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PRACTICE TIPS

For structure of the brief, see section 1.26 of chapter 1, section 4.77, et seq. of chapter 4, and section 5.2, et seq. of chapter 5 of the [ADI Appellate Practice Manual and rules 8.204 and 8.360 of the California Rules of Court](#).

While inclusion of *Anders* issues is not required, including them demonstrates counsel's diligent review of the case and may therefore enhance client relations.

For tips on professional presentation of briefs, see ADI's [Going in Style](#) articles.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION *[NUMBER]*

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

v.

[Appellant's name],
Defendant and Appellant.

Court of Appeal
No. *[number]*

Superior Court
No. *[number]*

**APPEAL FROM THE SUPERIOR COURT OF
[NAME] COUNTY**

Honorable *[Name]*, Judge

**BRIEF SUBMITTED ON BEHALF OF APPELLANT IN
ACCORDANCE WITH THE PROCEDURES OUTLINED IN
*PEOPLE V. DELGADILLO (2022) 14 Cal.5th 216***

[Attorney's Name, bar number]
[Address and telephone number]
[Email address and fax number if available]

Attorney for Defendant and Appellant *[Name]*
By Appointment of the Court of Appeal
under the Appellate Defenders, Inc. Program

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PEOPLE v. DELGADILLO (2022) 14 Cal.5th 216

STATEMENT OF APPEALABILITY

This appeal is from an order made after judgment, affecting the substantial rights of the defendant, and is authorized by Penal Code section 1237, subdivision (b).

STATEMENT OF THE CASE

[See rule 8.204(a)(2)(A) of the California Rules of Court and chapter 5, § 5.15 of the ADI Appellate Practice Manual.]

STATEMENT OF FACTS

[See rule 8.204(a)(2)(C) of the California Rules of Court and chapter 5, §5.16, et seq. of the ADI Appellate Practice Manual.]

ARGUMENT

I.

THE APPLICABLE LAW IN THIS CASE IS *PEOPLE v. DELGADILLO* (2022) 14 Cal.5th 216.

The procedures set forth in *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 do not apply to this case. (*People v. Delgadillo* (2022) 14 Cal.5th 216, 231.) Thus, when appointed appellate counsel finds no viable issues, counsel should file a brief informing the court that counsel has found no arguable issues and including a concise recitation of facts relating to the denial of the petition. (*Ibid.*) The reviewing court should send the brief to the defendant with notice that the defendant has the right to file a supplemental brief or letter within 30 days, and if no brief or letter is filed the appeal may be dismissed. (*Id.* at pp. 231-232.)

If the defendant raises issues in a supplemental brief or letter, the court must evaluate the arguments raised and issue a written opinion. However, no independent review of the record is compelled. If no brief or letter is filed, the court may dismiss the appeal without issuing an opinion but should notify the defendant of the dismissal. (*People v. Delgadillo, supra*, 14 Cal.5th at p. 232.)

The court retains discretion to conduct an independent review of the record in any particular Penal Code section 1172.6 appeal. (*People v. Delgadillo, supra*, 14 Cal.5th at p. 232.) Appellant requests this Court do so. *[Division Two of this Court/This Court opined that in appeals from section 1172.6 denials, “the interests of justice call for an independent*

review of the record as an additional layer of protection from the risk of a defendant remaining unlawfully incarcerated because of a failure to discover a meritorious issue in his or her appeal.” (People v. Griffin (2022) 85 Cal.App.5th 329, 335-336.) Review is particularly important in this case because....]

Counsel has thoroughly reviewed the record in this case and has found no arguable issues. This brief includes a concise recitation of facts bearing on the denial of the petition. (*People v. Delgadillo, supra*, 14 Cal.5th at p. 231.)

The following information about issues that counsel considered is provided to assist the court in conducting a discretionary independent review of the record. (*Anders v. California* (1967) 386 U.S. 738, 744, 745 [87 S.Ct. 1396; 18 L.Ed.2d 493] [brief must refer to “anything in the record that might arguably support the appeal”; such a brief allows the court to “pursue all the more vigorously its own review because of the ready references not only to the record, but also to the legal authorities as furnished it by counsel”]; *In re Phoenix H.* (2009) 47 Cal.4th 835, 843 [counsel must “file a brief setting out the applicable facts and the law”].) By listing these unbriefed issues, counsel is not suggesting the court must address them in its opinion, although it has plenary discretion to do so. [See chapter 1, §1.26, and chapter 4, §§4.77, 4.79 of the ADI Appellate Practice Manual.]

A. *[Identify the first Anders issue.]*

B. *[Identify the next Anders issue.]*

If the court determines an arguable issues exists, the court should order counsel to brief the issue. (*Penson v. Ohio* (1988) 488 U.S. 75, 88 [court-sanctioned withdrawal of counsel before court identified arguable issues “left petitioner completely without representation during the

appellate court's actual decisional process"].)

Dated: *[date]*

Respectfully submitted,

[Attorney's Name]

State Bar No. *[number]*

Attorney for Defendant and Appellant *[Name]*

DECLARATION OF *[APPELLATE COUNSEL'S NAME]*

[See chapter 4, §§4.82 of the ADI Appellate Practice Manual.]

I declare:

1. I am an attorney duly licensed to practice before all the courts in the State of California and the appointed attorney of record for appellant in their appeal.
2. I have thoroughly reviewed the record in this case and found no arguable issues. An attorney at Appellate Defenders, Inc., has also reviewed this case.
3. I have advised appellant that a brief on their behalf is being filed in accordance with the procedures outlined in *People v. Delgadillo* (2022) 14 Cal.5th 216 and provided a copy of this brief.
4. I have further advised appellant that they may personally file a supplemental brief or letter in this case, and their case will likely be dismissed if they fail to file a supplemental brief. I am making the appellate record available to appellant.

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

Dated: *[date]*

Respectfully submitted,

[Attorney's Name]

State Bar No. *[number]*

CERTIFICATION OF WORD COUNT

[See rule 8.204(c)(1) of the California Rules of Court and chapter 5.]

I hereby certify in accordance with California Rules of Court, rule 8.360(b)(1), that this brief contains *[number]* words, including footnotes, as calculated by the computer program used to prepare the brief.

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

Dated: *[date]*

Respectfully submitted,

[Attorney's Name]

State Bar No. *[number]*

PROOF OF SERVICE