

Motion for Bail on Appeal

Use standard motion format: lined for trial court; unlined for appellate court filings

Note that Rule 8.312(b) requires that the application be made first in the trial court

**APPLICATION FOR BAIL ON APPEAL
AND MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT THEREOF**

Appellant, [NAME OF APPELLANT], hereby applies to this court for bail on appeal, and requests that it be set in the amount of \$100,000. This motion is made pursuant to Penal Code sections 1272 and 1272.1. Hereinafter, all statutory references are to Penal Code sections 1272-1272.1, and to California Rule of Court, rule 8.312(b), and the accompanying Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

A. Statement of Facts (SAMPLE ONLY)

Appellant was a member of the United States Marine Corps for seven years, and then a San Diego police officer for over three years at the time of the offense for which he was convicted. (CT 164) He was convicted of second degree murder of his wife, who was a San Diego Sheriff's trainee, during an argument in their home in which his wife pointed a gun at him. (RT 543) Appellant testified that he did not know how the gun was discharged when after he was able to take it away from her, and that he did not intentionally fire the weapon. (RT 600)

On appeal, appellant urges that the trial court committed instructional error which permitted the jury to convict on the impermissible basis of spousal abuse felony murder,

and that the prosecutor committed prejudicial misconduct in closing argument during which he effectively urged that theory of conviction to the jury.

Appellant filed his opening brief on appeal by mail on March 28, 1990 at the same time as this application is filed. He was convicted of one count of second degree murder, with a two year enhancement for use of a firearm. He was sentenced to prison for a term of 17 years to life. (CT 257)

On May 5, 1989, appellant the court to set bail on appeal in the amount of \$100,000, the amount of bail set during the trial proceedings. The trial court noted that appellant had not missed any court appearances. (RT 854-855) The trial court denied the motion, indicating that it did not think appellant's appeal was frivolous, but that it did not think it was substantial either, and the court considered there was a likelihood of flight in view of the seriousness of the sentence. (RT 858-859)

Appellant requests this court to set bail on appeal on the grounds that he meets the criteria of Section 1272.1 generally, and particularly that he meets the criteria of section 1272.1, subdivision (c), and he requests that it be set in the amount of \$100,000.

B. Applicable Law

Penal Code section 1272.1 sets three criteria for release on bail pending appeal.

Appellant submits that he meets all three:

1. Section 1272.1(a) - Appellant is not likely to flee. Analyzing the subparts:

a. Section 1272.1(a)(1) - Ties to the community:

Appellant continues to have ties to the community. His son is being cared for by the child's maternal grandmother, who lives in the San Diego area. (CT 165) He had

been gainfully employed in the area. Although it would appear unlikely that appellant would not be reinstated in the police department pending appeal, his record of military service, police employment, and pursuit of further education while in the military and while employed shows that appellant is hard working, and would be able to obtain employment in the area while on bail. (CT 164) While appellant's mother lives in Philadelphia, she does live in the United States. (CT 165) Contrary to the prosecutor's assertions, there is no showing that appellant, who is a United States citizen, has any present ties to another country that would assist him in fleeing should he be released on bail.

b. Section 1272.1(a)(2) - Record of appearance:

As the trial court noted below, appellant was on a bail of \$100,000, and made all of his court appearances. (RT 854-855)

c. Section 1272.1(a)(3) - Severity of sentence:

While it is reasonable to consider a 17-year-prison sentence relatively severe, appellant's history as a hard working military man and police officer indicate he has every reason to appear while on appeal in anticipation of a new trial and ultimate exoneration so that he may resume the productive life he was leading prior to the tragedy of his wife's death.

2. Section 1272.1(b) - Appellant does not pose a danger to the community:

This case involves the death of his wife in an argument in their home in which she produced and pointed a firearm at appellant. There was no suggestion at trial or during the hearing on bail by the prosecutor or court that appellant posed a threat to the safety of

any person or the community. (RT 854-859)

3. Section 1272.1(c) - Substantial issue on appeal:

Appellant submits that his appeal raises substantial legal questions which, if decided in his favor, will result in reversal. The present appeal is not for the purposes of delay. The two primary issues raised are: 1) instructional error which permitted the jury to consider the impermissible theory of spousal abuse felony murder, and 2) prosecutorial misconduct amounting to prejudicial error. Either of those errors requires reversal.

C. Conclusion

Because it appears that appellant meets all of the criteria of section 1272.1, bail should be granted. In particular, it does not appear that this application is for the purposes of delay, or that there is no substantial issue which might result in a reversal in appellant's favor. Bail should be granted. The sum of \$100,000 is a high bail, and it previously secured his court appearances.

[Date]

Respectfully submitted

[ATTORNEY NAME]
Attorney for Appellant