

COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Supreme Court Copy

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

WILLIAM FREDERICK MAULTSBY,

Defendant and Appellant.

S182042

SUPREME COURT
FILED

OCT 25 2010

Frederick K. Ohlrich Clerk



AT
Deputy

Court of Appeal, Third Appellate District, No. C060532
Yolo County Superior Court No. 08868

Hon. Thomas Warriner, Judge

APPELLANT'S OPENING BRIEF ON THE MERITS

ELIZABETH CAMPBELL
Attorney at Law
State Bar No. 166960

1215 K Street
17th Floor
Sacramento, CA 95814
(916) 444-8538

Attorney for Appellant

TABLE OF CONTENTS

	<u>Page</u>
APPELLANT’S OPENING BRIEF ON THE MERITS	1
INTRODUCTION	1
STATEMENT OF THE CASE AND FACTS	3
ARGUMENT	
PENAL CODE SECTION 1237.5 DOES NOT APPLY TO AN APPEAL FROM JUDGMENT ENTERED FOLLOWING TRIAL BY JURY, AND <i>PEOPLE V. FULTON</i> SHOULD BE OVERRULED	5
A. Under the Plain Language of Section 1237.5, a Certificate of Probable Cause Is Required Only Where the Defendant Has Pleaded Guilty or No Contest to the Underlying Offense, and Does Not Apply to an Appeal Following a Court or Jury Trial.	6
B. The Clear Legislative Intent Behind Section 1237.5 Is to Prevent Unnecessary Record Preparation in Guilty Plea Appeals, and Applying Section 1237.5 to an Appeal Following a Trial Does Nothing to Further this Intent.	13
C. This Court Should Overrule the Decision in <i>People v. Fulton</i> .	17
CONCLUSION	21
CERTIFICATE OF WORD COUNT	21

TABLE OF AUTHORITIES

	<u>Page</u>
 <u>Cases</u>	
<i>Day v. City of Fontana</i> (2001) 25 Cal.4th 268	6
<i>In re Chavez</i> (2003) 30 Cal.4th 643	14
<i>In re Joseph B.</i> (1983) 34 Cal.3d 952	10, 20
<i>In re Marriage of Harris</i> (2004) 34 Cal.4th 210	6
<i>People v. Brown</i> (2010) 181 Cal.App.4th 356	16
<i>People v. Canty</i> (2004) 32 Cal.4th 1266	6
<i>People v. Castro</i> (1974) 42 Cal.App.3d 960	14
<i>People v. Cole</i> (2001) 88 Cal.App.4th 850	13
<i>People v. Fulton</i> (2009) 179 Cal.App.4th 1230	1, 2, 4-6, 13, 17-19
<i>People v. Hoffard</i> (1995) 10 Cal.4th 1170	2, 10, 11, 14, 15, 17
<i>People v. Jones</i> (1995) 10 Cal.4th 1102	11, 12, 15, 19
<i>People v. Lobaugh</i> (1987) 188 Cal.App.3d 780	19, 20
<i>People v. Lovings</i> (2004) 118 Cal.App.4th 1305	16
<i>People v. McEwan</i> (2007) 147 Cal.App.4th 173	16
<i>People v. Meals</i> (1975) 49 Cal.App.3d 702	14
<i>People v. Mendez</i> (1999) 19 Cal.4th 1084	5, 13, 14, 16, 18, 19
<i>People v. Mosby</i> (2004) 33 Cal.4th 353	9
<i>People v. Nguyen</i> (2009) 46 Cal.4th 1007	9
<i>People v. Panizzon</i> (1996) 13 Cal.4th 68	2, 14, 16, 19
<i>People v. Perry</i> (1984) 162 Cal.App.3d 1147	20
<i>People v. Ribero</i> (1971) 4 Cal.3d 55	15
<i>People v. Thurman</i> (2007) 157 Cal.App.4th 36	20
<i>People v. Watson</i> (1979) 89 Cal.App.3d 605	10
<i>People v. Wende</i> (1979) 25 Cal.3d 436	14
<i>People v. Williams</i> (1980) 103 Cal.App.3d 507	20
<i>People v. Williams</i> (2007) 156 Cal.App.4th 898	16

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Codes</u>	
Penal Code	
§ 484	3
§ 490.5	3
§ 666	3
§ 667	3
§ 1016	9, 10
§ 1019	9
§ 1025	9
§ 1158	9
§ 1237	1, 2, 5, 7, 8, 12, 13, 16, 19
§ 1237.1	8
§ 1237.5	1, 2, 5-7, 9-17, 20
§ 1538.5	19
 <u>California Rules of Court</u>	
Rule 8.304, subd. (a)	8
Rule 8.304, subd. (b)	5, 8, 12, 15, 18, 19
Rule 8.308	5, 8

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,

S182042

Plaintiff and Respondent,

C060532

v.

Yolo County
Superior Court
No. 08868

WILLIAM FREDERICK MAULTSBY,

Defendant and Appellant.

APPELLANT'S OPENING BRIEF ON THE MERITS

INTRODUCTION

This court has limited briefing to the following issue:

Was defendant required to obtain a certificate of probable cause to raise on appeal a claim that his admissions regarding prior conviction allegations were not knowingly and intelligently made, even though he was convicted by jury of the underlying offense? (See Pen. Code, § 1237.5; *People v. Fulton* (2009) 179 Cal.App.4th 1230.)

The plain language of Penal Code section 1237.5 refers only to appeals taken from pleas of guilty or no contest, not to appeals following a jury trial on the substantive charges. The statute does not include or even mention admissions to sentencing allegations. A plea from judgment following conviction by jury trial is governed by Penal Code section 1237, which does not require a defendant to seek a certificate of probable cause.

Moreover, the Court of Appeal's interpretation of section 1237.5 is contrary to this court's prior findings regarding the legislative intent underlying that statute. The purpose for requiring a certificate of probable cause for appeals from pleas of guilty or nolo contendere is to discourage and weed out frivolous or vexatious appeals challenging convictions following such pleas, and to promote judicial economy by screening out wholly frivolous guilty and nolo contendere plea appeals before time and money is spent preparing the record and briefs for consideration by reviewing court. (*People v. Panizzon* (1996) 13 Cal.4th 68, 75-76; *People v. Hoffard* (1995) 10 Cal.4th 1170, 1177.) Since appellant here had a statutory right under Penal Code section 1237 to pursue an appeal of his conviction, barring him from also seeking review of the admitted prior conviction allegation does nothing to promote the legislative intent of fostering judicial economy.

This court should reverse the holding of the Third District Court of Appeal in the instant case, and overrule *People v. Fulton* (2009) 179 Cal.App.4th 1230.

STATEMENT OF THE CASE AND FACTS

Elvin Tasby, a plain-clothes security person employed by Wal-Mart, testified that he was on duty on January 13, 2008, when he saw a person later identified as William Maultsby go through the theft-detection machine and set off the alarm. (1 RT 47-50, 52-53, 59.) Tasby asked Maultsby to identify himself, and asked him to step back through the theft-detection machine again. (1 RT 53.) Maultsby reached into his jacket and removed a package of nicotine gum. (1 RT 53, 55, 57-58.) Tasby asked Maultsby to go through the theft-identification machine a second time, and again the alarm went off. (1 RT 55-56.) Maultsby removed another packet of nicotine gum. (1 RT 55-56.)

Both packets of nicotine gum were Wal-Mart merchandise, with a total retail value of \$83.56, for which Maultsby did not have a receipt. (1 RT 57-58.)

On May 22, 2008, Yolo County information number 08-00868 charged Maultsby with petty theft with a prior conviction. (Pen. Code, §§ 484, subd. (a); 490.5, subd. (a); 666.) (CT 29-30.) The information further alleged that he had suffered a prior violent or serious felony conviction within the meaning of Penal Code section 667, subdivisions (c) and (e)(1). (CT 30.)

Following a jury trial, Maultsby was found guilty of the charged offense on July 22, 2008. (CT 57.) Maultsby admitted the prior conviction on July 21, 2008. (CT 37.)

On November 20, 2008, the court sentenced Maultsby to a doubled lower term, amounting to 32 months in state prison. (CT

99.) Appellant filed timely notice of appeal on November 26, 2008. (CT 115.)

On appeal, appellant argued that his admission of the prior serious felony allegation was not knowing and intelligent under the totality of the circumstances, because he was not advised of his right to remain silent or to confront witnesses. (Appellant's Opening Brief, pp. 4-13.) Following submission of briefs by both parties, the Court of Appeal requested supplemental briefing on the issue of whether appellant required a certificate of probable cause to challenge his admission of a prior strike. After the parties submitted briefs on the matter, the court issued an opinion on March 16, 2010, dismissing the appeal for failure to comply with Penal Code section 1237.5. (Slip opn., p. 3.) In so ruling, the court relied on its own recent holding in *People v. Fulton* (2009) 179 Cal.App.4th 1230.

On June 30, 2010, this court granted review, limiting the issue for review to the question of whether appellant was required to obtain a certificate of probable cause in order to challenge the prior serious felony admission.

ARGUMENT

PENAL CODE SECTION 1237.5 DOES NOT APPLY TO AN APPEAL FROM JUDGMENT ENTERED FOLLOWING TRIAL BY JURY, AND *PEOPLE V. FULTON* SHOULD BE OVERRULED

Relying upon *People v. Fulton* (2009) 179 Cal.App.4th 1230, the Court of Appeal dismissed appellant's appeal for failure to comply with Penal Code section 1237.5. The appellate court erred, because appeals from judgments following trial by jury are governed by section 1237, which does not require a defendant to seek a certificate of probable cause as a prerequisite to pursuing an appeal. This court should reverse the Court of Appeal's holding, overrule *People v. Fulton*, and remand this case for further proceedings.

Appeals following guilty or no contest pleas are strictly limited by multiple statutes, rules, and case law. (See, e.g., Pen. Code, § 1237.5; Rule 8.304, subd. (b); *People v. Mendez* (1999) 19 Cal.4th 1084.) Jury trial appeals, by contrast, have historically been limited only by a requirement that the notice of appeal be timely filed. (Pen. Code, § 1237; Rule 8.308.) Here the Third District has imposed a new hurdle on certain classes of jury trial appeals, a hurdle unsupported by either the plain language of the relevant statutes or by the policies outlined by this court's decisional law.

People v. Fulton, supra, 179 Cal.App.4th 1230, relied upon by the court below, was incorrectly decided and should be overruled by this court. Penal Code section 1237.5 requires that a

person seeking review of the validity of a plea of guilty or no contest first obtain a certificate of probable cause, but this statute by its plain language applies only to pleas to substantive charges, not to admissions of enhancement allegations. This court should overrule *People v. Fulton*.

- A. Under the Plain Language of Section 1237.5, a Certificate of Probable Cause Is Required Only Where the Defendant Has Pleaded Guilty or No Contest to the Underlying Offense, and Does Not Apply to an Appeal Following a Court or Jury Trial.

The goal of statutory construction is “to ascertain the Legislature’s intent so as to effectuate the purpose of the statute.” (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272.) The first step in construing any statute is to consider the language of the statute, giving the words their usual and ordinary meaning, in a manner that gives “significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose. [Citation.]” (*People v. Canty* (2004) 32 Cal.4th 1266, 1276.) The court should not consider one statute in isolation, but should read any statute “with reference to the entire scheme of law of which it is a part so that the whole may be harmonized and retain effectiveness.” (*In re Marriage of Harris* (2004) 34 Cal.4th 210, 222.)

Appeals following guilty or no contest pleas are governed by both statutory law and the California Rules of Court. Penal Code section 1237.5 provides:

No appeal shall be taken by the defendant from a **judgment of conviction upon a plea of guilty or**

nolo contendere, or a revocation of probation following an admission of violation, except where both of the following are met:

(a) The defendant has filed with the trial court a written statement, executed under oath or penalty of perjury showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings.

(b) The trial court has executed and filed a certificate of probable cause for such appeal with the clerk of the court.

(Pen. Code, § 1237.5, emphasis added.) As noted, the terms of the statute and apply only to “a judgment of conviction upon a plea of guilty or nolo contendere” or an admitted probation violation.

(Pen. Code, § 1237.5.) The statute makes no reference to a conviction by jury trial preceded by an admission of a prior conviction allegation.

Section 1237.5 is an exception to the general rule governing appeals taken by the defendant, which is outlined in section 1237:

An appeal may be taken by the defendant:

(a) From a final judgment of conviction except as provided in Section 1237.1 and Section 1237.5. A sentence, an order granting probation, or the commitment of a defendant for insanity, the indeterminate commitment of a defendant as a mentally disordered sex offender, or the commitment of a defendant for controlled substance addiction shall be deemed to be a final judgment within the meaning of this section. Upon appeal from a final judgment the court may review any order denying a motion for a new trial.

(b) From any order made after judgment, affecting the substantial rights of the party.

(Pen. Code, § 1237.)¹ Section 1237 places no limitation on appeals which include an admission of a prior conviction allegation.

In addition to the statutory provisions, California Rules of Court, Rule 8.304, provides further details regarding the form and content of notices of appeal. Subdivision (a) of that rule states, in relevant part:

(1)To appeal from a judgment or an appealable order of the superior court in a felony case – other than a judgment imposing a sentence of death – the defendant or the People must file a notice of appeal in that superior court. To appeal after a plea of guilty or nolo contendere or after an admission of probation violation, the defendant must also comply with (b).

(Rule 8.304, subd. (a)(1).) Subdivision (a)(4) notes that the notice of appeal is to be liberally construed.

Subdivision (b) of Rule 8.304 applies specifically to an “appeal from a superior court judgment after a plea of guilty or nolo contendere or after an admission of probation violation” (Rule 8.304, subd. (b)(1)), and addresses the additional procedural hurdles imposed on such appeals, including the need for a certificate of probable cause or for specific language limiting the scope of the appeal to matters occurring after the plea. (Rule 8.304, subd. (b)(4).) Rule 8.308 specifies the time frame in which a notice of appeal must be filed, but other than those already discussed, no rule or statutory provision otherwise limits the type

¹Section 1237.1 applies to appeals in which the defendant claims error in the calculation of presentence custody credits.

of appeal that may be taken from a judgment following a trial by court or jury.

Section 1237.5 plainly applies to “a plea of guilty or nolo contendere,” and makes no mention of admissions to prior conviction or other enhancement allegations. Significantly, the Legislature has elsewhere distinguished between guilty and no contest pleas and other types of admissions. Penal Code section 1016 lists six types of pleas; guilty and no contest pleas are among those listed. (Pen. Code, § 1016.) Admissions to sentencing allegations are not included in section 1016, but are instead described by the Legislature in Penal Code section 1158. (Pen. Code, § 1158.) Section 1025 likewise distinguishes between “pleas” to substantive offenses and “admissions” or “denials” of prior conviction allegations. (Pen. Code, § 1025, subd. (a).) Section 1019 holds that:

The plea of not guilty puts in issue every material allegation of the accusatory pleading, except those allegations regarding previous convictions of the defendant to which an answer is required by Section 1025.

(Pen. Code, § 1019.) Thus, it is abundantly clear that the Legislature treats pleas and admissions differently, as has this court. (Cf. *People v. Nguyen* (2009) 46 Cal.4th 1007, 1015; *People v. Mosby* (2004) 33 Cal.4th 353, 360.) Had the Legislature intended for appeals from admissions to prior conviction allegations to be included among the types of appeals limited by section 1237.5, the Legislature could and would have expressly included language to that effect.

This court has previously strictly interpreted section 1237.5 to apply only to pleas of guilty and no contest. (*In re Joseph B.* (1983) 34 Cal.3d 952, 955.) In *Joseph B.*, the court held that a minor who had admitted the allegations of a juvenile petition need not obtain a certificate of probable cause as a prerequisite to appealing, because minors are neither “defendants” nor do they “plead guilty,” and therefore the plain language of section 1237.5 does not apply to juvenile proceedings. (*In re Joseph B.*, *supra*, 34 Cal.3d at p. 955.)

Likewise, the Court of Appeal, Fifth Appellate District, has strictly interpreted section 1237.5 to apply only to the specific proceedings enumerated in that section. In *People v. Watson* (1979) 89 Cal.App.3d 605, that court found that section 1237.5 did not require that a defendant obtain a certificate of probable cause as a prerequisite to appealing a judgment of conviction upon a plea of insanity. (*People v. Watson*, *supra*, 89 Cal.App.3d at pp. 609-610.) Noting that a plea of not guilty by reason of insanity is enumerated separately from pleas of guilty or nolo contendere under Penal Code section 1016, the court in *Wagoner* concluded that “the Legislature could not have intended that section 1237.5 would apply to appeals from convictions following an insanity plea.” (*Id.* at p. 610.)

In *People v. Hoffard* (1995) 10 Cal.4th 1170,, this court reviewed the plain language of section 1237.5 in considering the issue of whether an appeal could proceed on a certificate issue other than the issue listed in a defendant’s signed statement filed

in support of a certificate of probable cause. The court concluded that an appellate court could entertain cognizable claims not identified in the defendant's statement of grounds or in the trial court's certificate of probable cause. (*People v. Hoffard, supra*, 10 Cal.4th at p. 1174.) In so holding, the court found that section 1237.5 neither expressly nor implicitly limits the issues that may be raised on appeal once a certificate of probable cause has been obtained. (*People v. Hoffard, supra*, 10 Cal.4th at p. 1177.) This court held that when a defendant has obtained a certificate of probable cause, the appellate court is free to consider any cognizable claim, including those not mentioned in the request for certificate of probable cause. (*Ibid.*)

Significantly, the court in *Hoffard* emphasized the statutory language stating that “no appeal shall be *taken ...*” (*People v. Hoffard, supra*, 10 Cal.4th at p. 1177.) This court held:

By its terms the statute thus determines only whether or not an appeal may be taken. Had the Legislature intended the certificate procedure to determine as well the particular issues reviewable on appeal, it presumably would have used language better adapted to that purpose, for example by providing that “no issue may be raised on appeal” from a guilty plea unless that issue had previously been presented to the trial court in the required statement and had been certified as nonfrivolous by the court.

(*People v. Hoffard, supra*, 10 Cal.4th at p. 1177.)

The holding in *Hoffard* reiterated this court's finding in *People v. Jones* (1995) 10 Cal.4th 1102 that section 1237.5 and

Rule 8.304(b)² are simply gatekeeper provisions designed to determine the operability of an appeal prior to preparation of the record, and are not intended to require specification of particular issues to be litigated on appeal. In *Jones*, the court held that former Rule 31(d) did not govern the cognizability of particular issues, but rather concerned whether an appeal could proceed at all. (*People v. Jones, supra*, 10 Cal.4th at p.1110.) The court stated unequivocally: “No statute or rule purports to restrict criminal appeals to issues stated in the notice of appeal.” (*Id.* at p. 1109.)

The *Hoffard* reasoning is particularly relevant in the instant case, because of course appellant was entitled to “take” an appeal from the judgment entered upon the jury verdict. The Court of Appeal has interpreted section 1237.5 not to bar the appeal, but to limit the issues to be raised, i.e., to preclude appellant from raising issues related to his admission of the prior conviction allegation. Not only does this interpretation of section 1237.5 run contrary to the plain language of the statute, it also does nothing to further legislative intent and goes against this court’s prior interpretations of section 1237.5.

In sum, the plain language of section 1237 states that appellant was entitled to take an appeal from the judgment of conviction, and the plain language of section 1237.5 does not

²Formerly Rule 31(d), in effect at the time of the decisions in *People v. Hoffard* and *People v. Jones*.

purport to limit that right. The holding of the Court of Appeal must be reversed.

B. The Clear Legislative Intent Behind Section 1237.5 Is to Prevent Unnecessary Record Preparation in Guilty Plea Appeals, and Applying Section 1237.5 to an Appeal Following a Trial Does Nothing to Further this Intent.

This court has held that the purpose of section 1237.5 is to promote judicial economy by screening out wholly frivolous guilty plea appeals before time and money are spent on such matters as preparation of the record on appeal, appointment of appellate counsel, and consideration and decision of the appeal itself. (*People v. Mendez, supra*, 19 Cal.4th at p.1095; see also *People v. Cole* (2001) 88 Cal.App.4th 850, 860.) The interpretation of section 1237.5 adopted by the Third District Court of Appeal in *People v. Fulton* and in the instant case does nothing to serve judicial economy.

In fact, the *Fulton* rule would frustrate that goal in cases such as this one, where the appellate record has already been prepared by virtue of appellant having filed timely notice of appeal under Penal Code section 1237, but where appellate counsel appears to find no arguable issues other than those that go to the legality of the admission of the prior conviction allegation. If appellant were required to obtain a certificate of probable cause as to those issues, when he is not so required as to matters concerning the jury trial, the alternative would be a brief and full

review pursuant to *People v. Wende* (1979) 25 Cal.3d 436 – hardly a model for judicial economy.

This court has had many occasions to address the purpose behind the legislative adoption of section 1237.5, and a review of the case law demonstrates that courts have found that the sole purpose of the certificate of probable cause requirement is to promote judicial economy. In particular, this court has found that the special procedures applicable in the case of an appeal from a judgment of conviction following a plea of guilty or no contest, specifically the requirement that the defendant obtain a certificate of probable cause, are intended to promote judicial economy by screening out wholly frivolous appeals prior to the commitment of economic and legal resources to such matters. (*In re Chavez* (2003) 30 Cal.4th 643, 653; see also *People v. Mendez, supra*, 19 Cal.4th at p. 1095, *People v. Panizzon, supra*, 13 Cal.4th at pp. 75-76.)

Moreover, this court has held that a certificate of probable cause is a procedural hurdle relevant to the operability of the appeal as a whole, not a vehicle for limiting or defining the issues that may be raised. (*People v. Hoffard, supra*, 10 Cal.4th at p. 1177.) A certificate of probable cause is a procedural requirement to perfect an appeal from a judgment based upon plea of guilty, and does not provide grounds for an appeal or determine which issues are reviewable. (*People v. Hoffard, supra*, 10 Cal.4th at p. 1177; see also *People v. Meals* (1975) 49 Cal.App.3d 702; *People v. Castro* (1974) 42 Cal.App.3d 960.)

Thus, an appellate court may entertain cognizable claims not identified in defendant's statement of grounds or in the trial court's certificate of probable cause. (*People v. Hoffard, supra*, 10 Cal.4th at p. 1177.) A certificate of probable cause is not intended to either limit or expand the issues that may be considered on appeal. (*People v. Ribero* (1971) 4 Cal.3d 55, 63.) To the contrary, section 1237.5 and Rule 8.304, subdivision (b), simply determine whether an appeal is operative; neither is intended to define the issues that may be considered on appeal. (*People v. Hoffard, supra*, 10 Cal.4th at p. 1177; *People v. Jones, supra*, 10 Cal.4th at p. 1110.)

The court in *Hoffard* emphasized that the purpose and effect of section 1237.5 “are not to define the issues cognizable on appeal from a guilty plea, but to create a mechanism for trial court determination of whether an appeal raises any nonfrivolous cognizable issue, i.e., *any nonfrivolous* issue going to the legality of the proceedings.” (*People v. Hoffard, supra*, 10 Cal.4th at p. 1179; emphasis in original.) The court noted that prior to the enactment of section 1237.5, “the mere filing of a notice of appeal required preparation of a record and, in many cases, appointment of counsel; only after expenditure of those resources would an appellate court determine whether the appeal raised nonfrivolous issues that fell within the narrow bounds of cognizability.” (*People v. Hoffard, supra*, 10 Cal.4th at p. 1179.)

The purpose of the certificate of probable cause requirement for appealing after a plea of guilty or nolo contendere is to create a

mechanism for the trial court to determine whether an appeal raises any nonfrivolous cognizable issue, i.e., any nonfrivolous issue going to the legality of the proceedings. (*People v. Brown* (2010) 181 Cal.App.4th 356, 359.) Such a requirement makes no sense in the context of a defendant's right to appeal from the judgment of conviction under Penal Code section 1237. The purpose of the requirement of a certificate of probable cause to challenge the validity of a guilty plea is to promote judicial economy by screening out wholly frivolous guilty plea appeals before time and money are spent on such matters as the preparation of the record on appeal, the appointment of appellate counsel, and consideration and decision of the appeal itself. (*People v. Mendez, supra*, 19 Cal.4th at p. 1095; *People v. Panizzon, supra*, 13 Cal.4th at pp. 75-76; *People v. Williams* (2007) 156 Cal.App.4th 898, 910; *People v. McEwan* (2007) 147 Cal.App.4th 173, 179.) Again, where a defendant has a right to appeal under Penal Code section 1237, no purpose is served by expending judicial resources to determine in advance which issues he may raise in that appeal.

A certificate of probable cause only perfects an appeal; it does not expand or limit the cognizable issues. (*People v. Lovings* (2004) 118 Cal.App.4th 1305, 1311.) But the appellate court's ruling in the instant case alters the purpose of the section 1237.5 requirement to do exactly that, to limit which issues are cognizable in an otherwise operative appeal. The intent of section 1237.5 is to remedy the unnecessary expenditure of judicial

resources on the prosecution of frivolous guilty plea appeals; the statute was not intended to place on already overburdened trial courts the additional duty of exhaustively reviewing their own plea proceedings for error. (*People v. Hoffard, supra*, 10 Cal.4th at p. 1179.) The Court of Appeal's ruling in this case reinterprets section 1237.5 to do exactly that, to require trial court's to prescreen jury trial appeals to determine which issues the defendant may raise.

This court should uphold its longstanding interpretation of the legislative intent underlying section 1237.5, and reverse the ruling of the Court of Appeal.

C. This Court Should Overrule the Decision
in *People v. Fulton*.

The court below relied on its previous holding in *People v. Fulton, supra*, 179 Cal.App.4th 1230. In *Fulton*, a jury found the defendant guilty of two Vehicle Code violations. The defendant waived his right to jury trial on prior prison term allegations, and subsequently admitted those allegations in exchange for dismissal of other counts. (*People v. Fulton, supra*, 179 Cal.App.4th at p. 1232.) The defendant filed an appeal and requested a certificate of probable cause as to the prior prison term admissions, but the court denied that request. (*Ibid.*) On appeal, the defendant raised issues related to the jury trial, and also argued that he did not knowingly and intelligently waive his rights as to the prior prison term allegations. (*Id.* at p. 1233.) The Court of Appeal found that the claims regarding the prior prison terms were not cognizable on

appeal because the defendant had not obtained a certificate of probable cause. (*Id.* at p. 1236.)

The court in *Fulton* relied in part on this court's opinion in *People v. Mendez, supra*. Specifically, the *Fulton* court noted that, under the holding in *Mendez*, a reviewing court “must decline to address certificate issues” even where the defendant has an otherwise valid notice of appeal, because “the presence of a notice of appeal stating noncertificate grounds does not supply the absence of a statement of certificate grounds and a certificate of probable cause.” (*People v. Fulton, supra*, 179 Cal.App.4th at p. 1236, quoting *People v. Mendez, supra*, 19 Cal.4th at p. 1099.)

This reliance is based on a fundamental misreading of the holding in *Mendez*, in which this court held that a defendant who timely filed a notice of appeal after a guilty plea stating only noncertificate grounds, without timely requesting or obtaining a certificate of probable cause, did not strictly or even substantially comply with the requirements for obtaining appellate review on issues requiring a certificate. (*People v. Mendez, supra*, 19 Cal.4th at p. 1100.) But that holding was based on the specific provisions relating to guilty plea appeals, which as already discussed do not apply to the instant case. Specifically, a guilty plea appeal based only on “noncertificate” issues is strictly limited by Rule 8.304, subdivision (b)(4), which permits an appeal after a guilty plea to proceed without a certificate of probable cause so long as the notice of appeal states that the appeal is limited to matters occurring after the plea, or is based on the denial of a motion to

suppress under Penal Code section 1538.5. (Rule 8.304, subd. (b)(4)(A)&(B); see former rule 31(d); see also *People v. Panizzon* (1996) 13 Cal.4th 68, 74-75; *People v. Jones, supra*, 10 Cal.4th at p. 1106.)

This court in *Mendez*, in fact, strongly reiterated that a defendant has an absolute statutory right to appeal from a judgment of conviction, so long as the notice of appeal is timely filed. (*People v. Mendez, supra*, 19 Cal.4th at p. 1094, citing Pen. Code, § 1237, subd. (a).) The court contrasted that right with the far more limited right afforded to defendants following a judgment of conviction following a guilty or no contest plea. (*Id.* at pp. 1094-1095.) The language relied upon by the court in *Fulton* addressed this more limited right, in spite of the fact that the defendant in that case, like appellant in the instant case, was not convicted upon a plea of guilty or no contest and thus enjoyed the broader right to appeal afforded by Penal Code section 1237.

The court in *Fulton* relied in part on its own prior holding in *People v. Lobaugh* (1987) 188 Cal.App.3d 780, but that case may be readily distinguished. There the defendant did not appeal from a conviction following a jury trial, but from both a plea to the substantive charge and an admission of a firearm allegation. The court held, without discussion, that the defendant could not challenge the firearm admission without a certificate of probable cause. (*People v. Lobaugh, supra*, 188 Cal.App.3d at p. 785.) As in *Mendez*, the appeal in *Lobaugh* was governed by the strictures of Penal Code section 1237.5, because it was an appeal taken from

judgment following a plea of guilty. *Lobaugh* is thus irrelevant to the instant case, which falls under the less restrictive purview of section 1237. (See also *People v. Perry* (1984) 162 Cal.App.3d 1147; *People v. Williams* (1980) 103 Cal.App.3d 507.)

In *People v. Thurman* (2007) 157 Cal.App.4th 36, also relied on by the court in *Fulton*, Division Two of the Fourth Appellate District addressed an appeal that involved some charges based on a jury verdict, and others based upon a plea of guilty, and held that all of the defendant's contentions on appeal either lacked merit or would not be cognizable even with a certificate of probable cause. (*People v. Thurman, supra*, 157 Cal.App.4th at p. 43.) In *Thurman*, the defendant had entered into a plea agreement after the jury deadlocked on several counts, and his appeal was taken from the judgment imposed following that plea. (*Id.* at p. 40.) Thus the defendant's appeal, like that in *Lobaugh*, fell within the plain language of Penal Code section 1237.5, and *Thurman*, too, is irrelevant to the instant case.

As this court has held in a different context, "[l]egislative intent and common sense dictate the inappropriateness and impracticality of requiring a certificate of probable cause" in a case in which the defendant has admitted a prior conviction allegation, but has been convicted following a trial on the substantive charges. (Cf. *In re Joseph B., supra*, 34 Cal.3d at p. 960.) This court should reverse the holding of the Court of Appeal and remand for a determination on the merits.

CONCLUSION

For the foregoing reasons, appellant requests that this court reverse the holding of the Court of Appeal and remand the matter for a determination on the merits.

Dated: October 21, 2010

Respectfully submitted,

ELIZABETH CAMPBELL
Attorney at Law
State Bar No. 166960

1215 K Street, 17th Floor
Sacramento, CA 95814
(916) 444-8538

Attorney for Appellant

As required by California Rules of Court, Rule 8.520(c), I certify that this brief contains 5,151 words, as determined by the word processing program used to create it.

Elizabeth Campbell
Attorney at Law

DECLARATION OF SERVICE

I, the undersigned, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to the within action; my business address is 1215 K Street, 17th Floor, Sacramento, California, 95814.

On October 22, 2010, I served the attached

APPELLANT'S OPENING BRIEF ON THE MERITS

by placing a true copy thereof in an envelope addressed to the person(s) named below at the address(es) shown, and by sealing and depositing said envelope in the United States Mail at Sacramento, California, with postage thereon fully prepaid. There is delivery service by United States Mail at each of the places so addressed, or there is regular communication by mail between the place of mailing and each of the places so addressed.

Office of the Attorney General Attorney for Respondent P.O. Box 944255 Sacramento, CA 94244-2550	Yolo County Superior Court 725 Court Street Woodland, CA 95695
William Frederick Maultsby Appellant San Quentin State Prison G40887 San Quentin, CA 94974	Yolo County District Attorney 301 Second Street Woodland, CA 95695
Central California Appellate Program 2407 J Street, Suite 301 Sacramento, CA 95816	California Court of Appeal, Third Appellate District 621 Capitol Mall 10th Floor Sacramento, CA 95814

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

Executed on October 22, 2010, in Sacramento, California.

DECLARANT