

Parts of this sample form in blue print are instructions to user, not to be included in filed document unless so noted. [Parts and references in green font, if any, refer to juvenile proceedings. See Practice Note, this web page, for guidance in adapting forms to juvenile cases. NOTE: The certificate of probable cause requirement does not apply to juvenile cases. (*In re Joseph B.* (1983) 34 Cal.3d 952, 959-960.)]

#### PRACTICE TIPS

A writ of mandate (mandamus) is an order from a higher court to a lower court or other person or entity, commanding that some act be performed. (Code of Civ. Proc., §§ 1084-1097.) In the context of a denial of a request for a certificate of probable cause, the writ of mandate would order the trial court to issue the certificate to permit an appeal contesting the validity of a guilty plea.

**Manual guidance:** See chapter 8 of the [ADI Appellate Practice Manual](#), § 8.71 et seq.

**Stay of appeal:** Stays are generally unnecessary and tend to be disfavored, unless the court decides to stay the appeal on its own motion. Counsel should not ask for a stay unless it is necessary to avoid some kind of prejudice. An extension of time to file the brief may be sufficient.

### IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

#### FOURTH APPELLATE DISTRICT, DIVISION *[NUMBER]*

*[Defendant's name]*,  
Petitioner and Defendant.

v.

Superior Court of *[Name]* County,  
Respondent.

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PEOPLE OF THE STATE OF CALIFORNIA,  
Real Party in Interest

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Court of Appeal No.  
*[Number]*

Superior Court No.  
*[Number]*

**Related Appeal Pending No.**  
*[Number]*

FROM THE SUPERIOR COURT OF *[NAME]* COUNTY

*[Name of trial judge]*, Presiding

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**PETITION FOR WRIT OF MANDATE**

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*[Attorney name]*

*[Address]*

State Bar No. *[number]*

Attorney for Defendant

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*[usual list]*

**TABLE OF AUTHORITIES**

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**PETITION FOR WRIT OF MANDATE**

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**TO THE HONORABLE JUSTICE *[NAME]*, PRESIDING JUSTICE,  
AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE  
COURT OF APPEAL OF THE STATE OF CALIFORNIA, FOURTH  
APPELLATE DISTRICT, DIVISION *[NUMBER]*:**

By this verified petition for writ of mandate, defendant *[name]* requests that this court order the superior court in *[People v. name]*, case number *[number]* to issue a certificate of probable cause to permit an appeal to contest the validity of the guilty plea in the related appeal now pending before this court in case number *[number]*. (Code of Civ. Proc. §§ 1085, 1086; Pen. Code, § 1237.5; Cal. Rules of Court, rule 8.304(b).)

## I.

The facts necessary for a decision in this matter are shown by the record in the related appeal, case number *[number]*, for which a separate motion for judicial notice is filed with this petition (and by the attached certified exhibits). *[Set forth the relevant procedural history of the case and the circumstances leading to the denial of the request of a certificate of probable cause and reference the relevant record pages and any attached exhibits, e.g. the notice of appeal, the request for a certificate of probable cause, and the court's order denying the request.]*

## II.

The sentencing court's denial of the certificate of probable cause was an abuse of discretion, because *[set forth the reasons and include the potential issues that require a certificate of probable cause]*.

## III.

The parties directly affected by this proceeding are defendant *[name]*, through his attorney *[name]*; respondent Superior Court of the State of California for *[name of county]*; the People of the State of California, by their attorneys *[name of District Attorney for the county and name of the Attorney General of the State of California]*. All the proceedings about which the petition is concerned have occurred within the territorial jurisdiction of the respondent court and of the Court of Appeal of the State of California, Fourth Appellate District.

**IV.**

No other petition for writ of mandate has been made by or on behalf of defendant relating to this matter. Nor has other relief in this or any other court regarding this matter been sought.

**V.**

Defendant has no other plain, speedy, or adequate remedy at law because, without the requested relief, the current appeal would be limited to matters not affecting the validity of the plea. A petition for writ of mandate is the proper remedy for the denial of a certificate of probable cause.

**VI.**

**REQUEST FOR RELIEF**

1. Defendant asks for a peremptory writ of mandate to be issued directing the respondent court to vacate its order denying defendant's application for a certificate of probable cause and to issue a certificate of probable cause for appeal in superior court case number *[number]*, pending appeal number *[number]*.
2. Grant defendant whatever further relief is appropriate in the interests of justice.

Dated: *[date]*

Respectfully submitted,

*[Attorney name]*  
State Bar No. *[number]*

Attorney for Defendant

## VERIFICATION

I, *[attorney name]*, declare as follows:

1. I am an attorney admitted to practice before the courts of the State of California.

2. I am the attorney for defendant and am authorized to file this petition.

3. I am making this verification because this petition deals entirely with proceedings in the superior court concerning appellate procedures. I am more familiar with these procedural matters and the facts alleged than is defendant.

4. All facts alleged in the above document are true of my own personal knowledge, or are supported by citations to the record in case number *[number]* now pending before this court and to the exhibits in this petition.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed *[date]*.

Respectfully submitted,

*[Attorney name]*  
State Bar No. *[number]*

Attorney for Defendant *[name]*

## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

#### **A PETITION FOR WRIT OF MANDATE IS THE PROPER REMEDY FOR DENIAL OF A REQUEST FOR CERTIFICATE OF PROBABLE CAUSE.**

“Where a certificate of probable cause has been denied on the merits the remedy is to seek review of the propriety of the denial. On a timely application therefor, the writ of mandate lies.” (*In re Brown* (1973) 9 Cal.3d 679, 683.) The only question properly before the superior court in ruling on the request for a certificate of probable cause was whether or not the issue is clearly frivolous and vexatious. (*People v. Ribero* (1971) 4 Cal.3d 55, 63, fn. 4.) Denying a certificate of probable cause when the request raises a non-frivolous issue is an abuse of discretion. (*People v. Holland* (1978) 23 Cal.3d 77, 83-84.)

#### **A. The Superior Court Abused Its Discretion In Failing To Issue A Certificate Of Probable Cause Because Appropriate Grounds Going To The Legality Of The Proceedings Were Presented In Defendant’s Request.**

##### **1. A Certificate of Probable Cause Is Properly Denied Only When The Issues Raised Are Clearly Frivolous And Vexatious.**

Penal Code section 1237.5 authorizes appeals based on “reasonable, constitutional, jurisdictional or other grounds going to the legality of the proceedings,” so long as the defendant files a statement with the trial court showing such grounds and the trial court executes and files a certificate of probable cause. (Pen. Code, § 1237.5, subd. (a) & (b); Cal. Rules of Court,

rule 8.304(b)(1) & (2).) These requirements seek to weed out appeals that raise no issues cognizable after a guilty plea which are “frivolous or vexatious.” (*People v. Panizzon* (1996) 13 Cal.4th 68, 75; *People v. Ribero*, *supra*, 4 Cal.3d at p. 63, fn. 4.)

In this regard, it is not the trial court’s duty to determine if there was error in the proceedings, but simply to eliminate appeals which have no possible legal basis by denying the request for a certificate of probable cause. (*People v. Hoffard* (1995) 10 Cal.4th 1170, 1178.) If the defendant’s declaration presents a cognizable issue for the appeal which is not clearly frivolous or vexatious, the trial court must issue the certificate of probable cause. (*Id.* at pp. 1178-1179.) The trial court should issue a certificate if an “honest difference of opinion” could exist on the merits of the appeal. (*People v. Ribero*, *supra*, 4 Cal.3d at p. 63, fn. 4.)

## **2. The Record Raises Legitimate And Cognizable Issues On Appeal.**

The issues raised in the request for certificate of probable cause are cognizable on appeal and are not frivolous or vexatious.

*[As to each issue, demonstrate the merit; set forth applicable law and the facts showing the grounds demonstrating an abuse of discretion.]*

## CONCLUSION

*[Summarize the argument]* The peremptory writ of mandate should issue here.

Dated: *[date]*

Respectfully submitted,

*[Attorney name]*

State Bar No. *[number]*

Attorney for Defendant *[name]*

## CERTIFICATION OF WORD COUNT

I, *[attorney name]*, hereby certify that, according to the computer program used to prepare this document, this petition contains *[number]* words.<sup>1</sup>

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed *[date]*.

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*[Attorney name]*  
State Bar No. *[number]*

Attorney for Defendant *[name]*

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<sup>1</sup>**Practice note:**

Technically, under rule 8.384(a)(2), the word limit of rule 8.204(c) – 14,000 – applies only to the *memorandum of points and authorities*, not to the petition itself. But in a relatively short petition like the typical *Benoit*, counsel need not be concerned with such a distinction.

In other, much more complex situations, if counsel finds word limits potentially troublesome, ADI has authorities showing the history of the rule limit and its intentional omission of the petition itself.

**PROOF OF SERVICE**