

[ATTORNEY NAME  
(Bar No. #####)  
Street Address  
City, State ZIP  
###-###-####  
email@address.email]  
  
Attorney for Appellant

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
  
FIRST APPELLATE DISTRICT, DIVISION [NUMBER]

**THE PEOPLE OF THE STATE OF  
CALIFORNIA,**

Plaintiff and Respondent,

v.

**[CLIENT NAME],**

Defendant and Appellant.

**A#####**

([County] County  
Superior Court  
No. #####)

**APPLICATION TO STRIKE APPELLANT'S OPENING  
BRIEF AND TO FILE A REPLACEMENT *WENDE* BRIEF**

TO THE PRESIDING JUSTICE OF DIVISION [NUMBER] OF  
THE FIRST DISTRICT COURT OF APPEAL:

Appellant hereby requests, through counsel, pursuant to California Rules of Court, rule 8.200(a)(4), that this Court strike his opening brief filed on [Date] and grant leave to file in its place a brief prepared in accordance with the procedures outlined in *People v. Wende* (1979) 25 Cal.3d 436. This request is based on appellant's state and federal constitutional rights to due process and effective assistance of counsel on appeal and on the accompanying declaration of counsel.

Dated: [Date]

Respectfully submitted,

/s/ Attorney Name  
[ATTORNEY NAME]

Attorney for Appellant

## DECLARATION OF COUNSEL

1. I am an attorney licensed to practice law in California, and I was appointed to represent appellant, [Client Name], in Court of Appeal case number A#####

2. In appellant's opening brief, I raised a single issue: that the matter must be remanded to the trial court for resentencing because the trial court sentenced appellant to "the low term of three years" when the statute under which he was convicted provided for a low term sentence of two years and a middle term sentence of three years. Because it was impossible to tell from the record whether the trial court meant to impose a low term sentence or a three-year sentence, a remand was necessary.

3. However, in an amended reporter's transcript of the sentencing hearing filed with this Court on [Date], the court reporter changed the sentence on which I relied to advance the above-referenced argument such that it now reads: "So the reinstating of probation is denied in this matter, and Mr. [Client] is sentenced to the midterm of three years in the state prison to be served locally." (Amended Reporter's Transcript at p. 16.) In an email to me explaining the reason for this change, the court reporter who prepared the original and amended transcripts, [Name], wrote: "I am the court reporter who prepared the sentencing transcript in the [Client Name] matter. It has come to my attention that I accident[ly] wrote 'low term' when in my notes I clearly heard the judge say 'mid term'."

4. In light of this amendment to the reporter's transcript, the sole argument raised on appeal in the opening brief is no longer viable.

5. When appointed counsel in a criminal appeal has not identified any arguable appellate issues, counsel has a duty to file a brief that sets forth

a summary of the proceedings and facts with citations to the transcript. (*People v. Wende* (1979) 25 Cal.3d 436, 441-442.) The Court of Appeal then must conduct a review of the entire record to determine whether the record reveals any issues that would, if resolved favorably to the appellant, result in reversal or modification of the judgment. (*Ibid.*) I now ask that this Court strike the opening brief currently on file in appellant's case and request permission to file instead a *Wende* brief, which I have already prepared and submitted to the Court and relevant parties along with this application.

6. Striking the opening brief and filing a *Wende* brief is necessary to secure appellant's right to effective assistance of counsel under the Sixth and Fourteenth Amendments to the United States Constitution and section 15 of article I of the California Constitution. (*Anders v. California* (1967) 386 U.S. 738.)

I declare under penalty of perjury that the foregoing is true and correct. This declaration was executed on [Date], at [City, State].

*/s/ Attorney Name*  
[ATTORNEY NAME]