

MAY 13 2011

ORIGINAL

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

COURT OF APPEAL - SECOND DIST

FILED

DIVISION SIX

MAY 13 2011

JOSEPH A. LANE, Clerk  
James Terry, Deputy Clerk

THE PEOPLE OF THE STATE OF CALIFORNIA, )

Plaintiff and Respondent, )

v. )

DENISE D'SANT ANGELO, )

Defendant and Appellant. )

2d Crim. No. B225609

Sup. Ct. No. 1292430

**MOTION TO RECALL THE REMITTITUR  
AND REINSTATE THE APPEAL  
WITH REQUEST FOR APPOINTMENT OF COUNSEL;  
MEMORANDUM OF POINTS AND AUTHORITIES  
DECLARATIONS OF DENISE D'SANT ANGELO,  
JOSEPH ALLEN AND ELIZABETH COURTENAY**

JONATHAN B. STEINER  
Executive Director

ELIZABETH A. COURTENAY  
Staff Attorney  
(State Bar No. 129612)

CALIFORNIA APPELLATE PROJECT  
520 S. Grand Ave., 4th Floor  
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Telephone: (213) 243-0300

On Behalf of Petitioner  
Denise D'Sant Angelo

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE OF THE STATE OF CALIFORNIA, )  
 ) 2d Crim. No. B225609  
Plaintiff and Respondent, )  
 )  
v. )  
 )  
DENISE D’SANT ANGELO, ) Sup. Ct. No. 1292430  
 )  
Defendant and Appellant. )  
\_\_\_\_\_ )

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AND REINSTATE THE APPEAL  
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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE OF THE STATE OF CALIFORNIA, )  
 ) 2d Crim. No. B225609  
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v. )  
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DENISE D’SANT ANGELO, ) Sup. Ct. No. 1292430  
 )  
Defendant and Appellant. )  
\_\_\_\_\_ )

**MOTION TO RECALL THE REMITTITUR  
AND REINSTATE THE APPEAL**

**TO: THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE JUSTICES  
OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA,  
SECOND APPELLATE DISTRICT, DIVISION SIX**

Pursuant to rules 8.272 (c)(2) and 8.540 (c)(2) of the California Rules of Court, and the California and Federal constitutional rights to effective assistance of counsel, petitioner Denise d’Sant Angelo, hereby moves this Court to recall the remittitur it issued on May 9, 2011, reinstate her appeal and appoint counsel to represent her.

The grounds for this motion are that petitioner is indigent, that Joseph Allen, who was retained by petitioner’s daughter and counsel of record on the appeal,

filed a Notice of Appeal advising this Court that he was representing petitioner on appeal, that Allen was thrice granted extensions of time but failed to timely file an opening brief. This Court dismissed the appeal and denied a fourth extension request. (See declarations of petitioner, p. 1, and Joseph Allen and copies of Notice of Appeal, docket and extension requests and dismissal order - Exhibits A-G.) According to petitioner, Allen had promised to provide her with a copy of the record but failed to do so. When petitioner called this Court on March 28, 2011, to ask when the opening brief was due, she was advised that the appeal had been dismissed two weeks earlier. Allen had not informed petitioner or her daughter of the dismissal and failed to take any steps to have petitioner's appeal reinstated. (See declaration of petitioner, p. 1.)

Petitioner has been diligent in pursuing her appeal and then seeking reinstatement of her appeal after learning that her appeal had been dismissed. Petitioner's daughter retained Allen, reviewed the trial transcripts with him and was advised by Allen that he was preparing an opening brief. After learning of the dismissal on March 28, petitioner immediately phoned the California Appellate Project in Los Angeles ("CAP/LA"). (See petitioner declaration, pp. 1-2.) She has been in continuous communication with present counsel since then. Petitioner has fully cooperated with CAP/LA. (See declarations of petitioner, p. 1 and present counsel, CAP/LA staff attorney Elizabeth A. Courtenay.)

This motion is based upon the State and Federal Constitutions, rules 8.272

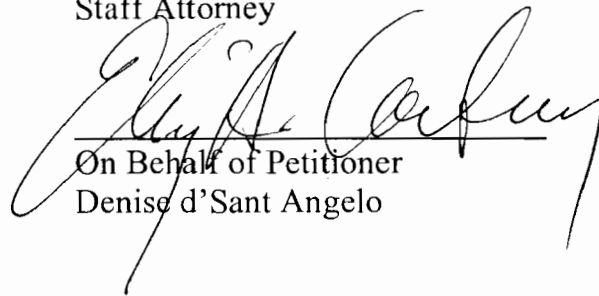
(c)(2) and 8.540 (c)(2) of the California Rules of Court, the accompanying Memorandum of Points and Authorities and the Declarations and Exhibits attached in support thereof, and on all files and records in Second Appellate District Court of Appeal case No. B225609.

Dated: May 9, 2011

Respectfully submitted,

CALIFORNIA APPELLATE PROJECT  
JONATHAN B. STEINER  
Executive Director

ELIZABETH A. COURTENAY  
Staff Attorney



On Behalf of Petitioner  
Denise d'Sant Angelo



## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

#### STATEMENT OF FACTS

##### A. Trial Court Summary

By complaint filed December 11, 1008, petitioner was charged with a felony offense. (*People v. Denise d'Sant Angelo*, Santa Barbara Superior Court No. 1292430) (1CT 1.)<sup>1</sup> On March 26, 2010, petitioner was found guilty as charged by a jury. (2CT 386-388; 4RT 917-920.) On June 8, 2010, attorney Joseph Allen substituted in as counsel of record. That same day, the court sentenced petitioner to the midterm of two years in prison. (2CT 454-456, 460; 4RT 921-927, 928-952.)

On July 1, 2010, Allen filed a timely Notice of Appeal. (See copy of Notice of Appeal - Exhibit A.) (2CT 461-464.) The Notice of Appeal indicated that Allen was representing petitioner on appeal. (Exhibit A.)

##### B. Appellate Court Summary

Petitioner's Notice of Appeal was lodged with this Court on July 7, 2010. Allen was listed as counsel of record on the appeal. (See copy of *d'Sant Angelo* docket and attorney-client information from appellate court website - Exhibit B.) The appellate

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<sup>1/</sup> All references are to the appellate record in *People v. Denise d'Sant Angelo*, B225609. The Clerk's Transcript is referred to as "CT," the Reporter's Transcript as "RT."

record was filed on August 27, 2010; the defense copy was mailed to Allen. (See docket - Exhibit A.) On January 26, 2011, this Court sent a rule 8.220 (a)(1) notice of default, advising Allen that petitioner's appeal would be dismissed if the opening brief, or good cause shown for relief from default, was not on file within 30 days. (See Exhibit A.) On March 7, 2011, this Court issued an order dismissing petitioner's appeal for default. (See copy of dismissal order - Exhibit G.) Allen admits that his failure to timely file an opening brief resulted in the dismissal of petitioner's appeal. (See declaration of Allen.) The remittitur issued on May 9, 2011. (See copy of docket - Exhibit A.)

Allen failed to seek relief from the default or reinstatement of the appeal. He never informed petitioner of the dismissal of the appeal. (See declaration of petitioner, p. 1; Exhibit A.) In the alternative, Allen failed to move to substitute out as counsel of record or have appointed counsel substituted in. (See Exhibit A.)

Petitioner understands that appeals take a long time, but she was worried when Allen failed to file an opening brief. (See petitioner declaration, p. 1.) She was not advised by Allen of the dismissal of her appeal. Petitioner learned of the dismissal when she phoned this Court to check on the status of the appeal. (See petitioner declaration, p. 1.) Petitioner was referred to CAP/LA and has worked with present counsel, Elizabeth Courtenay, a staff attorney at CAP/LA. (See declarations of petitioner, pp. 1-2; and present counsel.

After communicating with petitioner, present counsel ordered and copied

the appellate record and communicated with Allen. Present counsel prepared and mailed petitioner and Allen draft declarations. (See Courtenay declaration.)

Petitioner is indigent. (Petitioner declaration, pp. 2-3.) If the Court recalls the remittitur and reinstates petitioner's appeal, petitioner will need appointed counsel. Petitioner has submitted a completed financial affidavit with this motion. (Petitioner declaration, p. 2.)

## II.

### **THIS COURT SHOULD GRANT PETITIONER'S MOTION TO RECALL THE REMITTITUR, REINSTATE THE APPEAL AND APPOINT COUNSEL TO REPRESENT PETITIONER ON APPEAL**

#### **A. Allen Was Ineffective in the Present Case**

Petitioner was relying on Allen, as retained appellate attorney, to handle petitioner's appeal. (See petitioner declaration, p.1; Exhibits A-F.) Allen had a duty, as counsel of record on the appeal, to act in a professionally competent manner. He failed to act competently, in violation of the Rules of Professional Conduct, rule 3-100 (A)(2). After receiving notice that petitioner's appeal would be dismissed if he failed to file an opening brief within 30 days, Allen failed to file an opening brief. (See declaration of Allen and Exhibits A & F.) But for Allen's failure to timely proceed on petitioner's behalf, petitioner's appeal would not have been dismissed. (See Exhibits A, F & G.) Although responsible for the dismissal of petitioner's appeal, Allen failed to seek reinstatement of petitioner's appeal. (See Exhibit A.)

Allen was clearly ineffective for failing to timely file an opening brief. The failure to argue potentially meritorious claims has been repeatedly deemed ineffective assistance on counsel. (See *People v. Valenzuela* (1985) 175 Cal.App.3d 381, 388, 394-395 [and cases cited therein].) In *People v. Valenzuela, supra*, the Second District Court of Appeal held that where appointed counsel failed to brief and argue potentially meritorious claims, he rendered ineffective assistance of counsel of such magnitude as to

constitute grounds for recall of a remittitur so that petitioner could have his appeal heard anew. This principle must apply here, where Allen, as counsel of record, failed to do *anything* on petitioner's appeal other than file extension requests, even after being advised by this Court of the imminent dismissal. (See Exhibits B & F.)

In the alternative, Allen committed professional misconduct because his conduct represented a *de facto* withdrawal from employment. Because the default and dismissal resulted from the Allen's representation to this Court on the Notice of Appeal that Allen was appellate counsel, and Allen did not advise the Court before the dismissal that he wished to withdraw as counsel, the Court had no opportunity to send petitioner a right to counsel letter and financial affidavit to determine if petitioner was indigent and needed appointed counsel. Thus, Allen's misconduct included the failure to take reasonable steps to avoid foreseeable prejudice to petitioner. (Rules of Prof. Conduct, rule 3-700(A)(2).)

Finally, Allen failed to respond to reasonable communications from petitioner about the status of petitioner's appeal. (Rules of Prof. Conduct, rule 3-500; Bus. & Prof. Code, § 6068, subd. (m)). He failed to advise petitioner or her daughter of the dismissal even though continuing to present her in the trial court on a second case. (See petitioner declaration, pp. 1- 2.) As a result, petitioner was unable to determine the status of her appeal and that Allen was not proceeding on petitioner's behalf. (See petitioner declaration, pp. 1-2.)

Allen's failures make it evident that he was not adhering to the standards of professional conduct. The default and dismissal of the petitioner's appeal demonstrate Allen's ineffective assistance of counsel.

The principle of disposing of a case on its merits, rather than allowing a default to occur on technical grounds, applies where a litigant has been placed in default because of the neglect of his attorney. (*In re Serrano* (1996) 10 Cal.4th 447, 458; *In re Martin* (1962) 58 Cal.2d 133, citing *Strong v. Mack* (1943) 58 Cal.App.2d 805; *People v. Guerrero* (1943) 22 Cal.2d 183, 185.) In *Martin, supra*, the California Supreme Court held that a prisoner should not be deprived of his day in court simply because his counsel failed to meet court ordered deadlines. Thus, it was deemed error to deny defendant Martin's request to recall the remittitur. (*Id.*, at pp. 141-142.)

The principle enunciated in *Martin* should be applied here. As counsel of record on the appeal, Allen committed ineffective assistance of counsel in a case where his client served two years in prison.

**B. Good Cause Exists Because Petitioner Diligently Sought to Perfect Her Appeal Despite His Counsel's Incompetence and Abandonment**

As this Court's own records make evident, petitioner filed a timely Notice of Appeal, which gave this Court jurisdiction to hear the appeal. (Pen. Code, § 1237.) Petitioner reasonably relied on Allen, as counsel of record, to handle petitioner's appeal. (See petitioner declaration, p. 1; Exhibits A-G.) At no time did Allen advise petitioner or

this Court that he was not representing petitioner on appeal. (See Exhibit B.)

Allen failed to timely proceed with the appeal, move to reinstate the appeal after it was dismissed, or even advise petitioner of the dismissal. In the alternative, Allen failed to timely file a motion to be relieved as counsel of record or a motion to have appointed counsel substituted. In short, he took no steps to protect petitioner's rights to an appeal and to counsel on appeal.

After petitioner learned of the dismissal, she fully cooperated with CAP/LA in the preparation of the present motion. (See Courtenay declaration).

In *Martin*, the California Supreme Court stated that recall of the remittitur was appropriate in that, although petitioner was represented "strictly in a technical sense," and obtained no real assistance from counsel, he made "repeated efforts to communicate with his attorney." (*In re Martin, supra*, 58 Cal.2d at p. 141; see also, *In re Serrano, supra*, 10 Cal.4th 447 [held, inmate's reasonable, though mistaken, belief that attorney retained by his family was properly pursuing his appeal, combined with inmate's unsuccessful attempts to communicate with the attorney, entitled him to recall of remittitur and reinstatement of appeal].)

Petitioner has demonstrated as much diligence as the petitioners in *Martin* and *Serrano*. Indeed, it is hard to conceive of how petitioner could have done more under the circumstances presented here.

The standards of professional conduct embodied in Business and

Professions Code sections 6068, *et seq.*, and the Rules of Professional Conduct of the State Bar, make reliance by lay persons on a licensed attorney reasonable. Unfortunately here, the result of that reliance was a course of inaction by attorney Comstock that deprived petitioner of his appeal. As the California Supreme Court stated:

“[i]t is a severe penalty to be inflicted on a client to deprive him of his day in court for no fault other than his reliance on the implied representation of competency made by the licensing of the attorney.” (*In re Martin, supra*, 58 Cal.2d at 139.)

**C. New Counsel Should Be Appointed to Represent Petitioner on Her Reinstated Appeal**

Where the state affords the right to appeal and a petitioner is indigent, assistance of appointed counsel is mandated. (*Douglas v. California* (1963) 372 U.S. 353; *Griffin v. Illinois* (1956) 351 U.S. 12; see also, *Anders v. California* (1967) 386 U.S. 738, 744.) Further, the appellate courts have the power to appoint new counsel where the first counsel on a case does not adequately represent the petitioner. (*People v. Williams* (1970) 2 Cal.3d 894, 904.) Here, Allen did not adequately represent petitioner, which resulted in the dismissal of petitioner's appeal, and took no steps to seek reinstatement of petitioner's appeal.

Petitioner lacks the financial resources to retain an appellate counsel, and petitioner needs competent legal counsel in order to properly pursue an appeal from his life sentence. (See petitioner declaration, pp. 2-3.) Assuming the remittitur is recalled



and the appeal is reinstated, counsel should be appointed to represent petitioner on his appeal.

III.

CONCLUSION

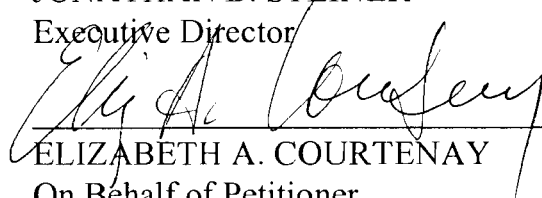
As demonstrated in the attached declarations and exhibits, petitioner's appeal was dismissed and a remittitur entered through no fault of petitioner. Counsel of record, Joseph Allen, failed to proceed with the appeal or inform this Court that petitioner needed appointed counsel, and thus avoid the dismissal of petitioner's appeal, and then failed to seek reinstatement of petitioner's appeal or cooperate with present counsel. It is a settled practice of California appellate courts to dispose of appeals based upon their merits, and avoid, whenever possible, forfeitures of substantial rights based upon technical grounds. (*People v. Guerrero, supra*, 22 Cal.2d 183, 185.)

Given the lack of an adjudication on the merits and the lack of available counsel of choice to pursue such, this motion should be granted so that this Court can adjudicate the merits of petitioner's appeal. Petitioner respectfully requests the recall of the remittitur and reinstatement of his appeal, and the appointment of counsel. (See order granting relief - Exhibit H.)

Dated: May 9, 2011

Respectfully submitted,

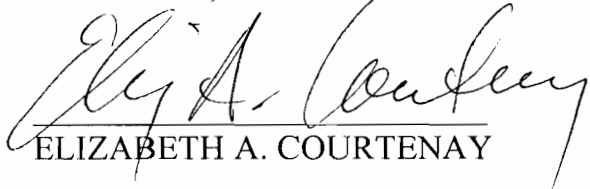
CALIFORNIA APPELLATE PROJECT  
JONATHAN B. STEINER  
Executive Director

  
ELIZABETH A. COURTENAY  
On Behalf of Petitioner  
Denise d'Sant Angelo

**WORD COUNT CERTIFICATION**

*People v. Denise D'Sant Angelo*

I certify that this document was prepared on a computer using Corel Wordperfect,  
and that, according to that program, this document contains 2,376 words.

  
ELIZABETH A. COURTENAY

## DECLARATION

## DECLARATION OF DENISE D'SANT ANGELO

I, Denise D'Sant Angelo, declare:

1. I was the defendant in *People v. Denise D'Sant Angelo*, Santa Barbara Superior Court case number 1292430. On March 26, 2010, a jury found me guilty of grand theft (Pen. Code, § 487, subd. (a)). My daughter, Andrianna Dsant Angelo, retained attorney Joseph Allen to represent me in the trial court on this case and another case prior to sentencing.

2. On June 8, 2010, I was sentenced to two years in prison. On July 1, 2010, Mr. Allen filed a timely Notice of Appeal from the judgment. (CT 461-464.) The appeal was processed as *People v. Denise D'Sant Angelo*, B225609.

3. Mr. Allen took charge of the appeal after he determined there was good cause for an appeal. I understood that the appellate record was prepared and filed. For months, Mr. Allen promised to deliver a copy of the record the records to me while I was in jail. I was released from custody on March 21, 2011, without ever receiving a copy of the record.

4. On or about March 28, 2011, I telephoned the Court of Appeal in Ventura to ask when the opening brief was due. I was informed that my appeal it been dismissed due to Mr. Allen's failure to file an opening brief after extension requests had been exhausted.

5. Mr. Allen told me that we need to get together to review the record in order for him to prepare the brief and that a motion needed to be filed to include documents outside the record. He had my daughter review the trial transcripts and informed her repeatedly that he was preparing the opening brief. Mr. Allen never told me or my daughter that the appeal had already been dismissed.

6. After contacting the Court of Appeal on March 28, 2011, I contacted the California Appellate Project in Los Angeles ("CAP/LA"). That same day, I received a call from present counsel, CAP/LA staff attorney Elizabeth Courtenay. We have been in communication

since that time.

7. On or about March 30, 2011, I mailed a letter to Mr. Allen terminating his services for the appeal because he had failed to competently represent me. The letter also terminated Mr. Allen's services in the ongoing criminal case (1329410 ).

8. On April 6, 2011, I advised Judge Ochoa that I wanted to fire Mr. Allen in the ongoing case and asked for a hearing to explain why there was a conflict of interest. Mr. Allen lied to the judge by telling them that he didn't file an opening brief because there were no grounds for an appeal. Mr. Allen never told me that. In addition, the extension requests filed by Mr. Allen in this Court indicate that he believed that there were meritorious appellate issues in this case.

9. Judge Ochoa did not allow me to fire Mr. Allen. He indicated that Mr. Allen would be the trial attorney in the proceeding commencing this week. I am greatly concerned about this.

10. If this Court grants relief, I will need appointed counsel on appeal because I am indigent. I am submitting a completed financial affidavit with this motion.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 7 day of April 2011, at Santa Barbara, California.

X Denise D'Sant Angelo  
Denise D'Sant Angelo

## DECLARATION OF JOSEPH ALLEN

I, Joseph Allen, declare:

1. I am a duly licensed attorney in the State of California with offices at 110 E. De La Guerra Street, Ste A, Santa Barbara, 93101-2205. I was retained to represent petitioner, Denise D'Sant Angelo, at sentencing in *People v. Denise D'Sant Angelo*, Santa Barbara Sup. Court No.1292430. On March 26, 2010, petitioner was found guilty by jury of grand theft (Pen. Code, § 487, subd. (a)). On June 8, 2010, petitioner was sentenced to two years in prison.

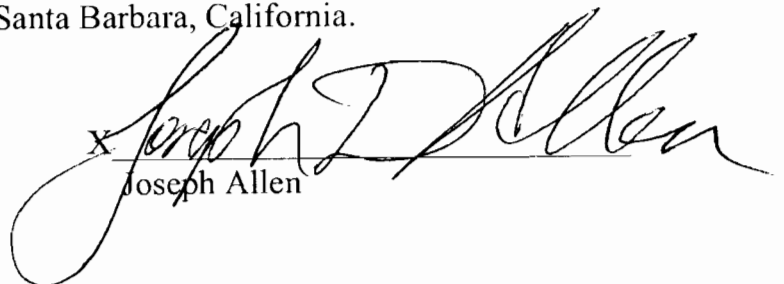
2. I was retained to handle the appeal. On July 1, 2010, I filed a timely Notice of Appeal. (*People v. Denise D'Sant Angelo*, B225609.) (CT 461-464.). I received the record in August 2010. On October 7, 2010, I was handed sealed records by the appellate clerk.

3. This Court granted three requests for extensions of time to file the opening brief, the last with a notation that no further extensions would be granted. I requested a fourth extension of time on February 22, 2011. This request was denied.

4. I failed to file an opening brief. On March 7, 2011, the appeal was dismissed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 30 day of April 2011, at Santa Barbara, California.

X   
Joseph Allen

## DECLARATION OF ELIZABETH A. COURTENAY

I, Elizabeth A. Courtenay, declare:

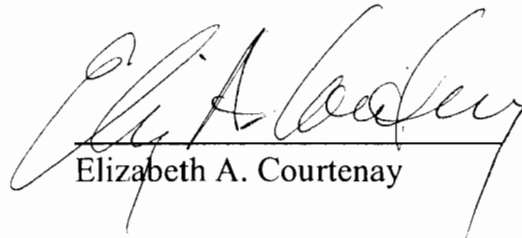
1. I am a duly licensed attorney in the State of California and a staff attorney at the California Appellate Project in Los Angeles ("CAP/LA"). On March 28, 2011, CAP/LA received a call from this Court regarding the dismissal of petitioner's appeal (*People v. Denise D'Sant Angelo*, Court of Appeal No. B225609). The Court thrice granted appellate counsel Joseph Allen's requests for extensions of time. On February 22, 2011, it denied the fourth request. Petitioner's appeal was dismissed on March 7, 2011, after Allen failed to timely file an opening brief.

2. On March 28, I phoned petitioner and mailed an authorization to her. I also asked our clerk to request the appellate file and record from the Court and have them copied. I received petitioner's authorization on April 14, 2011, and contacted Allen. I prepared and mailed petitioner and Allen draft declarations.

4. I prepared the present motion as soon as possible under the circumstances presented here. Petitioner has fully cooperated with CAP/LA.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 2 day of May, 2011, at Los Angeles, California.

  
Elizabeth A. Courtenay





<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  <b>JOSEPH D. ALLEN, SBN 048922</b>                  110 E. De La Guerra Street, Suite A                  Santa Barbara, CA 93101</p> <p>TELEPHONE NO.: (805) 892-2480 FAX NO.: (805) 892-2470                  ATTORNEY FOR (Name): <b>Denise Rachelle D'Sant Angelo</b></p>	<p>FOR COURT USE ONLY</p> <p><b>FILED</b>                  SUPERIOR COURT of CALIFORNIA                  COUNTY of SANTA BARBARA</p> <p><b>JUL 01 2010</b></p> <p>GARY M. BLAIR, Executive Officer                  BY <i>Patricia Fritos</i>                  PATRICIA FRITOS, Deputy</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA BARBARA</p>	
<p>PEOPLE OF THE STATE OF CALIFORNIA                  vs.                  DEFENDANT: <b>Denise Rachelle D'Sant Angelo</b></p>	
<p>Date of birth: <b>12/3/54</b> Cal. Dept. of Corrections and Rehabilitation No. (if any):</p>	
<p><b>NOTICE OF APPEAL—FELONY (DEFENDANT)</b>                  (Pen. Code, §§ 1237, 1237.5, 1538.5(m); Cal. Rules of Court, rule 8.304)</p>	<p>CASE NUMBER(S):                  1292430</p>

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**NOTICE**

- You must file this form in the SUPERIOR COURT WITHIN 60 DAYS after the court rendered the judgment or made the order you are appealing.
- **IMPORTANT:** If your appeal challenges the validity of a guilty plea, a no-contest plea, or an admission of a probation violation, you must also complete the Request for Certificate of Probable Cause on page 2 of this form. (Pen. Code, § 1237.5.)

- Defendant appeals from a judgment rendered or an order made by the superior court.  
 NAME of defendant: **Denise Rachelle D'Sant Angelo**  
 DATE of the order or judgment: **6-8-10**
- Complete either item a. or item b. Do not complete both.
  - If this appeal is after entry of a plea of guilty or no contest or an admission of a probation violation, check all that apply:
    - This appeal is based on the sentence or other matters occurring after the plea that do not affect the validity of the plea (Cal. Rules of Court, rule 8.304(b).)
    - This appeal is based on the denial of a motion to suppress evidence under Penal Code section 1538.5.
    - This appeal challenges the validity of the plea or admission. (You must complete the Request for Certificate of Probable Cause on page 2 of this form and submit it to the court for its signature.)
    - Other basis for this appeal (you must complete the Request for Certificate of Probable Cause on page 2 of this form and submit it to the court for its signature) (specify):
  - For all other appeals, check one:
    - This appeal is after a jury or court trial. (Pen. Code, § 1237(a).)
    - This appeal is after a contested violation of probation. (Pen. Code, § 1237(b).)
    - Other (specify):
- Defendant requests that the court appoint an attorney for this appeal. Defendant  was  was not represented by an appointed attorney in the superior court.
- Defendant's mailing address is:  same as in attorney box above.  
 as follows:

Date: **6-30-10**

Joseph D. Allen (TYPE OR PRINT NAME)      *Joseph D. Allen* (SIGNATURE OF DEFENDANT OR ATTORNEY)

000461



# CALIFORNIA APPELLATE COURTS

Case Information



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**The People v. d'Sant Angelo**  
**Division 6**

Case Number **B225609**

Date	Description	Notes
07/07/2010	Notice of appeal lodged/received (criminal).	dated 7-1-10; from judgment/jury trial (6-8-10); 487(a)PC 2 yrs SP verified by phone that Joseph D. Allen, Esq. is retained on appeal.
08/27/2010	Record on appeal filed.	C-2 (464) & R-4 (952) + Prob. Report & 2 "Marsden" hearing transcripts dtd 1/28/10 & 10/27/10
10/07/2010	Sealed records pursuant to request sent to:	personally handed to attorney Joseph Allen at Clerk's Office; Marsden Transcript dtd 1/28/10 & 10/27/10
10/07/2010	Requested - extension of time	
10/08/2010	Granted - extension of time.	
11/16/2010	Requested - extension of time	
11/17/2010	Granted - extension of time.	To 12/20/10 (45 days) only to file BOTH Appellant's Opening Brief AND Appellant's Motion to Augment Record on Appeal.
12/20/2010	Requested - extension of time	
12/22/2010	Granted - extension of time.	NO FURTHER!!!
01/26/2011	Appellant notified re failure to timely file opening brief.	
02/22/2011	Requested - extension of time	
02/23/2011	Denied - extension of time.	
03/07/2011	Appeal dismissed for failure to file opening brief.	Defendant and Appellant: d'Sant Angelo, Denise Rachele Attorney: Joseph D. Allen

04/07/2011	Received:	unserved letter from appellant Denise d'Sant Angelo informing the court that she contacted CAP and requested that an attorney be represented on her behalf as her retained counsel failed to file a brief and the court dismissed her appeal on 3/7/11. (DCA clerk advised Ms. d'Sant Angelo that we have now lost jurisdiction and suggested she speak to CAP about this. DCA clerk also made a courtesy call to Rick Lennon at CAP advising him of the letter and that we have lost jurisdiction in this matter. Noted by Acting P.J. Perren on 4/8/11
05/09/2011	Remittitur issued.	
05/09/2011	Case complete.	

**[Click here](#) to request automatic e-mail notifications about this case.**

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OCT - 8 2010

ORIGINAL

2DCA-04

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT, DIVISION SIX

[FILE STAMP]

OCT 7 2010

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and

v.

DENISE D' SANT ANGELO

Defendant and Appellant.

Appeal No. B -225609

Super. Ct. No. 1292430

JOSEPH A. LAMM, Clerk  
James Terry, Deputy Clerk

APPLICATION FOR EXTENSION OF TIME

- 1. To file Appellant's Opening Brief To 11/5/10
- 2. I need more time for the following reason(s) (specify): Counsel for Appellant was not counsel at trial and needs additional time to review the record with the client and trial counsel.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Santa Barbara California, on 10/07, 2010

JOSEPH D. ALLEN  
(TYPE OR PRINT NAME)

Bar No.: 048922

*Joseph D. Allen*  
(SIGNATURE)  
Phone No.: (805) 892-2480

1. Record size:	Volumes	Pages	Date filed
Appendix/CT:	2	464	08/10/10
RT:	4	952	08/10/10
Augmentation/other:			

2. Last brief filed by any party: none on (AOB, RB, etc.)

3. Number of previous extensions: 0 Last granted to:

EXTENSION OF TIME IS:

Granted to 11/5/10  
 Denied

Date: OCT - 8 2010

*Silbert*  
(SIGNATURE OF PRESIDING JUSTICE)

No Prior Ext.

PROOF OF SERVICE

I, the undersigned member of the Bar representing Appellant in this cause, served the foregoing APPLICATION FOR EXTENSION OF TIME by United States Mail, postage prepaid, by deposit at Santa Barbara, California, on the date shown below, addressed as follows:

Attorney General of California  
Appeals Section  
300 S. Spring St.  
Los Angeles CA 90013

District Attorney's Office  
1112 Santa Barbara Street  
Santa Barbara CA 93101

Executed under penalty of perjury under the laws of the State of California at Santa Barbara, on October 6, 2010.

  
JOSEPH D. ALLEN



D

ORIGINAL

2DCA-04

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT, DIVISION SIX

[FILE STAMP]  
COURT OF APPEAL - SECOND DISTRICT  
**FILED**  
NOV 16 2010

PEOPLE OF THE STATE OF CALIFORNIA,

*Plaintiff and*

v.

DENISE RACHELLE d'SANT ANGELO

*Defendant and Appellant.*

JOSEPH A. LANE, Clerk  
James Terry, Deputy Clerk  
Appeal No. B 225609

Super. Ct. No. 1292430

**APPLICATION FOR EXTENSION OF TIME**

1. To file Opening Brief To 1/10/2011

2. I need more time for the following reason(s) (specify): I am filing a Motion to Augment Record to add transcripts of Marsden hearings. I am currently in a jury trial in Department 1 of the Santa Barbara Superior Court and need more time to file the Opening Brief in this case.

I declare under penalty of perjury that the foregoing is true and correct Executed at Santa Barbara, California, on 11/15, 2010.

JOSEPH D. ALLEN  
(TYPE OR PRINT NAME)

Bar No.: 048922

  
(SIGNATURE)  
Phone No.: (805) 892-2480

1. Record size:	Volumes	Pages	Date filed
Appendix/CT:	<u>2</u>	<u>464</u>	<u>8/19/10</u>
RT:	<u>4</u>	<u>952</u>	<u>8/19/10</u>
Augmentation/other:	_____	_____	_____

2. Last brief filed by any party: NONE on \_\_\_\_\_  
(AOB, RB, etc.)

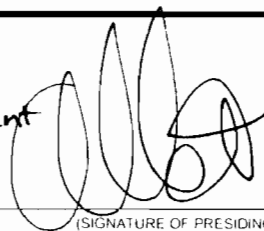
3. Number of previous extensions: NONE Last granted to: \_\_\_\_\_

EXTENSION OF TIME IS:

Granted to 12/20/10 to file both Appellant's opening Brief and Motion to Augment Record on Appeal  
 Denied

Date:

NOV 17 2010

  
(SIGNATURE OF PRESIDING JUSTICE)

1 prior 30 day ext. to 11/5/10  
60 day ext. request

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA

I am employed in the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action. My business address is 110 E. De La Guerra Street, Suite A, Santa Barbara, California 93101.

On November 16, 2010, I served the foregoing documents described as follows on the interested parties in this action: APPLICATION FOR EXTENSION OF TIME

by placing  the original  a true copy thereof enclosed in a sealed envelope as follows:

Attorney General of California  
Appeals Section  
300 S. Spring St.  
Los Angeles CA 90013

Clerk of Superior Court  
1100 Anacapa St.  
Santa Barbara CA 93101

District Attorney's Office  
1112 Santa Barbara Street  
Santa Barbara CA 93101  
 by facsimile to


by U.S. Mail

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Santa Barbara, California in the ordinary course of business.

by **Hand Delivery**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 16, 2010, at Santa Barbara, California.

  
Mary K. Bock



ORIGINAL

2DCA-04

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

[FILE STAMP]

SECOND APPELLATE DISTRICT, DIVISION

COURT OF APPEALS OF THE STATE OF CALIFORNIA  
FILED

DEC 20 2010

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and

v.

DENISE RACHELLE d'SANT ANGELO

Defendant and Appellant.

Appeal No. B 225609

JOSEPH A. LANE, Clerk  
James Terry, Deputy Clerk

Super. Ct. No. 1292430

APPLICATION FOR EXTENSION OF TIME

1. To file Opening Brief To 1/20/11

2. I need more time for the following reason(s) (specify): Concurrent motion to augment the record to add two transcripts of Marsden hearings. The client is in prison and all consulting is being done via mail.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Santa Barbara, California, on 12/16, 2010.

JOSEPH D. ALLEN

(TYPE OR PRINT NAME)

Bar No.: 048922

Phone No.: (805) 892-2480

*Joseph D. Allen*  
(SIGNATURE)

1. Record size:	Volumes	Pages	Date filed
Appendix/CT:	<u>2</u>	<u>464</u>	<u>08/19/10</u>
RT:	<u>4</u>	<u>952</u>	<u>08/19/10</u>
Augmentation/other:			

2. Last brief filed by any party: NONE on \_\_\_\_\_  
(AOB, RB, etc.)

3. Number of previous extensions: ONE Last granted to: 01/10/11

EXTENSION OF TIME IS:

Granted to 1/20/11  
 Denied

Date: DEC 22 2010

*[Signature]*  
(SIGNATURE OF PRESIDING JUSTICE)  
2 prior ext. to 12/20/10 (15 days)  
No Further Extensions

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA

I am employed in the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action. My business address is 110 E. De La Guerra Street, Suite A, Santa Barbara, California 93101.

On December 16, 2010, I served the foregoing documents described as follows on the interested parties in this action: APPLICATION FOR EXTENSION OF TIME

by placing  the original  a true copy thereof enclosed in a sealed envelope as follows:

Attorney General of California  
Appeals Section  
300 S. Spring St.  
Los Angeles CA 90013

Clerk of Superior Court  
1100 Anacapa St.  
Santa Barbara CA 93101

District Attorney's Office  
1112 Santa Barbara Street  
Santa Barbara CA 93101  
 by facsimile to

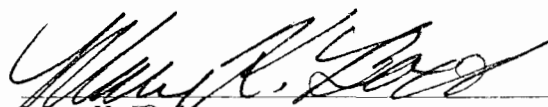
by U.S. Mail

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Santa Barbara, California in the ordinary course of business.

by **Hand Delivery**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 16, 2010, at Santa Barbara, California.

  
Mary K. Bock



FEB 22 2011

ORIGINAL

2DCA-04

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

[FILE STAMP]

SECOND APPELLATE DISTRICT, DIVISION SIX

FEB 22 2011

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and

v.

DENISE RACHELLE d'SANT ANGELO

Defendant and Appellant.

Appeal No. B 225609

MSB: [unclear] Clerk  
[unclear] Deputy Clerk

Super. Ct. No. 1292430

APPLICATION FOR EXTENSION OF TIME

1. To file Appellant's Opening Brief To March 14, 2011

2. I need more time for the following reason(s) (specify): appellant is in custody on another case that is pending. See attached declaration.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Santa Barbara California, on 02/22, 2011

JOSEPH D. ALLEN

(TYPE OR PRINT NAME)

Bar No.: 048922

Joseph D. Allen (SIGNATURE)  
Phone No.: (805) 892-2480

1. Record size:	Volumes	Pages	Date filed
Appendix/CT:	2	464	08/19/10
RT:	4	952	08/19/10

Augmentation/other:

2. Last brief filed by any party: NONE on (AOB, RB, etc.)

3. Number of previous extensions: Two Last granted to: 01/20/11

EXTENSION OF TIME IS:

Granted to  
 Denied

Date: FEB 23 2011

(SIGNATURE OF PRESIDING JUSTICE)

3 prior extensions to 1/20/11 (106 days)  
+ Default Notice issued 1/26/11 (30 additional days)  
- "At Further" Notice



**DECLARATION OF COUNSEL IN SUPPORT OF REQUEST FOR RELIEF FROM  
DEFAULT AND EXTENSION OF TIME TO FILE APPELLANT'S OPENING BRIEF**

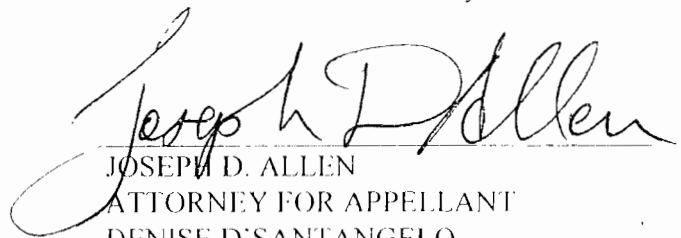
I, JOSEPH D. ALLEN, DECLARE:

1. I am a Member of the Bar, number 048922, and counsel of record by retention for appellant.
2. Appellant was remanded in this case at trial upon conviction by jury verdict, was sentenced to two years in prison at sentencing in June 2010, and has almost completed that sentence. She is in court this Thursday, February 24, 2011, to determine if she is eligible for immediate release on parole. As a result of these facts the People suffer no prejudice from these requests.
3. Appellant has an unrelated case ready for trial with a trial call of March 15, 2011. We are asking relief from default and extension of time to March 14, 2011, to file her Appellant's Opening Brief. I have consulted with appellant at jail. she is in agreement with this extension, she agrees she will suffer no prejudice from the extension as requested, but she would suffer great prejudice from the denial of sufficient time to finish the opening brief.
4. Appellant has meritorious issues for review as to both rulings at trial and as to sentencing. The court determined at sentencing that restitution in this matter amounted in total to \$280, yet, sentenced appellant, a first offender, to prison for two years and denied probation. The record reveals serious issues as to that ruling.
5. I received the previous notice of this Court that the appeal would be dismissed if the AOB were not filed by February 25, 2011. I believed I could do that and so did not seek relief at that time. I have in fact completed about half the AOB with about 12 hours work yet to

be done. I can complete that work in the time requested.

6. The delay since January 20, 2011, the last date to which time was extended, is due to the fact that I have been in trial continuously since January 3, 2011. I am defending the lead defendant in *People v. Ruben Mize*, a gang-related first degree murder case. The requirements of that trial have simply made my expectations to file the AOB in time on this case unrealistic.
7. It would be unjust for Ms. D'SantAngelo to lose an arguably meritorious appeal from her felony conviction and prison sentence, simply because of the exigencies of an unrelated trial, especially when she suffers no prejudice, she ardently supports the requested extension of time, and no prejudice at all results to the People or to any victim, or to anyone at all.
8. For these reasons I request the Court grant relief from default and extend time to file the AOB in this cause to and including March 14, 2011.

Executed under penalty of perjury at Santa Barbara, California, on February 22, 2011.

  
JOSEPH D. ALLEN  
ATTORNEY FOR APPELLANT  
DENISE D'SANTANGELO

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA

I am employed in the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action. My business address is 110 E. De La Guerra Street, Suite A, Santa Barbara, California 93101.

On February 22, 2011, I served the foregoing documents described as follows on the interested parties in this action: APPLICATION FOR EXTENSION OF TIME

by placing  the original  a true copy thereof enclosed in a sealed envelope as follows:

Attorney General of California  
Appeals Section  
300 S. Spring St.  
Los Angeles CA 90013

Clerk of Superior Court  
1100 Anacapa St.  
Santa Barbara CA 93101

District Attorney's Office  
1112 Santa Barbara Street  
Santa Barbara CA 93101

by facsimile to


by U.S. Mail

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Santa Barbara, California in the ordinary course of business.

by **Hand Delivery**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 22, 2011, at Santa Barbara, California.

  
Mary K. Bock



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT

DIVISION 6

THE PEOPLE,  
Plaintiff and Respondent,  
v.  
DENISE RACHELLE D'SANT ANGELO,  
Defendant and Appellant.

B225609  
Santa Barbara County No. 1292430

COURT OF APPEAL - SECOND DIST.

**F I L E D**

MAR - 7 2011

JOSEPH A. LANE, Clerk

GAY E. BENTS, Deputy Clerk

THE COURT:

It appearing that the appellant is in default pursuant to Rule 8.360, California Rules of Court, the appeal filed July 01, 2010, is dismissed.

**GILBERT**

---

Presiding Justice

NOTICE: This order becomes final in 30 days and thereafter is not subject to rehearing or modification. This time cannot be extended [Cal. Rules of Court, rule 8.264(b)(1)]. Any party desiring reinstatement must file a motion within 15 days of the date of this order.

H

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE OF THE STATE OF CALIFORNIA,	)	
	)	2d Crim. No. B225609
Plaintiff and Respondent,	)	
	)	Sup.Ct. No. 1292430
v.	)	
	)	
DENISE D'SANT ANGELO,	)	
	)	
Defendant and Appellant.	)	
_____	)	

This Court has read and considered petitioner Denise D'Sant Angelo's Motion to Recall the Remittitur, Vacate the Opinion and Reinstate the Appeal from the judgment in Los Angeles Superior Court case number 1292430 and to appoint counsel on appeal.

GOOD CAUSE HAVING BEEN SHOWN, the requested relief is granted. The Clerk is directed to file petitioner's financial affidavit and forward a copy of D'Sant Angelo's Notice of Appeal to the California Appellate Project in Los Angeles for recommendation of counsel on appeal.

DATED: \_\_\_\_\_

\_\_\_\_\_  
PRESIDING JUSTICE

**PROOF OF SERVICE**

I am a citizen of the United States, over the age of 18 years, employed in the County of Los Angeles, and not a party to the within action; my business address is 520 S. Grand Avenue, 4<sup>th</sup> Floor, Los Angeles, California 90071. I am employed by a member of the bar of this court.

On May 11, 2011, I served the within

**MOTION TO REINSTATE APPEAL**

in said action, by placing a true copy thereof enclosed in a sealed envelope, addressed as follows, and deposited the same in the United States Mail at Los Angeles, California.

Kamela Harris, Attorney General (hand delivered)  
300 South Spring Street  
Fifth Floor, North Tower  
Los Angeles, CA 90013

Second District Court of Appeal  
Division Six  
200 E. Santa Clara Street  
Ventura, CA 93001

Denise D'Sant Angelo  
1482 East Valley Road  
Santa Barbara, CA 93108

Joseph Allen, Esq.  
110 E. De La Guerra St., Ste A  
Santa Barbara, CA 93101-2205

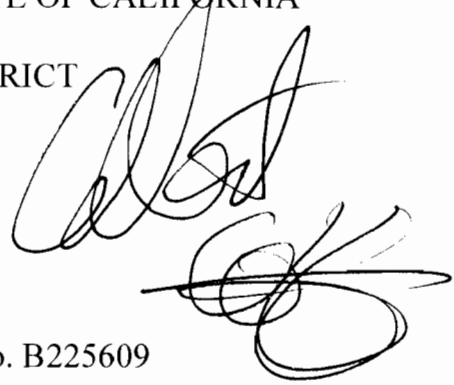
I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 11, 2011, at Los Angeles, California.

  
\_\_\_\_\_  
GRACE MEDINA



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SIX



THE PEOPLE,  
  
Plaintiff and Respondent,  
  
v.  
  
DENISE D'SANT ANGELO,  
  
Defendant and Appellant.

No. B225609  
  
(Super Ct. No. 1292430)  
Santa Barbara County

ORDER

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
JUN 1 2011

JOSEPH A. LANE, Clerk  
James Terry, Deputy Clerk

THE COURT:

Appellant's Motion to Recall the Remittitur and Reinstate Appeal is GRANTED.

The clerk of the superior court is directed to return the remittitur issued on May 9, 2011, to this court forthwith.

The clerk of this court is directed to file appellant's financial affidavit and forward a copy of the notice of appeal filed on July 1, 2010 to the California Appellate Project for recommendation of counsel on appeal.

Appellant's former counsel, Joseph D. Allen, is directed to forward appellant's copy of the record to the California Appellate Project, 520 S. Grand Ave., 4th Floor, Los Angeles, CA 90071 on or before June 6, 2011.