case. An attorney at Appellate Defenders, Inc., has also reviewed this case.

3. I have advised appellant that a brief on his behalf is being filed in accordance with the procedures outlined in *Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493] and *People v. Wende* (1979) 25 Cal.3d 436, and a copy of this brief is being provided to him.

4. I have further advised appellant that he may personally file a supplemental brief in this case raising any issues which he chooses to call to the court's attention and that he may request that I withdraw as counsel. I have sent a copy of the appellate record to appellant to assist him in filing supplemental briefing.

5. I hereby move to be relieved as appointed counsel, if appellant requests it.

Executed under penalty of perjury at \_\_\_\_\_, California on this \_\_\_\_\_ day of \_\_\_\_\_.

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Attorney  
State Bar No.

**CERTIFICATION OF WORD COUNT**

I, \_\_\_\_\_, hereby certify in accordance with California Rules of Court, rule 8.204(c), that this brief contains \_\_\_\_\_ words as calculated by the WordPerfect software in which it was written.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at \_\_\_\_\_, California.

Dated:

\_\_\_\_\_  
Attorney

ATTACH THE PROOF OF SERVICE