IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. **MISTER DEFENDANT,** Defendant and Appellant.	No. H012345 (Santa Clara County Superior Court No. CC123456)

APPELLANT'S OPENING BRIEF

Appeal from An Order After Judgment
The Honorable Benjamin Williams, Judge

Submitted in accordance with procedures outlined in
People v. Wende (1979) 25 Cal.3d 436 and
People v. Delgadillo (2022) 14 Cal.5th 216

SIXTH DISTRICT APPELLATE PROGRAM

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APPELLANT'S OPENING BRIEF

STATEMENT OF APPEALABILITY

Appellant filed a petition to be resentenced under Penal Code section 1172.75.[1] (2CT 339-343.) The court denied the petition on June 10, 2024 because there was not a referral from the Department of Corrections and Rehabilitation. (2CT 344-345.) A notice of appeal was filed on July 2, 2024, stating it was an appeal after judgment under section 1237, subdivision (b) (2CT 348). (But see *People v. Escobedo* (2023) 95 Cal.App.5th 440, 444; *People v. Burgess* (2022) 86 Cal.App.5th 375, 382.)

STATEMENT OF THE CASE

A jury convicted appellant of felony assault with great bodily injury. (§§ 245, subd. (a)(1), 12022.7, subd. (a).) There were two prior "strike" convictions (§§ 667, subds. (b)-(i), 1170.12), a prior serious felony conviction (§ 667, subd. (a)), and an enhancement for committing a felony while released on a felony (§ 12022.1). (1CT 85-86.)

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[1] Unless otherwise specified, all further statutory references are to the Penal Code.

In 2011, the court denied a request to dismiss the prior strike convictions (see *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 504), and it sentenced him to serve 25 years to life consecutive to 10 years. (1CT 85-86.)

Appellant filed a petition on April 25, 2024 to be resentenced under section 1172.75. He said he should be resentenced because the court now has discretion under section 1385 to dismiss the enhancement for the prior serious felony conviction. (2CT 339-343.)

On June 10, 2024, the court denied relief because appellant was not sentenced with a prison prior (§ 667.5, subd. (b)), as required under section 1172.75. Further, there was not a referral from the California Department of Corrections and Rehabilitation for resentencing under section 1172.75. (2CT 344-345.)

Appellant filed a notice of appeal on July 2, 2024. (2CT 348.)

STATEMENT OF THE EVIDENCE

Appellant and the victim have known each other since high school. (1CT 65.) A dispute arose, and appellant hit the victim in the side of the head with a cleaver. (1CT 66.) The victim responded by punching appellant in the face, and they wrestled each other. (1CT 67.) A bystander told them to stop because the victim was bleeding. (1CT 67.) The victim left and eventually went to the hospital. He had several lacerations that required stitches or staples. (1CT 67.) Appellant told the probation officer he did not remember what happened because he suffered an epileptic seizure, but the victim stole a watch and wallet. (1CT 68.)

ANALYSIS OF THE LAW

Pursuant to *People v. Wende* (1979) 25 Cal.3d 436, counsel requests that this court independently review the entire record on appeal. In *People v. Delgadillo* (2022) 14 Cal.5th 216, the Supreme Court decided that in an appeal from an order after judgment raising no issues, the reviewing court is not required to read the record, though it can choose to do so. (*Id*. at p. 232.) The reviewing court shall send a copy of this brief to appellant and notify him that he has a right to file a supplemental letter or brief advising the court of any issue he wants it to consider and if he fails to do so the appeal may be dismissed as abandoned. (*Id*. at pp. 231, 232.) If the defendant files his own supplemental brief or letter, the appellate court must evaluate the specific arguments he presents and address them in a written opinion. (*Ibid*.)

Appellant has been advised by counsel of his opportunity to inform the court of any issues he may think his case contains and his right to file a supplemental brief with this court. Counsel has reviewed the entire record on appeal and remains available to brief any issue upon the court's request.

CONCLUSION

Appellant respectfully requests that this Court independently review the entire record on appeal pursuant to *People v. Wende*, *supra*, 25 Cal.3d 436 or alternatively inform appellant of his right to file a supplemental brief pursuant to *People v. Delgadillo, supra,* 14 Cal.5th 216.

DATED: August 21, 2024

Respectfully submitted,
SIXTH DISTRICT APPELLATE PROGRAM

By: /s/ Jonathan Grossman
Jonathan Grossman
Attorney for Appellant
Mister Defendant

DECLARATION OF COUNSEL

I, Jonathan Grossman declare:

1. I am an attorney of law admitted to practice before all courts of California, and am appointed counsel for appellant Mister Defendant.

2. I have thoroughly reviewed the record and the files in this case.

3. I have determined that a brief pursuant to *People v. Wende, supra*, 25 Cal.3d 436 and *People v. Delgadillo, supra,* 14 Cal.5th 216 should be filed.

4. I have written appellant advising him that a brief, pursuant to *Wende* and *Delgadillo,* would be filed. I also informed him of his right to file a supplemental brief. I sent him the record on appeal to aid in the preparation of any supplemental brief.

5. I have also advised appellant that he has a right to ask the court to have present counsel relieved and another attorney appointed.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that it was executed on August 21, 2024 at San Jose, California.

By: /s/ Jonathan Grossman
Jonathan Grossman

CERTIFICATION OF WORD COUNT

I, Jonathan Grossman, certify that the attached Appellant's Opening Brief contains 1078 words.

By: /s/ Jonathan Grossman
Jonathan Grossman