

APPENDIX A
State Court Opinions

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SUPREME COURT
FILED
NOV 20 2024
Jorge Navarrete Clerk
Deputy

Court of Appeal, Second Appellate District, Division Six – No. B333141

S287407

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

MARIO AYALA ALFARO, Defendant and Appellant.

The petition for review is denied.

GUERRERO
Chief Justice

Filed 4/18/24 P. v. Alfaro CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

MARIO AYALA ALFARO,

Defendant and Appellant.

2d Crim. No. B333141
(Super. Ct. No. 2022011940)
(Ventura County)

Mario Ayala Alfaro appeals a judgment following his guilty plea to possession of methamphetamine. (Health & Saf. Code, § 11377, subd. (a).) He was initially charged with possession of methamphetamine after having been convicted of a super strike felony in 1996. Alfaro moved to vacate that 1996 prior conviction and to relieve the public defender. In response, the People moved to reduce the possession of methamphetamine count from a felony to a misdemeanor. The trial court granted that motion. Alfaro pled guilty to that misdemeanor. Imposition of sentence was suspended and Alfaro was released on conditional revocable release for 12 months.

We appointed counsel for Alfaro for this appeal. His counsel filed a brief under *People v. Wende* (1979) 25 Cal.3d 436, stating that he was not able to find any arguable issues to brief. On March 6, 2024, we sent notice to Alfaro advising him about his right to file a supplemental brief raising any issues he wanted us to consider. He has not filed a supplemental brief. From our review of the record, we conclude there are no arguable issues for this appeal.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

BALTODANO, J.

Patricia M. Murphy, Judge

Superior Court County of Ventura

Richard B. Lennon, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.



**Superior Court of California
County of Ventura**

Online Public Access

Docket Information

Name	Alfaro, Mario Ayala		Case Number	<u>2022011940</u>
Citation Number		Violation Date	05/16/2022	Case Status
Court Location	Ventura	Appearance/Due Date		Offense Level
Disposition Date	08/31/2023	Mandatory Appearance	No	Misdemeanor
Case Balance	\$220.00			

Docket Date **Docket Description**

08/31/2024	Probation expired by operation of law on 08/31/2024 . Search terms terminated. Sheriff notified of removal of search terms. Any unpaid Fines/Fees/Restitution are converted to a civil judgment.
07/11/2024	Judge - Wright, Ryan J .
07/11/2024	The Court having received, read and considered the Remittitur in this matter:
07/11/2024	The Court having reviewed the Appellate Judgment, finds no further proceedings are required.
06/27/2024	Remittitur filed - Written unpublished opinion. The Judgment is Affirmed .
06/27/2024	Appeal is finished: Affirmed .
04/18/2024	Opinion and Judgment from Court of Appeals, received from 04/18/24 , is forwarded to Judge Murphy, Patricia M . The judgment is Affirmed in full .
01/02/2024	District Court of Appeals appoints CAP as counsel on appeal.
11/21/2023	Receipt for Record on Appeal from DCA filed.
11/20/2023	Original Court Reporter's Transcript received by Appeals - 1 Volumes.
11/13/2023	Original Clerk's Transcript filed containing 2 volume(s).

10/12/2023	Notice of Compliance with Rule 8.863(b)&(c), with attached chronological indexes, mailed to all parties. Clerk's certificate of mailing included.
10/11/2023	'Notice to Court Reporters to Prepare Transcript on Appeal' is placed in an interoffice brown mail envelope and addressed to the attention of the Court Reporters Unit.
10/09/2023	The Notice Regarding Record of Oral Proceedings is filed.
10/04/2023	Order on application for appointment of appellate counsel is filed and Granted . Conflict Defense Attorney is appointed. Proof of service mailed.
10/04/2023	Notice of filing of Appeal and Clerk's Certificate of Mailing are mailed to the defendant and the District Attorney's Office.
10/03/2023	Notice Regarding Record on Appeal submitted on 9/28/2023 is rejected. No Proof of Service attached. Letter of Rejection regarding Record on Appeal mailed to Appellant on 10/3/2023.
09/28/2023	Notice of Appeal filed by Defendant in pro per.
09/28/2023	Request for appointment of counsel on appeal filed by defendant.
08/31/2023	EARLY DISPOSITION CONFERENCE Heard in Courtroom 12 on Aug 31, 2023 at 01:30 PM .
08/31/2023	Judge - Murphy, Patricia M .
08/31/2023	Judicial Assistant - Grande, A .
08/31/2023	Court Reporter - De La O, Kathy is present.
08/31/2023	The defendant is present in court.
08/31/2023	Public Defender Benthale, Katia is present in court.
08/31/2023	Deputy District Attorney Ewan, Jillian present.
08/31/2023	Court and counsel confer at bench.
08/31/2023	People's Oral motion, pursuant to 17(b) PC is granted .
08/31/2023	Count(s) 1 reduced to a misdemeanor on motion of the People , pursuant to 17(b) PC.
08/31/2023	The defendant was advised: "If you are not a citizen, you are hereby advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States (1016.5 PC)". The defendant was advised of charge(s), rights, and consequences including maximum and minimum penalties. After inquiry the court found that the defendant understood the nature of the charge(s), the consequences of conviction

	and his/her rights, and that he/she expressly, voluntarily, intelligently and understandingly waived his/her rights.
08/31/2023	The defendant is advised of the right to trial by court or jury; right to confront and cross-examine witnesses against him/her; and privilege against self-incrimination
08/31/2023	A guilty plea is entered as to count(s) 1 . Pursuant to Penal Code Section 1465.8, each violation resulting in a conviction will be assessed a \$40.00 security fee. Pursuant to Government Code Section 70373, a Criminal Conviction Assessment fee of \$35 on every conviction for infractions, and \$30.00 on every conviction for misdemeanors and felonies will be imposed.
08/31/2023	The Court orders the remaining counts to be dismissed.
08/31/2023	The court takes an oral waiver of rights.
08/31/2023	The Imposition of Sentence is suspended.
08/31/2023	The court has released you on Conditional Revocable Release for 12 months. You are subject to and must obey each of the conditions listed below. If you fail to do so, the court may impose any sentence previously suspended. If you fulfill all of the conditions, you may then apply for a dismissal of the charges.
08/31/2023	You are to obey all laws, city, county, state and federal.
08/31/2023	Report to court any arrest, citation, probation violation or change of address within 10 days, thereafter. Report in writing to: Ventura County Superior Court, Post Office Box 6489, Ventura, California 93006-6489. Include your name and case number.
08/31/2023	You shall not use or possess any narcotics, dangerous drugs, controlled substances, marijuana or paraphernalia unless prescribed.
08/31/2023	You shall not knowingly associate with any person who is using or trafficking in any controlled substance, including marijuana.
08/31/2023	You shall not alter, adulterate, nor attempt in any manner to falsify any bodily fluids submitted for the determination of the presence of controlled substances, including marijuana.
08/31/2023	You will hereby consent to any tests to determine the presence of controlled substances, including marijuana, at any time by a peace officer or probation officer.
08/31/2023	Now consent to a search of your person, vehicle, residence, business, or any other personal or real property under your control for controlled substances, including marijuana and related paraphernalia, by a peace officer or probation officer at any time, with or without a search warrant, warrant of arrest, or reasonable cause.
08/31/2023	You shall pay a fine of \$150.00 to the State Restitution Fund.

08/31/2023	You are to report immediately (unless in custody) to the Collection Unit in Room 205 or call (805) 639-5010. You are to pay as directed by the Collection Unit. Mail your fine and/or fees payment to the Ventura Superior Court Collection Unit, Room 205, P.O. Box 6489, Ventura, CA 93006-6489. Make your check payable to SCCU. Include your name and case number. If you are in custody, you must call the Collection Unit within 5 days from the date of your release. If you fail to pay as directed, the court may impose a civil assessment fee of up to one hundred dollars (\$100) pursuant to Penal Code 1214.1.
08/31/2023	This case can be collected as a civil judgment. Civil enforcement may include wage or bank garnishments and or liens on property. Any costs associated to civil enforcement will be added to the case. If you fail to pay as directed, the court may impose a civil assessment fee of up to one hundred dollars (\$100) pursuant to Penal Code 1214.1.
08/31/2023	You are ordered to serve 3 Day(s) in the Ventura County Jail.
08/31/2023	Defendant is entitled to credit for time served of: 3 days actual time and 0 days of 4019(b)(1) and (c)(1) time, for a total credit of 3 days, (calculated at the rate of 2 days 4019 for every 4 days sentenced).
08/31/2023	The court orders the jail sentence deemed served.
08/31/2023	Defendant accepts probation as stated by court.
08/31/2023	The court orders the defendant released on probation.
08/31/2023	Signature Required
08/31/2023	DMV Request Deleted. DMV interface DD1 request deleted - No violations to report
07/27/2023	EARLY DISPOSITION CONFERENCE Heard in Courtroom 12 on Jul 27, 2023 at 01:30 PM .
07/27/2023	Judge - Murphy, Patricia M .
07/27/2023	Judicial Assistant - Lozano, G .
07/27/2023	Court Reporter - De La O, Kathy is present.
07/27/2023	The defendant is present in court.
07/27/2023	Public Defender Bentale, Katia is present in court.
07/27/2023	Deputy District Attorney Moyer, Hayley present.
07/27/2023	Court and counsel confer at bench.
07/27/2023	Case continued to 08/31/23 at 01:30 PM in Courtroom 12 for EARLY DISPOSITION CONFERENCE .

07/27/2023	Court Finds and Orders:
07/27/2023	The Court will not take action on motion filed as Pro Per to vacate prior conviction
07/27/2023	Your release on your conditional own recognizance continues.
07/27/2023	The court orders you to appear.
07/26/2023	Motion to Vacate the Prior Void Conviction Alleged as a Material Element of Count One, Re: Case No. CR38580; and Motion to Relieve the Public Defender and Seek Appointment of Alternate Counsel; Memorandum of Law and Exhibits Attached filed.
07/26/2023	Motion sent to Judicial Assistant Division to be attached to the case file.
07/26/2023	Proof of Service filed on 07/26/23 .
07/26/2023	Proof of Service sent to Judicial Assistant Division to be attached to the file.
07/06/2023	EARLY DISPOSITION CONFERENCE Heard in Courtroom 12 on Jul 06, 2023 at 01:30 PM .
07/06/2023	Judge - Murphy, Patricia M .
07/06/2023	Judicial Assistant - Lozano, G .
07/06/2023	Court Reporter - Camacho, Elaina is present.
07/06/2023	The defendant is present in court.
07/06/2023	Public Defender Benthale, Katia is present in court.
07/06/2023	Deputy District Attorney Ewan, Jillian present.
07/06/2023	Defense request for continuance is granted.
07/06/2023	Case continued to 07/27/23 at 01:30 PM in Courtroom 12 for EARLY DISPOSITION CONFERENCE .
07/06/2023	Time waived to 07/27/23 plus 30 days.
07/06/2023	Your release on your conditional own recognizance continues.
06/14/2023	EARLY DISPOSITION CONFERENCE Heard in Courtroom 12 on Jun 14, 2023 at 01:30 PM .
06/14/2023	Judge - Murphy, Patricia M .
06/14/2023	Judicial Assistant - Lozano, G .
06/14/2023	Court Reporter - Kalla, Deborah-Ann D is present.
06/14/2023	The defendant is present in court.

06/14/2023	Public Defender Benthale, Katia is present in court.
06/14/2023	Deputy District Attorney Ewan, Jillian present.
06/14/2023	Defense request for continuance is granted.
06/14/2023	Case continued to 07/06/23 at 01:30 PM in Courtroom 12 for EARLY DISPOSITION CONFERENCE .
06/14/2023	Time waived to 07/06/23 plus 30 days.
06/14/2023	Your release on your conditional own recognizance continues.
05/01/2023	EARLY DISPOSITION CONFERENCE Heard in Courtroom 12 on May 01, 2023 at 01:30 PM .
05/01/2023	Judge - Murphy, Patricia M .
05/01/2023	Judicial Assistant - Muniz, A .
05/01/2023	Court Reporter - Camacho, Elaina is present.
05/01/2023	The defendant is present in court.
05/01/2023	Public Defender Benthale, Katia is present in court.
05/01/2023	Deputy District Attorney Minoui, Rameen A present.
05/01/2023	Court proceedings were conducted using Zoom video conferencing.
05/01/2023	Motion to file Complaint is granted .
05/01/2023	Amendment 1 of a/an Complaint submitted for filing by VCDA on 5/1/2023 00:00:00 .
05/01/2023	Felony charge 11377(a) HS filed as count 1 with violation date of 05/16/22 03:24:00 .
05/01/2023	Misdemeanor charge 11364(a) HS filed as count 2 with violation date of 05/16/22 03:24:00 .
05/01/2023	Misdemeanor charge 4462.5 VC filed as count 3 with violation date of 05/16/22 03:24:00 .
05/01/2023	PC 667S2 filed as to Count 1 Special Allegation 1 .
05/01/2023	PC 1170(H)(3) filed as to Count 1 Special Allegation 2 .
05/01/2023	Defendant waives arraignment on Amended Complaint .
05/01/2023	Court orders the defendant to provide a right thumbprint as provided in section 992 of the Penal Code.
05/01/2023	Arraignment waived, a plea of not guilty is entered as to all counts.

05/01/2023	Defendant denies any and all priors and special allegations associated to this case.
05/01/2023	Defense request for continuance is granted.
05/01/2023	Case continued to 06/14/23 at 01:30 PM in Courtroom 12 for EARLY DISPOSITION CONFERENCE .
05/01/2023	Time waived to 06/14/23 plus 30 days.
05/01/2023	The defendant waived his/her right to a prelim within 60 days of his/her arraignment.
05/01/2023	Your release on your conditional own recognizance continues.
05/01/2023	The court orders you to appear.
04/06/2023	EARLY DISPOSITION CONFERENCE Heard in Courtroom 12 on 04/06/23 at 01:30 PM .
04/06/2023	Judge - Murphy, Patricia M .
04/06/2023	Judicial Assistant - Muniz, A .
04/06/2023	Court Reporter - Spafford, Leah is present.
04/06/2023	The defendant is not present in court.
04/06/2023	Public Defender Nemerson, Matthew is present and is standing in for Bentahale, Katia .
04/06/2023	Attorney appearing for the defendant with 977 PC authority.
04/06/2023	Deputy District Attorney Ewan, Jillian present.
04/06/2023	The Early Disposition Conference (EDC) is not held. The Preliminary Examination is vacated. Early Disposition Conference is reset to: 05/01/23 at 01:30 PM in Courtroom 12 .
04/06/2023	And Motion to Amend
04/06/2023	Time waived to 05/01/23 plus 30 days.
04/06/2023	The defendant waived his/her right to a prelim within 60 days of his/her arraignment.
04/06/2023	Your release on your conditional own recognizance continues.
04/06/2023	The court orders you to appear.
04/03/2023	Motion for Leave to File Amended Complaint filed.
04/03/2023	Motion sent to Judicial Assistant Division to be attached to the case file.

03/27/2023	Judge - Murphy, Patricia M .
03/27/2023	The Public Defender has been appointed. The following information is printed at the request of the Public Defender's Office. You must call the Public Defender's Office in one week to obtain the name of your attorney. Note: The attorney you had at arraignment may not be your trial attorney. The Public Defender's office is located on the second floor of the Hall of Justice, Room 207. To set up an appointment, you can call (805) 654-2201 or use one of the toll-free numbers for the cities listed: Oxnard, Camarillo 385-8600; Fillmore, Malibu, Moorpark, Newbury Park, Oak Park, Piru, Santa Paula, Simi Valley, Somis, Thousand Oaks, Westlake/Agoura 1-800-660-5474. If you use one of these numbers, ask the operator to connect you with the Public Defender's Office. If you remain in custody, please call *9005# from the jail in one week to discuss your case.
03/27/2023	Judicial Assistant - Lozano, G .
03/27/2023	Court Reporter - Martin, Stephanie is present.
03/27/2023	Arraignment First Appearance Heard in Courtroom 12 on Mar 27, 2023 at 09:00 AM .
03/27/2023	The defendant is present in court.
03/27/2023	Public Defender Benitez, Matthew is present in court.
03/27/2023	Deputy District Attorney Ewan, Jillian present.
03/27/2023	Arraignment waived, a plea of not guilty is entered as to all counts.
03/27/2023	Case continued to 04/06/23 at 01:30 PM in Courtroom 12 for EARLY DISPOSITION CONFERENCE .
03/27/2023	Case continued to 04/10/23 at 08:15 AM in Courtroom 14 for PRELIMINARY EXAMINATION .
03/27/2023	Last day for preliminary examination is 04/11/23 .
03/27/2023	Agreement of defendant to appear personally (1318 PC): - I promise to appear at all times and places as ordered by the judge or magistrate before whom my proceedings are pending. - I promise to obey all reasonable conditions imposed by the court or magistrate. - I promise not to leave this state without prior approval of the court. - I waive my right to extradition if I fail to appear as required and am apprehended outside of this state. - I acknowledge that I have been informed of the consequences and penalties applicable to violation of the conditions of release.
03/27/2023	Agreement of defendant to appear personally (1318 PC): I promise to appear at all times and places as ordered by the judge or magistrate before whom my proceedings are pending. I promise not to leave this state without prior approval of the court. I waive my right to extradition if I fail to appear as required and am apprehended outside of this state. Further conditions are as follows: You are not

	to use or possess controlled substances or drugs. You are to submit to tests for controlled substances or drugs; consent to search for controlled substances or drugs.
03/27/2023	Agreement of defendant to appear personally (1318 PC): I promise to appear at all times and places as ordered by the judge or magistrate before whom my proceedings are pending. I promise not to leave this state without prior approval of the court. I waive my right to extradition if I fail to appear as required and am apprehended outside of this state. Further conditions are as follows: You are not to use or possess or be under the influence of controlled substances or drugs.
03/27/2023	The court orders you to appear.
03/27/2023	Signature Required
03/07/2023	Complaint submitted for filing by VCDA on 3/7/2023 00:00:00 .
03/07/2023	Alfaro, Mario Ayala filed as name of record.
03/07/2023	Felony charge 11377(a) HS filed as count 1 with violation date of 05/16/22 03:24:00 .
03/07/2023	Misdemeanor charge 11364(a) HS filed as count 2 with violation date of 05/16/22 03:24:00 .
03/07/2023	Misdemeanor charge 4462.5 VC filed as count 3 with violation date of 05/16/22 03:24:00 .
03/07/2023	Case calendared to 03/27/23 at 09:00 AM in 12 for Arraignment First Appearance
03/07/2023	Defendant notified by letter to appear in court. Letter is filed.

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out of 157**

APPENDIX B

Appellate Division of the Superior Court of California, County of Ventura

Order Appointing Counsel and Request for Counsel..... 16a

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA
APPELLATE DIVISION

PEOPLE OF THE STATE OF CALIFORNIA
Plaintiff,
vs.
MARIO ALFARO
Defendant(s).

CASE NO. 2022011940

ORDER ON REQUEST FOR APPOINTMENT OF
APPELLATE COUNSEL; NOTICE OF POTENTIAL
LIABILITY TO PAY ATTORNEY FEES AND COSTS
ON APPEAL

The application was filed on 9/28/2023 by Mario Alfaro.

Appellant Information:	Address: <u>8578 N. Ventura Ave.</u> City: <u>Casitas Springs</u> State: <u>CA</u> Zip: <u>93001</u> Telephone: <u>805-670-5304</u>
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VENTURA
SUPERIOR COURT
FILED

OCT 04 2023

BRENDA L. McCORMICK
Executive Officer and Clerk
By: *Adriana Velasco*, Deputy

IT IS ORDERED THAT:

The application/request is granted and the CDA is/are appointed.
 The application/request is denied for the following reason(specify): _____
 A hearing be held to resolve the following issue: _____

The hearing will be held on _____ at _____ in Courtroom _____ at 800 South Victoria Avenue, Ventura, California

NOTICE TO APPELLANT

If your request for appointed counsel has been granted, there will be a hearing at the conclusion of the appeal to determine your ability to pay all or part of that attorney's fees and related costs.

IT IS FURTHER ORDERED THAT the time for filing the Notice of Election of Oral Proceedings on appeal is due 10 days from the date of filing of this order 20 days from the date of filing of the notice of appeal.

Dated: Oct. 3, 2023

Ronda McKaig
Ronda McKaig, Presiding Appellate Judge

CLERK'S CERTIFICATE OF SERVICE

I deposited with postage prepaid, in sealed envelope(s), in the United States Post Office at the City of Ventura, or in the interoffice mail of the County of Ventura, a full, true and correct copy of this document, addressed to:

Office of the District Attorney
County of Ventura
#2730

Office of the Public Defender
County of Ventura
#2350

CDA
674 County Square Drive #304
Ventura, CA 93003

Mario Alfaro
8578 N. Ventura Ave.
Casitas Springs, CA 93001

Dated: BRENTA L. McCORMICK, Superior Court
Executive Officer and Clerk by:

Adriana Velasco, Deputy Clerk

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA
APPELLATE DIVISION**

PEOPLE OF THE STATE OF CALIFORNIA

vs

MARIO ALFARO

CASE NO: 2022011940

NOTICE OF FILING NOTICE OF APPEAL

In accordance with California Rules of Court, Rule 8.852 (b), notice is hereby given that a Notice of Appeal was filed in the cited case on 09/28/2023 from the Ruling heard on 08/31/2023 by Honorable Patricia M. Murphy.

Office of the District Attorney
County of Ventura
#2730

CDA
674 County Square Dr. #304
Ventura, CA 93003

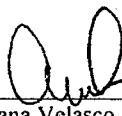
Office of the Public Defender
County of Ventura
#2350

Mario Alfaro
8578 N. Ventura Ave.
Casitas Springs, CA 93001

CLERK'S CERTIFICATE OF MAILING

I, BRENDA L. McCORMICK, Executive Officer and Clerk of the Superior Court of California, County of Ventura, certify that I am not a party to the within action or proceeding, that on the date below indicated I served a copy of the foregoing NOTICE by depositing said copy enclosed in a sealed envelope with postage thereon fully prepaid in the mail at Ventura, California, and the interoffice mail of County of Ventura, addressed as above indicated.

Dated: 10/04/2023 BRENDA L. McCORMICK, Superior Court
Executive Officer and Clerk, by:


Adriana Velasco, Deputy Clerk

Information About Your Case

② Were you/was your client represented by the public defender or another court-appointed lawyer in the trial court proceedings in this case? (Check a or b.)

a. Yes

b. No (Complete and attach Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense (form CR-105) showing that you/your client cannot afford to hire a lawyer. You can get form CR-105 at any courthouse or county law library or online at www.courts.ca.gov/forms.)

③ If you have been convicted, describe the punishment the trial court gave you/your client in this case (check all that apply and fill in any required information):

a. Jail time

b. A fine (including penalty and other assessments) (fill in the amount of the fine): \$ _____

c. Restitution (fill in the amount of the restitution): \$ 150.00

d. Probation (fill in the amount of time on probation): 12 months

e. Other punishment (describe any other punishment that the trial court gave you/your client in this case): 3 days jail, credit 3 days for time served; one year summary probation, search terms, abstain terms, do not associate terms, test terms.

f. Describe any other negative consequences that you are/your client is likely to suffer because of this conviction: Prior conviction alleged in felony complaint was void for ineffective assistance of counsel and all reasons raised in motion to vacate that established present conflict of interest with Public Defender, trial court refused to hear it, as a result the obligation remains to register pursuant to PC 290 despite being void for 27 years

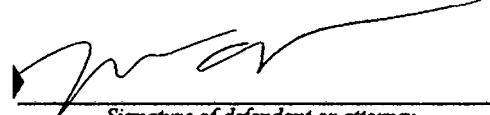
④ If you have not been convicted, describe the order being challenged on appeal:

Notice to Defendant: If you were represented by appointed counsel in the trial court and the trial court finds that you are able to pay all or part of the cost of that counsel, at the conclusion of the proceedings, the court may also determine after a hearing whether you are able to pay all or a portion of the cost of any attorney appointed to represent you in this appeal. If the court determines that you are at that time able to pay, the court will order you to pay all or part of such cost. Such orders will have the same force and effect as a judgment in a civil action and will be subject to enforcement.

Date: September 26, 2023

Mario Alfaro

Type or print name



Signature of defendant or attorney

CR-133**Request for Court-Appointed
Lawyer in Misdemeanor Appeal****Instructions**

- This form is only for requesting that the court appoint a lawyer to represent a defendant in a misdemeanor appeal.
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.
- The court is required to appoint a lawyer to represent you if you are indigent (you cannot afford to pay for a lawyer) and:
 - (1) You were convicted and your punishment includes going to jail or paying a fine of more than \$500 (including penalty and other assessments); or
 - (2) You are likely to suffer other negative consequences from the conviction (for example, immigration problems or inability to get or keep a license or permit); or
 - (3) You have not been convicted but you are likely to suffer significant harm if you lose the appeal.
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk's office for the same trial court where the notice of appeal was filed. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

① Your Information

a. Name of Defendant (the party who is filing this request):

Name: Mario AlfaroStreet address: 8578 N. Ventura Ave.
StreetCasitas Springs CA 93001
City State Zip

Mailing address (if different): _____

City State Zip

Phone: 805-670-5304Email: mariowario82@yahoo.com

b. Defendant's lawyer (skip this if the defendant is filling out this form):

Name: _____ State Bar number: _____

Street address:

City State Zip

Mailing address (if different): _____

City State Zip

Phone: _____ Email: _____

Fax: _____

Judicial Council of California, www.courts.ca.gov
Revised September 1, 2023, Optional Form
Cal. Rules of Court, rule 8.851

**Request for Court-Appointed Lawyer in
Misdemeanor Appeal**

CR-133, Page 1 of 2



Clerk stamps date here when form is filed.

VENTURA
SUPERIOR COURT
FILED**SEP 28 2023**BRENDA L. McCORMICK
Executive Officer and Clerk
By: UL Deputy**ADRIANA VELASCO**

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of
VENTURA
800 S. Victoria Ave.
Ventura, CA 93009

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:
2022011940Trial Court Case Name:
People v. Alfaro

You fill in the appellate division case number (if you know it):

Appellate Division Case Number:
2022011940

Trial Court Case Name: People v. Alfaro

Trial Court Case Number:
2022011940

2 Judgment or Order You Are Appealing

I am/My client is appealing (check one):

a. The final judgment of conviction in this case (Pen. Code, § 1466(b)(1)).
 I am/My client is contesting only the conditions of the probation.

b. The following order made after the judgment in this case that affects an important right of mine/my client (for example, an order after a probation violation) (Pen. Code, § 1466(b)(1)).
 An order modifying the conditions of probation.
 Other (describe the action you are appealing and give the date the trial court took the action):

c. The trial court has not yet issued a final judgment in this case. I am appealing before final judgment an order that denied a motion to suppress evidence in this case (Pen. Code, § 1538.5(j)).

d. Other action (describe the action you are appealing and give the date the trial court took the action):

3 Record on Appeal

(See form CR-131-INFO for information about the record on appeal.)

a. I have attached a completed *Notice Regarding Record on Appeal (Misdemeanor)* (form CR-134).

b. I have not attached a *Notice Regarding Record on Appeal (Misdemeanor)* (form CR-134). I understand that I must file this notice in the trial court within either (1) 20 days after I file this notice of appeal or, if it is later, (2) 10 days after the court appoints a lawyer for me (if I file a request for a court-appointed lawyer within 20 days after I file my notice of appeal). I also understand that if I do not file the notice on time, the court will not be able to consider what was said in the trial court in deciding whether an error was made in the trial court proceedings. In addition, I understand that if I am represented by a court-appointed lawyer and I do not file the notice regarding the record on time, the court may appoint a new lawyer. If I represent myself or hire a lawyer to represent me, and I do not file the notice regarding the record on time, the court may dismiss my appeal.

4 Court-Appointed Lawyer

a. Do you/Does your client want to be represented by a court-appointed lawyer in this appeal? (Answer yes or no.)

Yes. Complete and attach *Request for Court-Appointed Lawyer in Misdemeanor Appeal* (form CR-133).
 No.

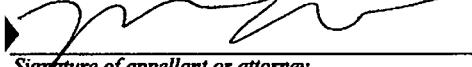
b. Were you/Was your client represented by the public defender or other court-appointed lawyer in the trial court? (Answer yes or no.)

Yes.
 No. If you answered yes to 4a, complete and attach *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form CR-105).

REMINDER—Except in the very limited circumstances listed in rule 8.853, you must file this form no later than 30 days after the trial court issued the judgment or order you are appealing in your case. If your notice of appeal is late, the court will not take your appeal.

Date: September 26, 2023

Mario Alfaro
Type or print your name


Signature of appellant or attorney

Revised January 1, 2020

**Notice of Appeal
(Misdemeanor)**

CR-132, Page 2 of 2

CR-132

**Notice of Appeal
(Misdemeanor)**

Instructions

- This form is only for appealing in a misdemeanor case. You can get other forms for appealing in a civil or infraction case at any courthouse or county law library or online at www.courts.ca.gov/forms.
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at www.courts.ca.gov/forms.
- You must file this form no later than 30 days after the trial court issued the judgment or order you are appealing (see rule 8.853(b) of the California Rules of Court for very limited exceptions). If your notice of appeal is late, the court will not take your appeal.
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk's office for the same trial court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

① Your Information

a. Name of appellant (the party who is filing this appeal):
Name: Mario Alfaro

b. Appellant's contact information (required):

Street address: 8578 N. Ventura Ave. Casitas Springs CA 93001
Street City State Zip

Mailing address (if different): _____

Phone: 805-670-5304 Street: _____ City: _____ State: _____ Zip: _____
E-mail: marieznaric82@yahoo.com

Phone: 605-670-5364 E-mail: marlowar1082@yahoo.com

c. Appellant's lawyer in the trial court proceedings:

The lawyer filling out this form is is not representing the appellant in this appeal.

If a court-appointed lawyer on appeal is being requested, see item 4.

Name: Public Defender _____ State Bar number: _____

Street address: 800 S. Victoria Ave. Ventura CA 93009

Street **City** **State** **Zip**

Mailing address (if different):

Phone: 805-654-2200 **E-mail:** _____

Fax: _____

Judicial Council of California, www.courts.ca.gov
Revised January 1, 2020, Optional Form
Cal. Rules of Court, rules 8.852, 8.853

**Notice of Appeal
(Misdemeanor)**

CR-132, Page 1 of 2

APPENDIX C

Court of Appeal of California Second Appellate District Division Six

Denial Of Motion to Recall Remittitur..... 23a

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

THE PEOPLE,
Plaintiff and Respondent,
v.
MARIO AYALA ALFARO,
Defendant and Appellant.

2d Crim. No. B333141
(Super. Ct. No. 2022011940)
(Ventura County)

O R D E R

COURT OF APPEAL - SECOND DIST.

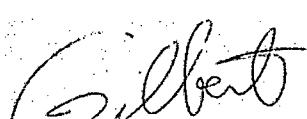
FILED

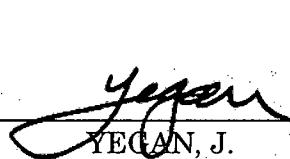
Sep 05, 2024

EVA McCLEINTOCK, Clerk
S. Claborn Deputy Clerk

THE COURT:

The motion to recall the remittitur filed by appellant
Mario Ayala Alfaro on September 3, 2024, is denied.


GILBERT, P.J.


YEGIAN, J.


BALTODANO, J.

APPENDIX D

Superior Court of California County of Ventura
Docket from 1996 Conviction Case No. CR38580 25a



**Superior Court of California
County of Ventura**

Online Public Access

Docket Information

Name	Alfaro, Mario A Jr	Case Number	<u>CR38580</u>
Citation Number	Violation Date	03/04/1996	Case Status Convicted
Court Location	Ventura	Appearance/ Due Date	Offense Level Felony
		Disposition Date	Mandatory Appearance No
			Case Balance \$0.00

Docket Date	Docket Description
04/13/1998	A1n 0145 Deft Not Present
04/13/1998	A3 0146 Dda Lisa Lyytikainen Present
04/13/1998	A5 0147 Court Reporter Kiddie Present
04/13/1998	D12 0148 Case Off Calendar - No Action Taken
04/02/1998	C1 0143 Case Calendared To 04/13/98 At 08:30 Am In Courtroom 14 For: Reference Atty Is
04/02/1998	M96 0144 Case On Calendar At Request Of Dda Conners
11/06/1996	M2 0142 Note: Hiv Laboratory Report Results Received 10/31/96
08/14/1996	O82 0141 Transcripts For Probation And Sentencing Filed
07/10/1996	M117 0140 Prison Packet Completed And Returned To Judicial Assistant Division
07/09/1996	A1 0104 Defendant Present
07/09/1996	A9a 0105 Pub Def Todd Howeth Present
07/09/1996	A3 0106 Dda Mark Pachowicz Present
07/09/1996	A5 0107 Court Reporter R.Jeffrey Present
07/09/1996	A26 0108 Defense Files A Statement In Mitigation.
07/09/1996	D56 0109 Probation Report/Memo Filed

07/09/1996	S13 0110 Defendant Waives Arraignment At Sentencing/Indicates No Legal Cause
07/09/1996	T44 0111 Argument By The People
07/09/1996	T45 0112 Argument By The Defense
07/09/1996	A26 0113 Final Comments By The Defense.
07/09/1996	S9 0114 Defendant's Application For Probation Is Denied
07/09/1996	D24 0115 Deft Sentenced To:
07/09/1996	Sp 0116 Defendant Committed To Department Of Corrections
07/09/1996	Sp1 0117 Ct 1, For The Mid Term Of 6 Years
07/09/1996	Sp1 0118 Ct 2, For The Mid Term Of 6 Years
07/09/1996	Cc 0119 To Run Concurrent:
07/09/1996	Wth 0120 With:Count #1.
07/09/1996	Sp3 0121 Total Fixed Term 6 Years 0 Months
07/09/1996	Jps 0122 No Credits Awarded On This Case.
07/09/1996	P26e 0123 Pay Restitution Of \$200.00 To State Restitution Fund
07/09/1996	P26e 0124 Pay Restitution Of \$700.00 To Port Huenem P.D.
07/09/1996	A26 0125 For Legal/Medical Examination On Victim.
07/09/1996	Sp36 0126 Pay A Fine Of \$540.00 Pursuant To Section 290.3 Of The Penal Code (Shop)
07/09/1996	S15 0127 You Shall Provide Blood And Saliva Samples Pursuant To Section 290.2 Of The Penal Code At The Request Of The Department Of Corrections
07/09/1996	S16 0128
07/09/1996	A26 0129 The Defendant Authorizes That The Clerk Of The Court May
07/09/1996	A26 0130 Release The Results To The Victim.
07/09/1996	S17 0131 Pursuant To Section 1202.05 Of The Penal Code, You Shall Have No Visitation With Jane Doe
07/09/1996	S19 0132 You Shall Read And Sign Cii Notification Form And Register Pursuant To 290 Of The Penal Code
07/09/1996	S14 0133 Court Finds Factual Basis For Plea
07/09/1996	Dr 0134 Dismiss Remaining Counts
07/09/1996	D58 0135 Defendant Advised Of Appeal Rights
07/09/1996	D58a 0136 Defendant Advised Of Parole Rights
07/09/1996	Sp39 0137 The Court Has Read And Considered The Probation Officer's Report

07/09/1996	J12 0138 Remanded To The Custody Of The Sheriff
07/09/1996	J40 0139 Sheriff Ordered To Transport Defendant To: Department Of Corrections - Wasco.
07/05/1996	M1a 0103 Probation Report Received, Courtroom 33, 7/09/96
06/07/1996	A1 0079 Defendant Present
06/07/1996	A3 0080 Dda M.Fox Present
06/07/1996	A5 0081 Court Reporter R.Jeffrey Present
06/07/1996	A9a 0082 Pub Def T.Howeth Present
06/07/1996	A22a 0083 Information Filed
06/07/1996	A58 0084 Information Alleging Ct 1 288(A) Pc Code, With 0 Priors And 1 Allegations
06/07/1996	A58 0085 Information Alleging Ct 2 288(A) Pc Code, With 0 Priors And 0 Allegations
06/07/1996	A58 0086 Information Alleging Ct 3 288(A) Pc Code, With 0 Priors And 0 Allegations
06/07/1996	A23b 0087 Information Served
06/07/1996	A7b 0088 Arraignment Waived, Plea Of Not Guilty Entered, Allegations Denied
06/07/1996	Fp4 0089 Deft Advised Of Charges, Rights And Maximum Penalties By Dda M.Fox
06/07/1996	Fp5 0090 Deft Now Expressly Knowingly And Intelligently Waives And Gives Up Rights
06/07/1996	G 0091 Guilty To Ct 1
06/07/1996	G 0092 Guilty To Ct 2
06/07/1996	A26 0093 Admits The Special Allegation In Count 1
06/07/1996	Fpa 0094 Parties Stipulate That The Court May Consider Probation Report To Show There Is A Factual Basis For The Plea
06/07/1996	Dr1 0095 Dismiss Remaining Counts At Time Of Sentencing
06/07/1996	Fbr 0096 Factual Basis Reserved
06/07/1996	Fp1 0097 Felony Plea Agreement Form Filed And Incorporated Herein
06/07/1996	C3a 0098 Refer To Formal Probation. Report Immediately To Room C, Sheriff/Correction Building And Following The Instructions Of The Probation Officer.
06/07/1996	A21 0099 Time Waived
06/07/1996	C1 0100 Case Calendared To 7/09/96 At 08:30 Am In Courtroom 33 For: Prob. & Sentencing Atty Is T.Howeth
06/07/1996	B20 0101 Deft Remanded To Custody Of Sheriff, Ilo Bail Of \$50,000.00
06/07/1996	J12 0102 Remanded To The Custody Of The Sheriff

05/24/1996	A1 0062 Defendant Present
05/24/1996	A3 0063 Dda Vanarelli Present
05/24/1996	A9a 0064 Pub Def Howeth Present
05/24/1996	A5 0065 Court Reporter Potts Present
05/24/1996	A35 0066 Case Assigned To Courtroom 33
05/24/1996	A26 0067 Forthwith
05/24/1996	B20 0068 Deft Remanded To Custody Of Sheriff, Ilo Bail Of \$50,000.00
05/24/1996	J12 0069 Remanded To The Custody Of The Sheriff
05/24/1996	A1 0070 Defendant Present
05/24/1996	A9a 0071 Pub Def Howeth Present
05/24/1996	A3 0072 Dda Byrne Present
05/24/1996	A5 0073 Court Reporter Stryer Present
05/24/1996	Fing 0074 Court Orders The Defendant To Provide A Right Thumbprint As Provided In Section 992 Of The Penal Code
05/24/1996	A26 0075 60 Days Period Begin 6-7-96
05/24/1996	C1 0076 Case Calendared To 6/07/96 At 08:30 Am In Courtroom 33 For: Continued Arraignmen Atty Is Howeth
05/24/1996	B20 0077 Deft Remanded To Custody Of Sheriff, Ilo Bail Of \$50,000.00
05/24/1996	J12 0078 Remanded To The Custody Of The Sheriff
05/07/1996	O35 0061 Motion For Disqualify Judge Filed
04/30/1996	A2 0040 Deft Present With Attorney Deputy Pd T. Howeth
04/30/1996	A3 0041 Dda M. Pachowicz Present
04/30/1996	A5 0042 Court Reporter D. Bradley Present
04/30/1996	A35 0043 Case Assigned To Courtroom 24
04/30/1996	A39 0044 Time Estimate 90 Minutes
04/30/1996	J40 0045 Sheriff Ordered To Transport Defendant To: Courtroom 24 Forthwith
04/30/1996	A1 0046 Defendant Present
04/30/1996	A3 0047 Dda T Howeth Present
04/30/1996	A3 0048 Dda M Pachowicz Present
04/30/1996	A5 0049 Court Reporter M Kohli Present

04/30/1996	D51 0050 Preliminary Hearing Waived.
04/30/1996	A26 0051 Defendant Advised Of Charges Rights And Maximum Penalties By
04/30/1996	A26 0052 Dpd T Hoeth
04/30/1996	Fp5 0053 Deft Now Expressly Knowingly And Intelligently Waives And Gives Up Rights
04/30/1996	A26 0054 Re Right To Preliminary Hearing
04/30/1996	A21 0055 Time Waived
04/30/1996	T79 0056 Defendant Held To Answer To Superior Court On 5/24/96 At 08:30 Am In Courtroom 44 For Arraignment
04/30/1996	C1 0057 Case Calendared To 5/24/96 At 08:30 Am In Courtroom 44 For: Arraignment Atty Is Pd
04/30/1996	D83 0058 Preliminary Hearing Vacated
04/30/1996	B20 0059 Deft Remanded To Custody Of Sheriff, Ilo Bail Of \$50,000.00
04/30/1996	J12 0060 Remanded To The Custody Of The Sheriff
04/12/1996	A1 0030 Defendant Present
04/12/1996	A3 0031 Dda M. Pachowicz Present
04/12/1996	A9a 0032 Pub Def R. Dahlstedt Present
04/12/1996	A26 0033 For T. Howeth
04/12/1996	A26 0034 Prelim Reset
04/12/1996	C1 0035 Case Calendared To 4/30/96 At 09:00 Am In Courtroom 12 For: Preliminary Exam. Atty Is Pd
04/12/1996	A39 0036 Time Estimate 3 Hours
04/12/1996	A21 0037 Time Waived
04/12/1996	B20 0038 Deft Remanded To Custody Of Sheriff, Ilo Bail Of \$50,000.00
04/12/1996	J12 0039 Remanded To The Custody Of The Sheriff
03/19/1996	A1 0018 Defendant Present
03/19/1996	A3 0019 Dda M. Fox Present
03/19/1996	A9a 0020 Pub Def T. Howeth Present
03/19/1996	A5 0021 Court Reporter C. Montgomery Present
03/19/1996	D83 0022 Preliminary Hearing Vacated
03/19/1996	C16 0023 At Public Defender Requests Continuance To 4/12/96 At 01:30 Pm In Courtroom 12 Roc Is Preliminary Exam. Atty Ispd .

03/19/1996	A39 0024 Time Estimate 3 Hours
03/19/1996	A21 0025 Time Waived
03/19/1996	A26 0026 Defendant Personally Waives Time
03/19/1996	J12 0027 Remanded To The Custody Of The Sheriff
03/19/1996	B20 0028 Deft Remanded To Custody Of Sheriff, Ilo Bail Of \$50,000.00
03/19/1996	B19 0029 Deft Ordered To Appear
03/08/1996	Z44 0001 Booking Release Information Filed
03/08/1996	Z45 0002 Formal Complaint Filed
03/08/1996	M98 0003 Upon Conviction Assess Booking Fee Of \$120.00
03/08/1996	M15 0004 Felony Case Assigned To: Judge O'neill, Courtroom 44
03/08/1996	A1 0005 Defendant Present
03/08/1996	A3 0006 Dda D. Corona Present
03/08/1996	A9 0007
03/08/1996	A9d 0008
03/08/1996	A9e 0009 If You Use One Of These Numbers, Ask The Operator To Connectyou With The Public Defender's Office. If You Remain In Custody Please Call #21 From The Jail In One Week To Discussyour Case.
03/08/1996	A9a 0010 Pub Def R. Dahlstedt Present
03/08/1996	A5 0011 Court Reporter K. Ernst Present
03/08/1996	A7b 0012 Arraignment Waived, Plea Of Not Guilty Entered, Allegations Denied
03/08/1996	C1 0013 Case Calendared To 3/19/96 At 01:30 Pm In Courtroom 12 For: Preliminary Exam. Atty Is Pd
03/08/1996	A39 0014 Time Estimate 30 Minutes
03/08/1996	J12 0015 Remanded To The Custody Of The Sheriff
03/08/1996	B20 0016 Deft Remanded To Custody Of Sheriff, Ilo Bail Of \$50,000.00
03/08/1996	B19 0017 Deft Ordered To Appear

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APPENDIX E

California Codes

Health and Safety Code

§ 11377(a)..... 32a

Penal Code

§ 288..... 32a-33a

§ 290..... 32a

§ 667..... 32a

California Health & Safety Code

§ 11377 (a) "... every person who possesses any controlled substance ... shall be punished by imprisonment in a county jail for a period of not more than one year, *except that such person may instead be punished* pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has *one or more prior convictions for an offense specified* in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code."

California Penal Code

§ 667(e)(2)(C)(iv)(III) "A lewd or lascivious act involving a child under 14 years of age, in violation of Section 288."

§ 290(c) "The following persons shall register: (1) A person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section...288".

§ 261.5 (a) Unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor. For the purposes of this section, a "minor" is a person under 18 years of age and an "adult" is a person who is 18 years of age or older.

(b) A person who engages in an act of unlawful sexual intercourse with a minor who is not more than three years older or three years younger than the perpetrator, is guilty of a misdemeanor.

(c) A person who engages in an act of unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170.

(d) A person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.

1995-1996 SB1161 Section 1. (Amends) - Chaptered (Stats.1995 Ch.890)

§ 288 [as it read in 1996] "(a) Any person who **willfully and lewdly** commits any lewd or lascivious act, including any of the acts constituting other crimes provided for in Part 1, upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(b) (1) Any person who commits an act described in subdivision (a) by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years."

The Latest Version Available as closest to Olsen

19871988 AB1826 Sec. 3. (Amends) - Chaptered (Stats.1987 Ch.1068)

SEC. 3. Section 288 of the Penal Code is amended to read:

288.

- (a) Any person who shall willfully and lewdly commit any lewd or lascivious act including any of the acts constituting other crimes provided for in Part 1 of this code upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of such person or of such child, shall be guilty of a felony and shall be imprisoned in the state prison for a term of three, six, or eight years.
- (b) Any person who commits an act described in subdivision (a) by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, shall be guilty of a felony and shall be imprisoned in the state prison for a term of three, six or eight years.
- (c) In any arrest or prosecution under this section the peace officer, the district attorney, and the court shall consider the needs of the child victim and shall do whatever is necessary and constitutionally permissible to prevent psychological harm to the child victim.

Amendment to (c)

19871988 AB3835 Section 1. (Amends) - Chaptered (Stats.1988 Ch.1398)

SECTION 1. Section 288 of the Penal Code is amended to read:

288.

- (a) Any person who shall willfully and lewdly commit any lewd or lascivious act including any of the acts constituting other crimes provided for in Part 1 of this code upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of the child, shall be guilty of a felony and shall be imprisoned in the state prison for a term of three, six, or eight years.
- (b) Any person who commits an act described in subdivision (a) by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, shall be guilty of a felony and shall be imprisoned in the state prison for a term of three, six, or eight years.
- (c) Any person who commits an act described in subdivision (a) with the intent described in that subdivision, and the victim is a child of 14 or 15 years, and the defendant is at least 10 years older than the child, shall be guilty of a public offense and shall be imprisoned in the state prison for one, two, or three years, or by imprisonment in the county jail for not more than one year.

Current Version, Relevant to Above

20172018 AB1934 Sec. 2. (Amends) - Chaptered (Stats.2018 Ch.70)

SEC. 2. Section 288 of the Penal Code is amended to read:

288.

- (a) Except as provided in subdivision (i), a person who willfully and lewdly commits any lewd or lascivious act, including any of the acts constituting other crimes provided for in Part 1, upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.
- (b) (1) A person who commits an act described in subdivision (a) by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, is guilty of a felony and shall be punished by imprisonment in the state prison for 5, 8, or 10 years.
- (c) (1) A person who commits an act described in subdivision (a) with the intent described in that subdivision, and the victim is a child of 14 or 15 years, and that person is at least 10 years older than the child, is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year. In determining whether the person is at least 10 years older than the child, the difference in age shall be measured from the birth date of the person to the birth date of the child.

APPENDIX F

<i>Wende</i> Letter Responses as Presented in Motion to Recall Remittitur.....	35a
Age of Consent Laws [Table].....	40a

As noted in the application for relief from default, Appellant lives with his mother, who failed to deliver a letter to Appellant. At first it was thought to be the invitation to submit a brief, but it was the letter from counsel to be appointed on 1/2/24, dated 12/27/23, abandoning before appointment.

It is quoted below and the footnotes under it address the errant contentions.

The letter is in Exhibit I, 130:

“I have been sent the court records in your case and **have read through them**.

I assume that you are appealing because you wanted to challenge the conviction based on the motion to vacate the prior that you filed.¹ Unfortunately, that won't be able to be appealed.² The court never really read or ruled on the motion.³ The appellate court's jurisdiction is limited to that which the trial court actually ruled on.⁴ So, given that the court never really ruled on this,⁵ it can't be argued on appeal.⁶

¹ “**Prior conviction** alleged in felony complaint **was void** for ineffective assistance of counsel and **all** reasons raised in motion to vacate that established **present conflict of interest with Public Defender, trial court refused to hear it**,” (form CR-133) (Exhibit K, 155)

² “[I]f an order or judgment is void, an order denying a motion to vacate that order or judgment is also void and appealable because it gives effect to a void judgment. [Citation.]” (*Doe v. The Regents of the Univ. of Cal.*, (2022) 80 Cal.App.5th 282, 292 (*Doe*))

³ “**Court Finds and Orders:**

The Court will not take action on motion filed as Pro Per to vacate prior conviction”. (Exhibit J, 139)

⁴ “Given the trial court's lack of inquiry into... any conflict... that would have prevented her from litigating Carter's motion to dismiss, its denial... rests on error of law, constituting an abuse of discretion.” (*Carter, supra*, p.13)

⁵ See Pen. Code § 860 and Code Civ. Proc. § 170 (“A judge has a duty to decide any proceeding in which he or she is not disqualified.”) See *Spector v. Superior Court*, (1961) 55 Cal.2d 839, 843 (“cardinal principle... a party should not be bound or concluded by a judgment unless he has had his day in court”)

⁶ See fns. 3, 5, & 6 and “An appeal may be taken by the defendant ... (b) From any order made after judgment, affecting the substantial rights of the party.” (Pen. Code § 1237) “A fundamental requirement of due process is ‘the opportunity to be heard.’ [Citation.] It is an opportunity which must be granted at a meaningful time and in a meaningful manner.” (*Armstrong v. Manzo*, (1965) 380 U.S. 545, 552)

The court did tell you that it couldn't consider the motion because it had no jurisdiction.⁷ Under the case law,⁸ a court in a pending case that alleges⁹ a prior conviction can entertain a motion to vacate the use¹⁰ of the conviction based on either the complete deprivation of counsel¹¹ or the failure, in a plea case, where the defendant pled without being informed of his rights.¹²

In your case, it appears that you want to claim IAC by then-counsel for telling you that you should plead out.¹³ That can't be the subject of a motion to vacate a prior conviction for use in a

⁷ “A void order or judgment may be directly or collaterally attacked at any time. [Citations.] Even when relief is not available under a statute, the court retains inherent power to vacate void orders.” (*Doe, supra.*) If the “court never really read” it, how would it know if it lacked jurisdiction? Regarding an active case before that court with the People using the void conviction, stemming from “an unauthorized sentence, which the trial court would have had jurisdiction to correct at any time.” (*People v. Picklesimer*, (2010) 48 Cal.4th 330, 338 (*Picklesimer*)) See Pen. Code § 681.

⁸ “[P]rior convictions obtained in violation of *any* of a defendant's constitutional rights not be used to enhance a prison sentence.” (*People v. Allen*, (1999) 21 Cal.4th 424, 430) “attacks upon the constitutional basis of prior convictions... if the issue is properly raised at or prior to trial, it must be determined by the trial court.” (*Id.*, at 435) Noting twice approved thereafter.

⁹ Health & Safety Code, § 11377(a)(possession of methampheta-mine one year maximum, but may punish per “(h) of Section 1170 of the Penal Code if” required to register per “Section 290 of the Penal Code”) “any ‘facts that increase the prescribed range of penalties to which a criminal defendant is exposed’ are elements of the crime.” (*Alleyne v. United States* (2013) 570 U.S. 99, 111) See (Cal. Const. art. I, § 28(f)(4)) (Motion 179-180)

¹⁰ “Vacate the use”, meant move to strike that which was sought to sextuple the sentence, which is what *Allen* referred to when discussing an enhancement, not when used to create a substantive offense (see art. I, §28(f)(4)). However, this was a motion to vacate a void conviction. After the *Allen* discussion, “As noted at the outset under *Vasiliyan* per Witkin, a variety of vehicles are available, which includes a motion to vacate.” (Motion 181:14-15)

¹¹ Motion 175:1-2 “resulting in state caused deprivation of counsel in all subsequent matters, *Strickland v. Washington*, (1984) 466 U.S. 668, 69[2].” This was a “jurisdictional defect” (*Custis v. United States*, (1994) 511 U.S. 485, 496) Because “a party whose counsel is unable to provide effective representation is in no better position than one who has no counsel at all.” (*Evitts v. Lucey*, (1985) 469 U.S. 387, 396) “*In re Harris* (1993) 5 Cal.4th 813, 840 [“Fundamental jurisdictional defects [i.e., acts in excess of jurisdiction], like constitutional defects, do not become irremediable when a judgment of conviction becomes final, even after affirmance on appeal.”].” (*Picklesimer* at 338, brackets in original.)

¹² “guilty plea is not equally voluntary and knowing, it has been obtained in violation of due process and is therefore void. ... it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts.” (*McCarthy v. United States* (1969) 394 U.S. 459, 466) (Motion 176:20-27)

¹³ “The issue is whether “counsel's representation fell below an objective standard of reasonableness” (*id.* at 1384) by failing to advise and misadvising on the defenses.” Motion 187:25-27

current case.¹⁴ Also, based on what you have written, there would not appear to be IAC.¹⁵ I understand that you want, based on the victim now¹⁶ recanting her testimony, to argue consensual sex and mistake of fact. But, given that the recantation came years after the plea, how could that support an IAC claim?¹⁷ Based on the statement of the victim to the cops, how was the PD IAC in advising that a conviction was likely?¹⁸ And, while you want to argue mistake of fact,¹⁹ the case law rejects that as a defense²⁰ to a molestation involving someone under the age of 14.

¹⁴ The 117-page verified motion was not a rant about being told to plead, it was proving through the law that the conviction was void.

“However, ‘[t]here is no statutory authority for a trial court to entertain a postjudgment motion that is unrelated to any proceeding then pending before the court.’” (*Picklesimer* at 337)

¹⁵ Assuming arguendo that 34 pages were not dedicated to *Olsen* being overruled, the Motion pp.94-96 also raised that a more specific crime was applicable over the general statute.

¹⁶ The statement “based on the victim *now* recanting” sounds just like the first attorney, completely failing to listen, Sylvia had lied about her age, by definition that established lack of knowledge of a fundamental threshold element, “a defendant must know the facts that make his conduct illegal” (*Staples v. United States*, (1994) 511 U.S. 600, 619)

¹⁷ Because his client’s repeatedly stated facts were the same, and years later were corroborated by Sylvia. Refusing to listen to the client and failing to investigate is ineffective assistance. Furthermore, the refusal of counsel to investigate was prejudicial, she could have recanted earlier. The delay was due to Appellant being in prison because of the refusal to assist.

¹⁸ The *Brady* and *Napue* aspect of the Motion 259-262, established that the failure to advise the PD of the recanting caused Appellant to be sent to prison three more times. And was an ongoing obligation of the prosecutor’s office to correct the known false basis.

¹⁹ The very first defense discussed in the Motion was Misfortune pp. 196-202 and that it was applicable regardless of *Olsen* and counsel never advised regarding it.

²⁰ Motion 217-251 was solely devoted to proving that every aspect of *Olsen* had been overruled, before the 1996 case. Counsel said he read the record, so he knew everything he stated was factually false and legally inaccurate.

But in any event, the motions premise can't be the subject of the appeal, both because it wasn't heard and because you pled.²¹ You can't plead and then appeal the conviction without getting special permission.²² So, I don't see that this appeal is arguable.²³

The fact that Mr. Lennon actually stated in his letter "while you want to argue mistake of fact, the case law rejects that as a defense" is demonstrative proof that he "did not, however, conduct a review of the entire record before doing so." (*People v. Wende*, (1979) 25 Cal.3d 436, 438) Thirty-four pages were devoted to proving every aspect of *Olsen* was based on a faulted premise and has been overruled on its denial of a statutory defense protected by the Fourteenth Amendment.

The context of his statement was that he was breaking news that case law precludes such an argument. Not rebutting one third of the motion's argument. If Mr. Lennon had read the motion he would have said something substantive, e.g., *stare decisis* binds a court, or that's an uphill battle, or even I disagree with your analysis. The flippant announcement was dismissive and as proven by the very motion he "read", was dead wrong.

The *Olsen* court members themselves negated the premise twice thereafter, *People v. Skinner*, (1985) 39 Cal.3d 765, 772, 780; *People v. Pearson*, (1986) 42 Cal.3d 351, 356 (§288 is a specific intent crime).

²¹ "[I]f an order or judgment is void, an order denying a motion to vacate that order or judgment is also void and appealable because it gives effect to a void judgment. [Citation.]" (*Doe, supra.*)

²² *Vera* concluded a challenge to the court's denial of a postplea *Marsden* (*People v. Marsden* (1970) 2 Cal.3d 118) motion did not require a certificate: 'We regard the issue of whether defendant currently needed a new attorney [at sentencing] as a postplea issue not essentially implicating the validity of the no contest plea.'" (*People v. Stamps*, (2020) 9 Cal.5th 685, 698 n.5)

Rule 8.304(b)(2) "Appeal not requiring a certificate of probable cause" on *any* "grounds that do not affect the validity of the *plea*" itself, i.e., "His appellate claim does not constitute an attack on the validity of his plea because the claim does not challenge his plea as defective when made." (*Stamps* at 696)

²³ "In short, the promise of *Douglas* that a criminal defendant has a right to counsel on appeal — like the promise of *Gideon* that a criminal defendant has a right to counsel at trial — would be a futile gesture unless it comprehended the right to the effective assistance of counsel." (*Evitts v. Lucey*, (1985) 469 U.S. 387, 397)

“The language in *Hernandez*, together with the reasoning in *Tober*, *Toliver* and *Gutierrez*, compel the conclusion that a reasonable mistake as to the victim’s age is not a defense to a section 288 charge.” (*Olsen* at 647)

Of those latter three cases that *Olsen* relied on to determine whether the defenses that are applicable to the entire Code through Pen. Code § 26 should apply or not (*Skinner* held it always does), *Tober* & *Toliver* were not based on a case or controversy thus were pure obiter dictum; *Gutierrez* was impossible to have mistake of fact apply because the prosecutor caught them collaborating on that testimony in the hallway.

The statute *Olsen* relied on was proven with legislative history to have been a rushed product and the version just prior to a hurried compromise intended to afford the very defense applicable to these facts.

“If the defendant befriends the victim for the purpose of initiating sexual relations and **the victim neither solicits sexual contact nor shares in that initial purpose** at the time of the befriending.” (Leg. Digest, SB-586 Amended by Assembly August 25, 1981, p.7) (Exhibit D [p.289])

“So long as counsel has not disabled himself from effectively representing his client *by describing the case as frivolous*, no reason appears why he should be required to request to withdraw.” (*Wende* at 442, emphasis added.) Frivolous means “Lacking a legal basis or legal merit; not serious; not reasonably purposeful” (Black’s Law Dictionary (8th ed. 2004) p. 1969) which is expressly what he described.

In an adversary system, is it normal to have to spar with one’s own counsel just for the right to be heard? Is the denial of autonomy by counsel offensive to the Constitution?

“Violation of a defendant’s Sixth Amendment-secured autonomy ranks as error of the kind our decisions have called ‘structural’; when present, such an error is not subject to harmless-error review.” “[S]uch as ‘the fundamental legal principle that a defendant must be allowed to make his own choices about the proper way to protect his own liberty.’” (*McCoy v. Louisiana*, (2018) 138 S.Ct. 1500, 1511)

Does “such an error is not subject to harmless-error review” mean not appealable?

PRIMARY SOURCE <https://chnm.gmu.edu/cyh/primary-sources/24.html>
Age of Consent Laws [Table]

Annotation

Information on the ages used historically in western age of consent laws is not readily available. This table has been compiled from a combination of historical and contemporary sources. By 1880, the first date chosen, many western nations had established an age of consent for the first time, typically of 12 or 13 years. By 1920, when the influence of reform campaigns that established a new link between the age of consent and prostitution had run its course, most had revised their age upward, to 14 or 15 in European nations, and 16 in the Anglo-American world. In the last decades of the 20th century, states and nations with ages below those averages amended their laws to move closer to them. In Europe that growing conformity owed much to moves toward greater European integration. Given that the rationale for the age of consent has remained essentially unchanged in its emphasis on the need to protect 'immature' children, the table highlights the shifting and various definitions of childhood employed across time and cultures.

Source

Date compiled from the following sources: Hirschfeld, Magnus. *The Homosexuality of Men and Women*. Translated by Michael Lombardi-Nash. Amherst, New York: Prometheus Books, 2000; Killias, Martin. "The Emergence of a New Taboo: The Desexualization of Youth in Western Societies Since 1800." *European Journal on Criminal Policy and Research* 8 (2000): 466; Odem, Mary. *Delinquent Daughters: Policing and Protecting Adolescent Female Sexuality in the United States, 1885-1920*. Chapel Hill: University of North Carolina Press, 1995; "Worldwide Ages of Consent," AVERTing HIV and Aids, www.avert.org/aofconsent.htm (accessed November 29, 2007).

Primary Source Text

Age Limit in Age of Consent Laws in Selected Countries

	1880	1920	2007
Austria	14	14	14
Belgium	-	16	16
Bulgaria	13	13	14
Denmark	12	12	15
England & Wales	13	16	16
Finland	-	12	16
France	13	13	15
Germany	14	14	14
Greece	-	12	15

	1880	1920	2007
Italy	-	16	14
Luxembourg	15	15	16
Norway	-	16	16
Portugal	12	12	14
Romania	15	15	15
Russia	10	14	16
Scotland	12	12	16
Spain	12	12	13
Sweden	15	15	15
Switzerland	various	16	16
Turkey	15	15	18
Argentina	-	12	13
Brazil	-	16	14
Chile	20	20	18
Ecuador	-	14	14
Canada	12	14	14
<i>Australia</i>			
New South Wales	12	16	16
Queensland	12	17	16
Victoria	12	16	16
Western Australia	12	14	16
<i>United States</i>			
Alabama	10	16	16
Alaska	-	16	16
Arizona	12	18	18
Arkansas	10	16	16
California	10	18	18
Colorado	10	18	15
Connecticut	10	16	16
District of Columbia	12	16	16
Delaware	7	16	16
Florida	10	18	18

	1880	1920	2007
Georgia	10	14	16
Hawaii	-	-	16
Idaho	10	18	18
Illinois	10	16	17
Indiana	12	16	16
Iowa	10	16	16
Kansas	10	18	16
Kentucky	12	16	16
Louisiana	12	18	17
Maine	10	16	16
Maryland	10	16	16
Massachusetts	10	16	16
Michigan	10	16	16
Minnesota	10	18	16
Mississippi	10	18	16
Missouri	12	18	17
Montana	10	18	16
Nebraska	10	18	17
Nevada	12	18	16
New Hampshire	10	16	16
New Jersey	10	16	16
New Mexico	10	16	17
New York	10	18	17
North Carolina	10	16	16
North Dakota	10	18	18
Ohio	10	16	16
Oklahoma	-	-	16
Oregon	10	16	18
Pennsylvania	10	16	16
Rhode Island	10	16	16
South Carolina	10	16	16
South Dakota	10	18	16

	1880	1920	2007
Tennessee	10	18	18
Texas	10	18	17
Utah	10	18	16
Vermont	10	16	16
Virginia	12	16	18
Washington	12	18	16
West Virginia	12	16	16
Wisconsin	10	16	18
Wyoming	10	16	16

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