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Practice Tip: Release pending appeal is covered in chapter 3, §3.37 et seq. of the [ADI Manual](#).

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

Attorney for Appellant *[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.

[Name],
Defendant and Appellant.

Court of Appeal
No. *[Number]*

Superior Court
No. *[Number]*

APPEAL FROM THE SUPERIOR COURT OF *[Name]* COUNTY

Honorable *[Name]*, Judge

**MOTION FOR BAIL PENDING APPEAL PURSUANT
TO PENAL CODE SECTION 1272.1 AND
CALIFORNIA RULES OF COURT, RULE 8.312**

TO THE HONORABLE *[name]*, PRESIDING JUSTICE, AND THE
HONORABLE ASSOCIATE JUSTICES OF THE COURT OF APPEAL,
FOURTH APPELLATE DISTRICT, DIVISION *[number]*:

Appellant *[name]*, through counsel, requests release on reasonable bail [or release on own recognizance]. This motion is based on the accompanying points and authorities.

Dated: *[date]*

Respectfully submitted,

[Attorney's name]
State Bar No. *[Number]*
Counsel for Appellant *[Name]*

MEMORANDUM OF POINTS AND AUTHORITIES

Appellant, *[name]*, by and through his/her attorney, *[name]*, respectfully submits this memorandum of points and authorities in support of his/her request for release on reasonable bail [or release on own recognizance] pending finality of his/her appeal.

STATEMENT OF THE CASE

An information was filed on *[date]*, charging appellant with *[offenses]* pursuant to *[code sections]*. Appellant was convicted by a jury/plea of *[state counts]*. (S)he was sentenced to *[state sentence]*. A notice of appeal was filed on *[date]*.

On *[date]*, appellant applied to the superior court for release on bail pending appeal [or release on own recognizance]. (Exhibit A [bail motion].) On *[date]*, the Honorable *[name]* denied the request; bail was set at the unreasonable amount of \$ *[amount]*. (Exhibit B [Transcript of Bail Hearing].) For reasons set below, the denial/unreasonable setting was unjustified. (Cal. Rules of Court, rule 8.312(b).)

Appellant is presently in the *custody of the [custodian]* and is *incarcerated at [custodial location]*. Appellant's inmate/ CDCR identification number is *[number]*.

For the reasons set forth below, appellant is not likely to flee and does not pose a danger to the safety of any other person or to the community. (Pen. Code, § 1272.1, subds. (a) & (b)).

For the reasons set forth below, the appeal is not for the purposes of delay and raises [a] substantial legal question(s) which, if decided in favor of the defendant, is/are likely to result in reversal. (Pen. Code, § 1272.1, subd.(c).)

DISCUSSION

1. This Court Has Jurisdiction To Order Release Pending Appeal.

As noted above, appellant made an application to the superior court as required by rule 8.312(b). (See Exhibit A.) For reasons to follow, the trial court's ruling was unjustified.

2. The Defendant Is Unlikely To Flee And Is Not a Danger to the Safety of Any Person or the Community.

It is within the court's discretion to determine whether appellant should be granted bond [or release on own recognizance]. (See *In re Podesto* (1976) 15 Cal.3d 921, 926 & fn. 1.) Under Penal Code section 1272.1, subdivision (a), this court must consider (1) the ties of the defendant to the community, including his or her employment, the duration of his or her residence, the defendant's family attachments and his or her

property holdings; (2) the defendant's record of appearance at past court hearings or of flight to avoid prosecution; and (3) the severity of the sentence the defendant faces. Here, clear and convincing evidence establishes the defendant is unlikely to flee.

[State pertinent applicable facts and cite to supporting evidence, e.g., “Appellant posted bond after her arrest and fulfilled all the terms and obligations of that bond. Appellant attended all scheduled court appearances prior to her conviction, 23 in total. Moreover, appellant was not late to any of those scheduled appearances, even though she had to travel a significant distance from her home, with a travel time of one and a half hours each way.”] At the hearing below, the trial court erred by concluding *[state how the trial court unjustifiably erred]*.

Moreover, appellant is not a threat and does not pose a danger to the community. Under Penal Code section 1272.1, subdivision (b), this court must consider among other factors, whether the crime for which the defendant was convicted is a violent felony, as defined in Penal Code section 667.5, subdivision (c). Appellant does not stand convicted of such an offense. *[State pertinent facts and cite to supporting evidence, e.g., “The forgery convictions were non-violent offenses, and similarly, the majority of appellant's prior offenses were also non-violent offenses, theft*

and petty theft.”] The trial court unjustifiably concluded [state how the trial court unjustifiably erred].

Appellant has significant ties to the community. *[State pertinent facts and cite to supporting evidence, e.g., “She is a devoted mother of three young children, ages 7, 9, and 13, and her absence poses a severe hardship to her family. She is very involved in the community, where she attends a local church with her family, and is involved with her children's activities including boy scouts, girl scouts, soccer, baseball and camping. Appellant owns her home with her husband, and they have lived there for nine years. During that time, they have made several friends in the neighborhood.”] The trial court unjustifiably concluded [state how the trial court unjustifiably erred].*

3. The Appeal is Not Taken for Delay, and the Appeal Raises Substantial Legal Questions That, If Decided in Favor of the Appellant, Are Likely To Result in Reversal.

For purposes of Penal Code section 1272.1, subdivision (c), “a substantial legal question means a close question, one of more substance than would be necessary to a finding that it was not frivolous. In assessing whether a substantial legal question has been raised on appeal by the defendant, the court shall not be required to determine whether it committed error.”

Appellant intends to raise several issues on appeal including, but not limited to, the following: *[State generally issues to be raised – the statement must be specific enough to satisfy Penal Code section 1272.1, subdivision (c), but need not be a full exposition of the entire issue]*. Each of the aforementioned issues presents “a close question, one of more substance than would be necessary for a finding that it was not frivolous.” (Pen. Code, § 1272.1, subd. (c).) Moreover, each of these issues would require reversal if successful, and thus, bail on appeal is appropriate in this instance where there are meritorious issues to be presented on appeal. The trial court unjustifiably concluded *[state how the trial court unjustifiably erred]*.

CONCLUSION

For the reasons presented, it is respectfully requested that this court exercise its discretion to permit appellant’s release from custody on reasonable bail [or release on own recognizance] pending finality of his/her appeal.

Dated: *[Date]*

Respectfully submitted,

[Attorney’s name]
State Bar No. *[Number]*
Attorney for Appellant *[Name]*

PROOF OF SERVICE