Parts in blue print are instructions to user, not to be included in filed document except as noted.

***PRACTICE TIPS***

Motions filed in superior court must conform to California Rules of Court, rule 2.100 (rule) et seq. Motions filed in superior court should be printed on pleading paper.

For information on release pending appeal, see [ADI Manual](https://www.adi-sandiego.com/legal-resources/), chapter 3, section 3.4, et seq. Rule 8.312(b) requires that the defendant first seek release on appeal in the superior court. If that court denies the request, then the defendant can apply in the reviewing court. (Rule 8.312(a)(2).)

*[Attorney name*

State Bar No. *number*

*Attorney’s address*

*Attorney’s telephone number*

*Attorney’s email and fax number, if available]*

Attorney for Defendant *[Name]*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF *[NAME]*

|  |  |
| --- | --- |
| THE PEOPLE OF THE STATE  OF CALIFORNIA,    Plaintiff,  v.  *[NAME]*,  Defendant. | Superior Court No. *[number]*  Court of Appeal No. *[number]*  NOTICE OF MOTION AND  MOTION FOR BAIL PENDING  APPEAL  Hon. *[name of judge]*  Dept: No. *[number]*  Date/Time:TBD |

TO THE CLERK OF THE SUPERIOR COURT AND *[Name]*, DISTRICT ATTORNEY, COUNTY OF *[NAME]*:

Notice is given that defendant, *[name]*, through counsel, *[name of counsel]*, requests release on reasonable bail [or release on own recognizance], pending appeal, which is presently pending in the Court of Appeal, case number *[number]*.

This motion is made based on the attached memorandum of points and authorities and accompanying exhibits *[describe any attached exhibits]*.

Defendant respectfully requests that the court enter an order directing that defendant be released on reasonable bail [or released on own recognizance], pending final determination of defendant’s case on appeal. It is further requested that the court direct the clerk of the court to deliver to counsel a certified copy of the order of release on bail [or release on own recognizance] for personal delivery to the custodian of the defendant.

Dated: *[date]* Respectfully submitted,

*[Attorney’s name]*

State Bar No. *[Number]*

Attorney for Defendant *[Name]*

**MEMORANDUM OF POINTS AND AUTHORITIES**

Defendant, *[name]*, by and through his/her attorney, *[name]*, submits this memorandum of points and authorities in support of defendant’s request for release on reasonable bail [or release on own recognizance], pending finality of the appeal.

**STATEMENT OF THE CASE**

An information was filed on *[date]*, charging defendant with *[offenses]* pursuant to *[code sections]*. Defendant was convicted by a jury/plea of *[state counts]*. Defendant was sentenced to *[set forth the sentence]*. (Exhibit A.)

A notice of appeal was filed on *[date]*. (Exhibit B.) This appeal is currently pending before the Fourth District Court of Appeal, Division *[Number]*, appeal number *[number]*. (Exhibit C.)

Defendant is presently in the custody of the *[custodian]* and is incarcerated at *[custodial location]*. Defendant’s inmate/ CDCR identification number is *[number]*.

For the reasons set forth below, defendant is not likely to flee and does not pose a danger to the safety of any other person or to the community. (Pen. Code, § 1272.1, subds. (a) & (b).)

For the reasons set forth below, the appeal is not for the purposes of delay and raises [a] substantial legal question(s) which, if decided in favor of the defendant, is/are likely to result in reversal. (Pen. Code, § 1272.1, subd. (c).)

**DISCUSSION**

**1. The Trial Court Has Jurisdiction To Order Release Pending Appeal**.

Penal Code section 1272.1 prescribes that “[r]elease on bail pending appeal under subdivision (3) of Penal Code section 1272 shall be ordered,” when certain criteria are established. California Rules of Court, rule 8.312(b), requires, in essence, that application first be made to the superior court. It states: “The application [to the reviewing court for bail, to reduce bail, or for release on other conditions] must include a showing that the defendant sought relief in the superior court and that the court unjustifiably denied the application.” (Cal. Rules of Court, rule 8.312(a)(2) and (b).) Thus, this court is the appropriate court in which to make this application.

**2. The Defendant Is Unlikely To Flee And Is Not A Danger To The Safety of Any Person Or The Community.**

It is within the court’s discretion to determine whether defendant should be granted bail [or release on own recognizance]. (See *In re Podesto* (1976) 15 Cal.3d 921, 926.) Under Penal Code section 1272.1, subdivision (a), this court must consider the following in determining whether defendant is not likely to flee based on clear and convincing evidence:

(1) The ties of the defendant to the community, including his or her employment, the duration of his or her residence, the defendant’s family attachments and his or her property holdings.

(2) The defendant’s record of appearance at past court hearings or of flight to avoid prosecution.

(3) The severity of the sentence the defendant faces.

For the following reasons, clear and convincing evidence establishes that the defendant is unlikely to flee.

*[State pertinent applicable facts and cite to supporting evidence, e.g.,“Defendant posted bond after arrest and fulfilled all the terms and obligations of that bond. Defendant attended all scheduled court appearances prior to conviction, 23 in total. Moreover, defendant was not late to any of those scheduled appearances, even though defendant had to travel a significant distance from home, with a travel time of one and a half hours each way.”]*

Moreover, clear and convincing evidence establishes defendant is not a threat and does not pose a danger to the community. Under Penal Code section 1272.1, subdivision (b), this “court must consider among other factors, whether the crime for which the defendant was convicted is a violent felony, as defined in Penal Code section 667.5, subdivision (c).” Defendant does not stand convicted of such an offense. *[State pertinent facts and cite to supporting evidence, e.g., “The forgery convictions were non-violent offenses, and similarly, the majority of defendant's prior offenses were also non-violent offenses, theft and petty theft.”]*

Defendant has significant ties to the community. *[State pertinent facts and cite to supporting evidence, e.g., “Defendant is a devoted parent of three young children, ages 7, 9, and 13, and defendant’s absence poses a severe hardship to the family. Defendant is very involved in the community, where he/she attends a local church with the family, and is involved with the children's activities including boy scouts, girl scouts, soccer, baseball, and camping. Defendant owns his/her home with his/her spouse, and they have lived there for nine years. During that time, they have made several friends in the neighborhood.”]*

**3. The Appeal is Not Taken for Delay, and the Appeal Raises Substantial Legal Questions Which, If Decided in Favor of Defendant is Likely to Result in Reversal.**

For purposes of Penal Code section 1272.1, subdivision (c), “a ‘substantial legal question’ means a close question, one of more substance than would be necessary to a finding that it was not frivolous. In assessing whether a substantial legal question has been raised on appeal by the defendant, the court shall not be required to determine whether it committed error.”

Defendant intends to raise several issues on appeal including, but not limited to, the following: *[State generally issues to be raised. The statement must be specific enough to satisfy Penal Code section 1272.1, subdivision (c), but need not be a full exposition of the entire issue.]*  Each of the aforementioned issues presents “a close question, one of more substance than would be necessary for a finding that it was not frivolous.” (Pen. Code, § 1272.1, subd. (c).) Moreover, each of these issues would require reversal if successful, and thus, bail on appeal is appropriate in this instance where there are meritorious issues to be presented on appeal.

**CONCLUSION**

For the reasons presented herein, it is respectfully requested that the court exercise its discretion to permit defendant’s release from custody on reasonable bail [or release on own recognizance] pending finality of the appeal.

Dated: *[date]*  Respectfully submitted,

*[Attorney’s name]*

State Bar No. *[Number]*

Attorney for Defendant *[Name]*

**EXHIBIT A**

**EXHIBIT B**

**EXHIBIT C**

**PROOF OF SERVICE**