

Client Instructions for Filing a Petition for Review

Regardless of whether you file a petition for rehearing in the Court of Appeal, you may ask the California Supreme Court to review your case. If you have decided to file a petition for review in the California Supreme Court, you must do so within 10 days after the decision of the Court of Appeal becomes final. The Court of Appeal decision becomes final 30 days after it was filed. **This means that you must file your petition for review between 30 and 40 days after the opinion is issued by the Court of Appeal.** (The date the opinion is issued is stamped on the first page of the court's opinion, usually in the top-right corner.) Your petition must be at the court by this date so if you mail it be certain to allow enough time for it to **arrive** in San Francisco at the Supreme Court on time. Unlike other deadlines, the posting date at the prison is **not** sufficient; the Supreme Court must actually **receive** your petition by the 40th day. The Supreme Court does not grant extensions of time to file a late petition under any circumstances. They will accept it earlier than the 30 days.

Once filed, the California Supreme Court will usually decide whether to review your case within 60 days after your petition is filed, although the Court can take up to 90 days to make this determination.

Under rule 8.500(b) of the Rules of Court, there are four grounds for review in the Supreme Court:

1. Where it is necessary to secure uniformity of decisions or to settle important questions of law;
2. Where the Court of Appeal was without jurisdiction of the cause;
3. Where the decision of the Court of Appeal lacks the concurrence of the required majority of qualified judges; or
4. For the purpose of transferring the case back to the Court of Appeal.

In all probability, your grounds for review will be under number 1 above; numbers 2 & 3 almost never occur. Any one of these grounds will be sufficient for a petition for review.

Your petition for review need not be an elaborate document. However, it must contain at the beginning of the brief, a Statement of the Issues presented, in concise, non-argumentative form. It must also contain a Discussion section of why the Court should grant review. This usually means a discussion of whether an important question of law is involved, or whether review is necessary to obtain uniformity of decisional law. Your Arguments and Legal Authorities section should follow next. A Certificate of Word Count should follow the arguments stating the number of words in the document. (Under rule 8.504(d) the petition may not exceed 8,400 words [if done on a computer], or may not exceed 30 pages [if done on a typewriter].) Next, a copy of the Court of Appeal opinion should be attached as an Appendix A. Finally, a Proof of Service must be included at the end. You should be able to find the addresses

for the Superior Court and the District Attorney by looking at the proof of service at the back of any briefs previously filed in your case.

Serve copies of the petition for review by mailing it to the following parties:

Signed original + 13 copies:
(14 total) Clerk of the Court
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

1 copy: **Office of the Attorney General**
P. O. Box 944255
Sacramento, CA 94244-2550

(or instead of Attorney General, serve 1 copy on **County Counsel** in dependency cases; see proof of service at the back of any brief previously filed in your case for their name and address)

1 copy: **Clerk of the Superior Court**
(see proof of service address of county court)

1 copy: **District Attorney** (if criminal case)
(See proof of service address in County of conviction)

1 copy to:
(if Third District case) Clerk of the Court of Appeal
Third District
914 Capitol Mall, 4th Flr.
Sacramento, CA 95814 (new address eff. 2/4/13)

(if Fifth District case) **Fifth District**
2424 Ventura Street
Fresno, CA 93721

The Proof of Service should reflect that service has been made on each of the parties above. If you cannot afford to make the extra 13 copies for the Court, send the original petition to the Supreme Court, and include a letter stating that you do not have funds to make copies of the petition; however, you must still serve 1 copy each on the other parties on the mailing list.

Remember to mail the signed original and 13 copies to the California Supreme Court in time for the Court to **receive** the document by the deadline of the 40th day after the date the opinion was filed in your case. If the Supreme Court decides to review your case, you will be contacted by them regarding appointment of counsel.

See the attached sample for the proper format of the petition.

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE)
OF CALIFORNIA,)
)
Plaintiff and Respondent,) Case No.
)
vs.)
)
[APPELLANT NAME],)
)
Defendant and Appellant.)
_____)

SAMPLE ONLY

Third Appellate District, Case No. _____
[COUNTY] County Superior Court, Case No. _____
The Honorable [TRIAL JUDGE'S NAME]

PETITION FOR REVIEW

ATTORNEY CAPTION

Attorney for Appellant

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE)
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Plaintiff and Respondent,) Case No.
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vs.)
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[APPELLANT NAME],)
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Defendant and Appellant.)
_____)

SAMPLE ONLY

Third Appellate District, Case No. _____
[COUNTY] County Superior Court, Case No. _____
The Honorable [TRIAL JUDGE'S NAME]

PETITION FOR REVIEW

ATTORNEY CAPTION

Attorney for Appellant

PETITION FOR REVIEW

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Petitioner [APPELLANT’S FULL NAME] petitions this court for review following the decision of the Court of Appeal, Third Appellate District, filed in that court on October 26, 2012. A copy of the decision of the Court of Appeal is attached hereto as Attachment A.

ISSUES PRESENTED

SAMPLE ONLY

1. Does a violation of Vehicle Code¹ section 5201 occur when a license plate is entirely readable but partially obstructed by a tow hitch ball?
2. Did the Court of Appeal improperly fail to defer to the trial court’s factual finding that every single letter and all the digits on Mr. [APPELLANT NAME]’s license plate could be determined even with a tow hitch ball in place on his bumper?

NECESSITY FOR REVIEW

In *People v. White* (2001) 93 Cal.App.4th 1022, 1026, the Fourth Appellate District broadly construed section 5201 and held that “a license plate must not be obstructed in any manner and must be entirely readable.” Under *White*’s construction of section 5201, “[a] license plate mounted in a

¹ All further statutory references will be to the Vehicle Code unless otherwise indicated.

place that results in it being partially obstructed from view by a trailer hitch ball violates Vehicle Code section 5201 and, thus, provides a law enforcement officer with a lawful basis upon which to detain the vehicle and hence its driver.” (*Ibid.*) Here, the Court of Appeal held that *White* was directly on point in this case after rejecting the trial court’s factual finding that Mr. [APPELLANT NAME]’s license plate number could be determined even with a tow hitch ball partially obstructing the license plate.

(Attachment A, pp. 3-6.)

As set forth in the “Argument” portion of this petition, the *White* court’s construction of section 5201, which the Court of Appeal followed in this case, will lead to unreasonable and arbitrary results. Under this construction of that statute, any obstruction of a license plate violates section 5201 even if a person can read the pertinent information on a license plate despite the obstruction, as found by the trial court in this case. This means that every driver with a partially obstructed vehicle license plate—including obstructions due to a tow hitch or a license plate frame—is currently violating section 5201. This construction of section 5201 raises serious constitutional issues and threatens the right of every driver with a partially obstructed but entirely readable license plate to be free from unreasonable searches and seizures. There is currently a split in authority

among a number of states as to whether a partially obstructed license plate constitutes a violation of the jurisdiction's license plate display statute, and a federal court has noted a constitutional issue with a statute similar to section 5201.

In addition to the issue of the proper construction of section 5201, this case also presents an issue regarding the lack of deference that the Court of Appeal gave the trial court's factual finding, which is explained further in the "Argument" section below.

Based on the above considerations, this case presents important questions of law that could impact an enormous number of drivers in California on a daily basis. Mr. [APPELLANT NAME] respectfully requests that this court grant review to decide the questions presented. (Cal. Rules of Court, rule 8.500(b)(1).)

STATEMENT OF THE CASE

An information filed on July 18, 2011 charged Mr. [APPELLANT NAME] with a felony violation of driving a vehicle under the influence of an alcoholic beverage or drug (Veh. Code, § 23152, subd. (a)) (count one) and a felony violation of driving a vehicle with a blood alcohol level above .08 percent (Veh. Code, § 23152, subd. (b)) (count two). (1 CT 28-29.) In connection with counts one and two, the information alleged that Mr.

[APPELLANT NAME] committed three prior violations of sections 23103, 23152, or 23153 within the past ten years (Veh. Code, § 23550). (1 CT 28-29.)

Following the denial of his motion to suppress evidence pursuant to Penal Code section 1538.5, Mr. [APPELLANT NAME] pleaded no contest to a violation of section 23152, subdivision (a), and the allegation that he suffered three prior convictions of a similar nature in the last ten years (count one) on November 7, 2011. (1 CT 40, 43-49.) The plea was conditioned on the trial court granting probation. (1 CT 43.) Count two was dismissed. (1 CT 49.)

On December 12, 2011, the court accepted Mr. [APPELLANT NAME]'s conditional plea and granted him probation. (1 CT 71-74.)

The Court of Appeal affirmed Mr. [APPELLANT NAME]'s judgment in full on October 26, 2012 in an unpublished opinion. (Attachment A.) He filed a petition for rehearing on November 13, 2012, which the court denied on November 16.

STATEMENT OF FACTS²

On December 31, 2010, a Yuba County Sheriff's Deputy stopped

² Because Mr. [APPELLANT NAME] pleaded no contest in this case, the statement of facts is based on the factual basis for the plea and the probation report. (See 1 RT 43; 1 CT 62.)

Mr. [APPELLANT NAME] for driving his truck with an obstructed license plate, an infraction. (1 CT 62.) California Highway Patrol officers who came to the scene performed a series of field sobriety tests and concluded that Mr. [APPELLANT NAME] was under the influence of alcohol. (1 CT 62.) He was arrested and agreed to take a breath test, which indicated that he had a .13 percent blood alcohol content. (1 CT 62; 1 RT 43.)

ARGUMENT

I. This Court Should Grant Review in This Case to Construe Section 5201 and Provide Guidance on How to Properly Defer to Factual Findings by a Trial Court Because the Current Construction of Section 5201 Adversely Impacts an Enormous Number of California Drivers by Subjecting Them to Unreasonable and Arbitrary Search and Seizures in Violation of the Fourth Amendment.

The current construction of section 5201 affects every driver in California who has a tow hitch, a license plate frame, or any other item that partially obstructs even a small portion of a vehicle's rear license plate. Even if all the pertinent information on the license plate is readable and the vehicle can be identified, the driver still violates section 5201 under the current construction of the statute. This court, which has never ruled on this issue, should determine whether the Legislature intended a violation of section 5201 to occur in these circumstances.

A. Additional Background

Prior to Mr. [APPELLANT NAME]'s no contest plea, the defense

filed a motion to suppress all observations of law enforcement officers, all Mr. [APPELLANT NAME]'s statements, and the results of Mr. [APPELLANT NAME]'s breath test. (1 CT 34-38.) At a hearing on the motion, the prosecution and the defense stipulated that Mr. [APPELLANT NAME] was driving a pickup truck on December 31, 2010, when a sheriff's deputy stopped him. (1 RT 30.) The prosecution introduced a photograph of the back of his pickup truck into evidence. (1 RT 30; ACT 1.) This photograph shows that the rear view of Mr. [APPELLANT NAME]'s license plate is partially obstructed by a tow hitch ball that is mounted a short distance in front of the license plate. (1 ACT 1.) This was the sheriff's deputy's view of Mr. [APPELLANT NAME]'s license plate when he stopped him. (1 RT 30.) There was no search warrant and no warrant for Mr. [APPELLANT NAME]'s arrest. (1 RT 31.)

The prosecution argued that the sheriff's deputy had probable cause to stop Mr. [APPELLANT NAME] based on an alleged violation of section 5201, which requires license plates to be clearly legible. (1 RT 30-33) Relying on *People v. White, supra*, 93 Cal.App.4th 1022, the prosecution argued that Mr. [APPELLANT NAME]'s trailer hitch ball obscured the lower half of the middle numeral on the rear license plate in violation of section 5201. (1 RT 31-33.)

The trial court denied the defense's motion to suppress because it was bound by *People v. White, supra*, 93 Cal.App.4th 1022. (1 RT 34-36.) However, based only on the photograph of the rear view of Mr. [APPELLANT NAME]'s truck, the trial court was able to accurately read Mr. [APPELLANT NAME]'s license plate, despite the presence of the tow hitch ball. (1 RT 34-35.) The trial court explained that "the ball does not obscure the ability of anyone to determine what that license plate number is." (1 RT 35.) The court went on to recognize that the Fourth District Court of Appeal in *White* held that anything that obscures the operative part of the license plate violates section 5201. (1 RT 35.) The court observed that *White's* interpretation of section 5201 led to the result that "everybody that has a trailer ball in any way that blocks any portion of a license plate is rolling probable cause to stop." (1 RT 35-36.) The trial court disagreed with the decision but felt bound to follow it. (1 RT 36.)

The trial court explained that it thought the purpose of section 5201 is to allow people "to determine the owner of a vehicle by being able to determine what the license plate number is." (1 RT 36.) The court observed that even with the tow hitch ball in place, it was able to determine Mr. [APPELLANT NAME]'s license plate number. (1 RT 36.) The court had "no special expertise in the shape of license plate numbers or anything

else that would lead me to come to a conclusion that anybody else couldn't have come to." (1 RT 36.) Although the court denied the defense's motion to suppress because it was bound by *White*, the court made a factual finding that "every single letter and all the digits on this license plate can be determined even with that ball in place." (1 RT 36.)

B. This Court Should Grant Review to Limit *People v. White* (2001) 93 Cal.App.4th 1022 and Provide a Reasonable and Constitutional Construction of Section 5201.

Section 5201 provides, relevant to this case:

License plates shall at all times be securely fastened to the vehicle for which they are issued so as to prevent the plates from swinging, shall be mounted in a position so as to be clearly visible, and so that the characters are upright and display from left to right, and shall be maintained in a condition so as to be clearly legible.

"A vehicle license plate is a state-imposed display of registered vehicle identification." (*Kahn v. Department of Motor Vehicles* (1993) 16 Cal.App.4th 159, 166.) As the trial court in this case recognized, the purpose of section 5201 is to allow people "to determine the owner of a vehicle by being able to determine what the license plate number is." (1 RT 36.) California requires vehicles to be registered to protect innocent purchasers against fraud, identify drivers in the case of an accident, and deter vehicle theft. (*Buzard v. Justice Court for Atwater Judicial Dist.*

(1962) 198 Cal.App.2d 814, 817.) License plates are issued once a vehicle is registered to identify the vehicle. (Veh. Code, § 4850, subd. (a).) It follows that section 5201 requires license plates to be “clearly visible” and “clearly legible” so other people can identify the vehicle.

As noted above, in *People v. White, supra*, 93 Cal.App.4th 1022, 1026, the Fourth Appellate District broadly construed section 5201 and held that “a license plate must not be obstructed in any manner and must be entirely readable.” In enacting section 5201, the court reasoned that the Legislature intended “that the view of the license plate be entirely unobstructed.” (*Id.* at p. 1025.) The Court of Appeal in this case followed the *White* court’s construction of section 5201. (Attachment A, pp. 4-9.) Because Mr. [APPELLANT NAME]’s license plate was obstructed, the court concluded that the deputy had probable cause to stop his truck. (Attachment A, p. 9.)

The trial court’s factual finding that Mr. [APPELLANT NAME]’s license plate number could still be determined despite the presence of a tow hitch raises a serious constitutional issue with the *White* court’s construction of section 5201 and illustrates how this construction is unreasonable and arbitrary in light of the purpose of the statute. Under the *White* court’s construction, a violation of this section occurs even if all the pertinent,

identifying information on a license plate is legible and readable if the license plate is obstructed in any way, as illustrated by this case. (See Veh. Code, §§ 4851, 5204, subd. (a) [information displayed on license plate].) Finding a violation in these circumstances is unreasonable and arbitrary given that purpose of the statute is to ensure that a vehicle can be identified. (See *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, 1291 [courts will avoid statutory construction that would lead to unreasonable, impractical, or arbitrary results]; *People v. Arias* (2008) 45 Cal.4th 169, 177 [when “statute is amenable to two alternative interpretations, the one that leads to the more reasonable result will be followed”].) It is unreasonable under the Fourth Amendment to allow law enforcement to stop a vehicle based on a violation of section 5201 if an officer can see and read the pertinent information on the license plate and identify the vehicle. (See *People v. Hernandez* (2008) 45 Cal.4th 295, 299, quoting *Delaware v. Prouse* (1979) 440 U.S. 648, 663 [99 S.Ct. 1391, 59 L.Ed. 2d 660].) Further, the current construction of section 5201 leaves the statute vulnerable to a constitutional challenge on vagueness grounds because a violation occurs even if the license plate is still readable but partially obstructed. (See *United States v. Cardenas-Alatorre* (10th Cir. 2007) 485 F.3d 1111, 1112, 1114-1116 [holding deputy who could not read license

plate due to partial obstruction by frame did not act in objectively unreasonable manner under the Fourth Amendment and noting that nothing in the court’s analysis of the issue was “meant to prejudge whether a vagueness challenge to the New Mexico law shouldn’t or wouldn’t ultimately succeed”].)

A number of state courts have wrestled with the issue of partially obstructed license plates as well. Florida and Ohio courts have held that each state’s respective license plate display statute was not violated even when a license plate was partially obstructed by a tow hitch or a license plate frame. (*Harris v. State* (Fla. Dist. Ct. App. 2d Dist. 2009) 11 So.3d 462, 463-464 [trailer hitch that partially blocked license plate tag did not violate Florida license plate display statute]; *State v. Brooks* (11th Dist. Ct. App. No. 2005-L-200) 2007 Ohio 344, at P34-39³ [no violation of Ohio license plate display statute occurred because officer could partially read numbers on photograph of license plate at hearing even though plate was partially obstructed by frame]; *State v. Ronau* (Dec. 6, 2002, 6th Ct. App., No. L-02-1147) 2002 Ohio 6687, at P7, P17-18 [vehicle stop was unlawful

³ Ohio Courts of Appeal opinions “issued after May 1, 2002 may be cited as legal authority and weighted as deemed appropriate by the courts without regard to whether the opinion was published or in what form it was published.” (Ohio Rules for the Regp. of Opns., rule 3.4 <<http://www.supremecourt.ohio.gov/LegalResources/rules/reporting/Report.pdf>>.)

where sole reason for stop was that trailer hitch was blocking a portion of the license plate and officer testified that extent to which plate was obscured differed according to his position behind the car from side to side as well as the distance from the car; officer could read plate when he stood directly behind the vehicle].)

Other states have concluded that license plate obstructions due to a tow hitch or license plate frame constitute a violation the jurisdiction's license plate display statute. (*State v. Hill* (N.M. Ct. App. 2001) 34 P.3d 139, 146-147 [sufficient evidence to support conviction for improper display of license plate where renewal sticker was not visible because it was obscured by truck's trailer hitch]; *State v. Jacquez* (N.M. Ct. App. 2009) 222 P.3d 685, 687-688 [registration sticker that is obstructed by a license plate frame placed over the sticker so as to prevent the information contained on the sticker from being read constitutes a violation of New Mexico license plate display statute; officer was unable to see expiration date of registration sticker]; *Parks v. State* (Wyo. 2011) 247 P.3d 857, 857, 860 [a trailer ball mounted in a place that causes it to partially obstruct a license plate from view violates Wyoming license plate display statute; officer unable to read license plate due to obstruction]; *State v. Smail* (Sept. 27, 2000, 5th Dist. No. 99COA01339) 2000 Ohio App. LEXIS 4599, at *5-

7⁴ [license plate was not in plain view because two middle numbers were obstructed by a trailer ball hitch; officers were unable to read the two middle numbers]; *State v. Robinson* (8th Dist. Ct. App. No. 85149) 2005 Ohio 2834, at P6, P29-30 [bracket that surrounded rear license plate and partially obscured a required state sticker constituted violation of Ohio license plate display statute].) In many of these cases, however, officers testified that the obstruction preventing them from reading information on the license plate.

SAMPLE ONLY

Some courts have noted that an officer's ability to read a license plate despite an obstruction determines whether a violation of a license plate display statute occurs. (*United States v. Cardenas-Alatorre, supra*, 485 F.3d 1111, 1115 [court found that deputy acted in reasonable manner under the Fourth Amendment based on its understanding that New Mexico's license plate display statute allows officers to stop vehicles "only when foreign material prevents them from *reading* the information contained on a license plate" (emphasis added)]; *State v. Cromes* (3d Ct. App. No. 17-06-07) 2006 Ohio 6924, at P5-9, P14-15, P49 [once officer observed that he had misread legible license plate, he no longer maintained

⁴Although this is an unpublished opinion, it is included for the court's convenience because it is discussed in other cited cases.

a reasonable articulable suspicion that vehicle was not properly licensed or registered and that driver was in violation of Ohio license plate display statute; officer initially unable to read license plate due to dirt or manufacturer defect].)

Based on these considerations, Mr. [APPELLANT NAME] respectfully requests that this court grant review to consider this issue that has a widespread impact on California drivers.

C. This Court Should Grant Review to Provide Guidance on the Proper Treatment of Factual Findings by Trial Courts.

The Court of Appeal here failed to properly consider the trial court’s factual finding below. To reject the trial court’s factual finding, the Court of Appeal had to find that substantial evidence did not support the finding that Mr. [APPELLANT NAME]’s license plate number can be determined despite the presence of a tow hitch. (See 1 RT 36; *People v. Hernandez, supra*, 45 Cal.4th 295, 298-299.) Instead of determining whether this factual finding was supported by the record, the Court of Appeal misconstrued the factual finding, concluding instead that the “finding was not supported by substantial evidence, because the license number was partially obstructed under *White . . .*” (Attachment, p. 5.) The court explained that “[t]he fact that the trial court could apparently deduce or

determine the correct license plate number does not demonstrate that the plate was *completely unobstructed*.” (Attachment A, p. 5 [emphasis in original].) The Court of Appeal found that the numbers “are partially obstructed” and “are not clearly visible.” (Attachment A, p. 5.)

The trial court, however, did not make a factual finding that the license plate number was completely unobstructed. (See 1 RT 34-36.) The trial court made a factual finding that the Mr. [APPELLANT NAME]’s license plate number could still be determined even with the tow hitch partially obstructing the number because it was, in fact, readable. (1 RT 36.) If the Court of Appeal could read and determine the letters and numbers on Mr. [APPELLANT NAME]’s license plate then the trial court’s factual finding is supported by substantial evidence. Mr. [APPELLANT NAME] directed the Court of Appeal’s attention to its misstatement of the trial court’s factual finding in a petition for rehearing, which the court denied.

Mr. [APPELLANT NAME] respectfully requests that this court grant review on this issue to provide guidance to appellate courts regarding how to properly defer to a trial court’s factual findings, or alternatively to transfer the case back to the Third District Court of Appeal with directions to give due deference to the trial court’s factual finding.

CONCLUSION

Appellant respectfully requests that this court grant review.

Date: December 3, 2012

Respectfully submitted,

ATTORNEY INFO CAPTION

Attorney for Appellant

SAMPLE ONLY

Certificate of Appellate Counsel
Pursuant to Rules 8.504(d)(1) of the California Rules of Court

I, [ATTORNEY], appointed counsel for appellant, certify pursuant to rule 8.504(d)(1) of the California Rules of Court, that I prepared this opening brief on behalf of my client, and that the word count for this opening brief is 4046.

This petition for review complies with the rule that limits a brief to 8,400 words, including footnotes. I certify that I prepared this document in WordPerfect 14 and that this is the word count WordPerfect generated for this document.

DATED: December 3, 2012

[ATTORNEY NAME]
Attorney for Appellant