

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

**PEOPLE OF THE STATE OF
CALIFORNIA,**

Plaintiff and Respondent,

v.

[CLIENT NAME],

Defendant and Appellant.

A#####

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

**Brief Submitted on Behalf of Appellant
in Accordance with the Procedures Outlined in
People v. Delgadillo (2022) 14 Cal.5th 216**

Appeal from the Judgment of the Superior Court
of the State of California for [County] County

Honorable [Judge Name], Judge

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

Attorney for Appellant

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People v. Delgado (2022) 14 Cal.5th 216**

STATEMENT OF APPEALABILITY

Appellant [Client Name] appeals from the trial court's denial of [his/her/their] petition for resentencing under Penal Code section 1172.6.¹ The appeal is authorized under section 1237, subdivision (b).

STATEMENT OF THE CASE

[Describe the relevant procedural background of the case.
Because the Court of Appeal will not be required to

¹ All further statutory references are to the Penal Code unless otherwise indicated.

independently review the record, take special care to flag any potential arguable issues.]

STATEMENT OF FACTS

[Describe the relevant factual background of the case. Because the Court of Appeal will not be required to independently review the record, take special care to flag any potential arguable issues.]

ARGUMENT

This Court Should Exercise Its Discretion to Independently Review the Record to Determine Whether There Are Any Arguable Issues to Raise on Appeal.

Under *People v. Delgadillo* (2022) 14 Cal.5th 216, where, as here, counsel in an appeal from the denial of a section 1172.6 petition files a brief raising no issues, the appellate court is not required to independently review the record to determine whether there are any arguable issues to raise on appeal, but the court may exercise its discretion to do so. (*Id.* at ___ [302 Cal.Rptr.3d 153, 165].)

At a minimum, upon the filing of such a brief, the court should send a copy of the brief to the appellant, along with a notice informing the appellant of their right to file a supplemental brief within 30 days. (*Ibid.*) The notice should specify that if the appellant does not file a supplemental brief, the appeal may be dismissed as abandoned. (*Ibid.*)

If the appellant files a supplemental brief, the court must “evaluate the specific arguments presented in that brief” and issue a written opinion addressing them. (*Ibid.*) If the appellant does not file a supplemental brief, the court may dismiss the appeal as abandoned, in which case the court need not issue a written opinion but should notify the appellant of the dismissal. (*Ibid.*)

Even where the appellant does not file a supplemental brief, however, the court has the discretion to independently review the record for arguable issues. (*Ibid.*)

This brief and the attached declaration of counsel are filed in accordance with the procedures outlined in *Delgadillo*. Accordingly, this Court should, at a minimum, provide [Client Name] with the required notice and opportunity to file a supplemental brief.

The Court should also exercise its discretion to independently review the record, regardless of whether [Client Name] files a supplemental brief. As the Court of Appeal observed in *People v. Griffin* (2022) 85 Cal.App.5th 329, “even very dedicated and highly skilled counsel overlook potentially meritorious issues.” (*Id.* at ___ [301 Cal.Rptr.3d 236, 241].) And this “risk of [missed issues] is increased where, as here, amendments to existing provisions and enactment of a new statute give rise to novel and often complex issues unfamiliar to counsel.” (*Ibid.*) Moreover, the fiscal and administrative burdens of independent review here [– where the record is relatively short and the range of potentially meritorious issues relatively

limited –] are minimal in comparison with independent review in a defendant’s first appeal as of right. (*Ibid.*)

[Describe any case-specific reasons for the Court of Appeal to independently review the record, e.g., an especially complex procedural history, an especially severe sentence, a failure to appoint counsel, etc.]

Accordingly, in the interests of justice, this Court should independently review the record “as an additional layer of protection from the risk of [Client Name] remaining unlawfully incarcerated because of a failure to discover a meritorious issue.” (*Griffin, supra*, 85 Cal.App.5th at ___ [301 Cal.Rptr.3d 236, 241]; see also *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 556 (dis. opn. of George, C.J.) [“[T]hat independent review is not constitutionally required in appeals [from the imposition of a conservatorship under the Lanterman-Petris-Short Act] in no way prevents the Courts of Appeal from expending the minimal effort required to provide these appeals with a second look and to provide an opinion that briefly notes the court has reviewed the record and that identifies the findings and evidence supporting the order.”].)

CONCLUSION

For the foregoing reasons, the Court should, at a minimum, follow the procedures outlined in *Delgadillo* and provide [Client Name] with the required notice and opportunity to file a supplemental brief. The Court should also exercise its discretion

to independently review the record, regardless of whether [Client Name] files a supplemental brief.

Dated: [Month Day, Year]

Respectfully submitted,

[Attorney signature] _____

[ATTORNEY NAME]

Attorney for Appellant

DECLARATION OF COUNSEL

1. I am an active member of the California State Bar, and I am appointed counsel on appeal for appellant.
2. I have thoroughly reviewed the entire record on appeal in this case.
3. Based upon my review of this case, I have determined that a brief pursuant to *People v. Delgadillo* (2022) 14 Cal.5th 216 is appropriate.
4. I have written to appellant at [his/her/their] last known address and advised [him/her/them] of the filing of this brief.
5. I have advised appellant that [he/she/they] may personally file a supplemental brief within 30 days of the filing of this brief raising any issues [he/she/they] wish[es] to call to the court's attention.
6. I have advised appellant that, if [he/she/they] file a supplemental brief, the Court will consider the arguments in the brief and issue a written opinion addressing them.
7. I have advised appellant that, if [he/she/they] do not file a supplemental brief, the appeal will likely be dismissed as abandoned.
8. I remain available for any further briefing this Court may request; however, I have informed appellant that [he/she/they] may request the Court to relieve me as counsel in this case.

I declare under penalty of perjury of the laws of the state of California that the foregoing is true and correct. This declaration was executed at [City], California, on [Month Day, Year].

[Attorney signature]_____

[ATTORNEY NAME]

Attorney for Appellant

CERTIFICATE OF WORD COUNT

Counsel for [Client Name] hereby certifies that this brief consists of **#,###** words (excluding cover page information, tables, proof of service, signature blocks, and this certificate), according to the word count of the computer word-processing program. (Cal. Rules of Court, rule 8.360(b)(1).)

Dated: [Month Day, Year]

[Attorney signature]

[ATTORNEY NAME]

Attorney for Appellant