

[ATTORNEY-INFO
HEADING]

COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE [THIRD/FIFTH] APPELLATE DISTRICT

PEOPLE OF THE STATE OF)	
CALIFORNIA,)	[No. _____]
)	
Plaintiff and Respondent,)	_____ County Superior
)	Court No. _____
v.)	
)	
[NAME OF APPELLANT],)	
)	
Defendant and Appellant.)	
_____)	

APPLICATION TO DETERMINE APPELLATE JURISDICTION

TO THE HONORABLE [xxxxxx], PRESIDING JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA [THIRD/FIFTH] APPELLATE DISTRICT

Pursuant to rules 8.50, 8.304, and 8.340 of the California Rules of Court, appellant [name of appellant] by and through his counsel, requests this court to determine whether the Court of Appeal has appellate jurisdiction over this case.

Appellant, [name of appellant], was charged with [state charges] by way of felony complaint filed on [date], in [county name] County Superior Court. (CT xx.)

At the preliminary hearing, the charge was reduced to a misdemeanor. (Pen. Code, § 17, subd. (b).) Appellant was subsequently convicted at trial. (CT xx.)

Applicable Law

The court in *People v. Nickerson* (2005) 128 Cal.App.4th 33, was called upon to answer a similar question regarding appellate jurisdiction. Nickerson had been charged with child endangerment (a wobbler charged as a felony) and two misdemeanors. At the preliminary hearing, the magistrate reduced the child endangerment to a misdemeanor and dismissed one misdemeanor. Nickerson was tried and conviction on one misdemeanor count. (*Id.* at p. 36.) He filed a notice of appeal, and the clerk of the superior court directed the appeal to the Court of Appeal. (*Ibid.*) The Court of Appeal held:

[A] defendant is not “charged with a felony” within the meaning of section 691 until an information or indictment is filed or a complaint is certified to the superior court pursuant to section 859a. (See § 949.) When the matter goes before the magistrate for a preliminary examination and the court as magistrate reduces all of the felony charges from felonies to misdemeanors under section 17, subdivision (b)(5), the defendant is never charged with a felony. The resulting case

is thus a misdemeanor case and appellate jurisdiction belongs in the appellate division of the superior court. (*People v. Nickerson, supra*, 128 Cal.App.4th at p. 38.)

The *Nickerson* court then transferred the fully briefed matter back to the appellate division of the superior court from which it originated. (*Id.* at pp. 40-41.)

Conclusion

In the interests of judicial economy, this court should review and determine appellate jurisdiction before this case proceeds further.

DATED: _____

Respectfully submitted,

[NAME OF ATTORNEY]
Attorney for Appellant
[Client Name]