

Parts of this sample form in blue print are instructions to user, not to be included in filed document unless so noted. [Parts and references in green font, if any, refer to juvenile proceedings. See Practice Note, this web page, for any guidance in adapting forms to juvenile cases.]

PRACTICE TIPS

This motion applies when seeking a limited remand of the case so that the trial court can conduct further proceedings, such as a resentencing where new legislation directs that a petition to the superior court must initiate the process (e.g., Propositions 36 & 47, Pen. Code, § 1437) or where superior court action may effect more speedy resolution of the appellate issue(s) and there may be a question of whether the superior court has jurisdiction. This allows defendant to gain the benefit of early relief, and likely promotes judicial economy by having the issue resolved below.

There is no specific rule under the California Rules of Court applicable in this context, but general rule 8.54, governing motions, may be cited.

Manual guidance: See chapter 1 of the [ADI Appellate Practice Manual](#), § 1.33A. See also section II.B.4. of ADI's  [Guide to Motion Practice \(PDF\)](#).

[Attorney's name, bar number]
[Address and telephone number]
[Email address and fax number if available]
Attorney for Defendant *[name]*

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

THE PEOPLE OF THE STATE OF CALIFORNIA,)
Plaintiff and Respondent,)
v.) Court of Appeal
[Appellant's name],) No. *[number]*
Defendant and Appellant.)
) Superior Court
) No. *[number]*
)

FROM THE SUPERIOR COURT OF *[NAME]* COUNTY

Honorable *[Name of trial judge]*, Judge

**APPELLANT'S MOTION FOR STAY OF APPEAL
AND LIMITED REMAND**

TO THE HONORABLE *[NAME]*, PRESIDING JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION *[NUMBER]*:

Defendant *[name]* moves for a stay of the appellate proceeding and a limited remand *[set forth the proceedings to be conducted by the trial court, e.g., to conduct a post-conviction resentencing hearing or other proceeding]*. This motion is based upon California Rules of Court, rule 8.54, the accompanying memorandum of points and authorities, the attached exhibits *[such as declarations and other documentary evidence]*, and the files and records in Fourth Appellate District case number *[number]*.

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF THE CASE

[Set forth procedural history relevant to the purpose of the motion and describe the other proceeding to take place including any case number, court, judge, etc. and attach any supporting exhibits.]

II. ARGUMENT

A. **THIS COURT HAS THE AUTHORITY TO AUTHORIZE A LIMITED REMAND FOR THE PURPOSE OF GRANTING THE TRIAL COURT JURISDICTION TO *[set forth the proceedings to be conducted by the trial court]* AND TO STAY THE APPEAL**

A reviewing court possesses statutory “authority [under Penal Code section 1260] to issue a limited remand to the trial court, before reaching the merits of the appeal. . . .” (*People v. Awad* (2015) 238 Cal.App.4th 215, 220 (*Awad*); see also *People v. Braxton* (2004) 34 Cal.4th 798, 818-819 [limited remand appropriate under Pen. Code, § 1260 to allow trial court to resolve factual issues affecting the validity of the judgment but distinct from the issues submitted to the jury, or for the exercise of discretion that is vested by law in the trial court].) In pertinent part, the statute provides that the appellate court “may, if proper, remand the cause to the trial court for such further proceedings as may be just under the circumstances.”

In *Awad*, the court issued a limited remand to the trial court for the specific purpose of allowing the lower court to entertain a Proposition 47 petition to recall a sentence under Penal Code section 1170.18. (*People v. Awad, supra*, 238 Cal.App.5th at p. 222.) To protect its appellate jurisdiction and “to promote judicial economy and the

efficient administration of the law,” the court stayed the proceedings in the appeal. (*Id.* at p. 225.)

Although the instant case is not one in which Proposition 47 relief is sought, this court’s authority under Penal Code section 1260 is the same and serves the same purposes as under *Awad, supra*. (See, e.g., *People v. Martinez* (2019) 31 Cal.App.5th 719, 729 (*Martinez*) [defendant retains the option of seeking to stay pending appeal to pursue relief under Senate Bill 1437 in the trial court where supported by good cause and reviewing court may stay appeal with limited remand to trial court]; see also *People v. Cervantes* (2020) 46 Cal.App.5th 213, 226 [same].)

[Establish good cause: discuss the circumstances of the case justifying remand and militating in favor of deciding the other proceeding first, such as protecting against unnecessary custody time waiting out the duration of the appeal as in People v. Awad, supra, 238 Cal.App.4th at p. 221 and promoting judicial economy.] “In those cases where a stay is granted and a . . . petition is successful, the direct appeal may either be fully or partially moot. If the petition is unsuccessful, a defendant may seek to augment the appellate record, as necessary, to proceed with any issues that remain for decision.” (*People v. Martinez, supra*, 31 Cal.App.5th at p. 729.)

Finally, to protect this court’s appellate jurisdiction and “to promote judicial economy and the efficient administration of the law” (*People v. Awad, supra*, 238 Cal.App.4th at p. 225), this court should stay the appeal.

C. CONCLUSION

For the foregoing reasons, defendant requests this court grant a stay of the appeal and a limited remand to *[set forth the proceedings to be conducted by the trial court]*.

Dated: *[date]*

Respectfully submitted,

[Attorney name]

State Bar No. *[number]*

Attorney for Defendant *[name]*

PROOF OF SERVICE