

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
Plaintiff and Respondent,) Court of Appeal
) No. xxx
v.)
) Superior Court
XXX,) No. xxx
)
Defendant and Appellant.)
_____)

Superior Court of Riverside County
Honorable Richard F. Fields, Judge

**MOTION TO AMEND NOTICE OF APPEAL TO
COMPLY WITH CALIFORNIA RULES OF COURT,
RULE 8.304(b)(4) AND TO INCLUDE SENTENCING
AS GROUNDS FOR APPEAL**

TO THE HONORABLE MANUEL A. RAMIREZ, PRESIDING
JUSTICE, AND THE HONORABLE ASSOCIATE JUSTICES OF THE
COURT OF APPEAL, FOURTH DISTRICT, DIVISION TWO:

Appellant XXX hereby moves this court for an order deeming his
timely filed notice of appeal to include sentencing as a ground for the
appeal in accordance with California Rules of Court, rule 8.304(b)(4). The

grounds for this request are more particularly set forth in the attached memorandum of points and authorities.

Respectfully submitted,

Amanda F. Benedict
Staff Attorney, Bar No. 200291
Attorneys for Defendant and Appellant
XXX

STATEMENT OF THE CASE

On July 13, 2001, appellant was sentenced following a guilty plea to a term of two years, eight months in state prison. (See Exhibit "A" [minute order, 7/13/01].)

Appellant filed a timely notice of appeal in propria persona on September 4, 2001, indicating a challenge to the validity of the plea. On September 17, 2001, the trial court denied appellant's request for a certificate of probable cause. (See Exhibit "B" [notice of appeal].)

The appeal form appellant filed indicated a challenge to the validity of the plea but failed indicate his desire to challenge the sentence he received. Appellate Defenders, Inc., received appellant's notice of appeal on October 9, 2001. On October 26, 2001, Appellate Defenders, Inc. corresponded with appellant regarding potential issues for appeal.

Appellant filed the notice of appeal in propria persona without the assistance of qualified legal counsel. When appellant filed the notice of appeal he sought to challenge the validity of the guilty plea based upon the advice he received from trial counsel and based upon the sentence he received. Appellant, filing in propria persona and without the assistance of his attorney or other qualified counsel, filed a notice of appeal. By mistake or inadvertence, appellant failed to check the box indicating a challenge to the sentence in addition to checking the box indicating his desire to challenge to the validity of the plea. (See Exhibit AC@ [declaration of xxx].) Appellant, operating without the assistance of legal counsel, should not be penalized for failing to state all of the possible grounds for appeal after a guilty plea as required by California Rules of Court, rule 8.304(b)(4).

MEMORANDUM OF POINTS AND AUTHORITIES

A defendant's exercise of the right to appeal following a plea of guilty frequently depends on many technical requirements of which he may be unaware. (*People v. Ribero* (1971) 4 Cal.3d 55, 64.) Appellant filed his notice of appeal in propria persona. His notice of appeal only indicated a challenge to the validity of the plea, when in fact, he also desired to challenge the sentence he received. (See Exhibit "C".)

As stated in *Seeley v. Seymour* (1987) 190 Cal.App.3d 844 (citing

Jarkieh v. Badagliacco (1945) 68 Cal.App.2d 426, 431), California Rules of Court, rule 1 (a) declares that notices of appeal shall be liberally construed in favor of their sufficiency. This state has a "strong public policy in favor of hearing appeals on their merits and of not depriving a party of his right to appeal because of technical noncompliance where he is attempting to perfect his appeal in good faith." (*Seeley v. Seymour, supra*, 190 Cal.App.3d at pp. 853-854.)

Appellant, filing in propria persona and without the assistance of his attorney or other qualified counsel, filed a notice of appeal. By mistake or inadvertence, appellant failed to check the box indicating a challenge to the sentence in addition to checking the box indicating his desire to challenge to the validity of the plea. The court in *People v. Knauer* (1988) 206 Cal.App.3d 1124, concluded that if the clerk were to process an appeal in the absence of specified appropriate grounds, the defective notice of appeal would not bar appellate review. The defendant's failure to specify the requisite grounds, which in theory would indefinitely suspend preparation of the record, is not a jurisdictional defect and does not preclude consideration of the merits of the appeal. (*Id.* at p. 1130; see also *People v. Brown* (1985) 166 Cal.App.3d 1166, 1168, fn. 1; *People v. Engel* (1980) 105 Cal.App.3d 489, 494-495.)

The right to appeal is "one of the most important rights possessed by a convicted defendant, and every legitimate element should be exercised in its favor." (*In re Pickett* (1972) 25 Cal.App.3d 1158, 1166 citing *People v. Serrato* (1965) 238 Cal.App.2d 112, 115; *People v. Casillas* (1964) 61 Cal.2d 344.) California Rules of Court, rule 45(e) allows this court to relieve a party from default occasioned by any failure to comply with filing rules, including rule 8.304(b)(4). The power to grant relief from default in filing notices of appeal is to be liberally construed to protect the right to appeal. (*People v. Ribero* (1971) 4 Cal.3d 55, at page 65, citing *People v. Acosta* (1969) 71 Cal.2d 683, 685; *People v. Camarillo* (1967) 66 Cal.2d 455.) Appellant asks this court to grant relief and deem the notice of appeal filed on September 4, 2001, to be construed to include a challenge to the sentence as grounds for appeal.

CONCLUSION

For all the foregoing reasons, this court should grant appellant's motion to amend the notice of appeal and allow appellant to proceed on sentencing grounds.

Dated:

Respectfully submitted,

Amanda F. Benedict
Staff Attorney