

THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE THIRD APPELLATE DISTRICT

THE PEOPLE OF THE STATE
OF CALIFORNIA,

C087698

Plaintiff and Respondent,

Sacramento County
96F01396

vs.

DAVID WESLEY CARLILE,

Defendant and Appellant.

On Appeal from the Judgment and Order of the
Superior Court of California, Sacramento County
Honorable David De Alba, Judge

APPELLANT'S OPENING BRIEF
(People v. Wende (1979) 25 Cal.3d 436)

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STATEMENT OF APPEALABILITY

This appeal is from an order made after judgment, affecting the substantial rights of the defendant, and is authorized by Penal Code section 1237, subdivision (b).

STATEMENT OF CASE AND FACTS

In 1996 appellant pleaded guilty to possession of methamphetamine for sale (Health & Saf. Code, § 11387) and admitted two strike prior convictions. Appellant was sentenced to 25 years to life in prison. On February 20, 2015, in an unpublished decision in case number C074991 this Court affirmed the denial of appellant's Penal Code section 1170.126 petition.¹

On or about May 20, 2018, appellant filed "Amended Petition/Renewed Petition for Relief/Prop 36 Resentencing. Change in

¹ Pursuant to Evidence Code section 541, appellant requests the Court take judicial notice of its opinion in case number C074991.

Law.” Appellant’s renewed petition was based upon *People v. Gallardo* (2017) 4 Cal.5th 120. (CT 2-4.)

In a written decision dated June 8, 2018, the trial court denied appellant’s petition. (CT 6-7.) The trial court found no good cause to entertain the renewed petition under Penal Code section 1170.126, subdivision (b). (CT 6-7.)

Appellant filed a timely notice of appeal on July 30, 2018. (CT 8.)

ARGUMENT

I. PURSUANT TO *PEOPLE v. WENDE* (1979) 25 Cal.3d 436 APPELLANT REQUESTS THE COURT TO MAKE AN INDEPENDENT REVIEW OF THE RECORD ON APPEAL

Pursuant to the opinion of the California Supreme Court in *People v. Wende* (1979) 25 Cal.3d 436, counsel requests that this court independently review the entire record on appeal in this case. Appellant has been advised by present counsel of his right to file a supplemental brief in this court within 30 days of the date this brief is filed. Appellant has been advised that in the supplemental brief he may bring to the court's attention any issues he believes deserve review. Appellant has been further advised that he may ask the court to relieve present counsel, that upon his request present counsel will forward appellant's copy of the record on appeal for the purpose of preparing a supplemental opening brief, but that counsel will retain the record for the present to allow proper representation in the event this court requests further briefing.

Dated: December 21, 2018

Respectfully submitted,

/s/ Kendall Dawson Wasley
Kendall Dawson Wasley

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vs.

**DECLARATION OF
APPELLATE COUNSEL**

David Wesley Carlile,

Defendant and Appellant.

_____ /

I, Kendall Dawson Wasley, hereby declare:

As counsel appointed to represent appellant, David Wesley Carlile, in this appeal, I have read the entire record consisting of 8 pages of clerk's transcript and the Court of Appeal opinion in case number C074991.

In a letter dated December 21, 2018, I advised my client of the nature of this brief; that I would serve a copy of this brief on my client; that he may file a supplemental brief within 30 days of my filing the opening brief on his behalf; that upon request I would send him the client's copy of the record on appeal to aid his preparation of a supplemental brief, if any; that I would remain available to brief issues as requested by the court; and that he may file a request for the court to relieve me as counsel in this appeal.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on December 21, 2018, in Sacramento, California.

/s/ Kendall Dawson Wasley
Kendall Dawson Wasley

CERTIFICATE OF LENGTH

I, Kendall Dawson Wasley, counsel for David Wesley Carlile, certify pursuant to the California Rules of Court, that the word count for this document is 1,305 words, excluding the tables, this certificate, and any attachment permitted under rule 204(d). This document was prepared in Word Perfect is the word count generated by the program for this document.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed, at Sacramento, California, on December 21, 2018.

/s/ Kendall Dawson Wasley
Kendall Dawson Wasley
Attorney for Appellant

Re: *The People v. Carlile*, Case No. C074991

**DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY
PLACEMENT AT PLACE OF BUSINESS FOR COLLECTION AND
DEPOSIT IN MAIL**

(Code Civ. Proc., § 1013a, subd. (3); Cal. Rules of Court, rules 8.71(f) and 8.77)

I, *Sebastion Lowe*, declare as follows:

I am, and was at the time of the service mentioned in this declaration, over the age of 18 years and am not a party to this cause. My electronic service address is eservice@capcentral.org and my business address is 2150 River Plaza Dr., Ste. 300, Sacramento, CA 95833 in Sacramento County, California.

On **December 21, 2018**, I served the persons and/or entities listed below by the method checked. For those marked “Served Electronically,” I transmitted a PDF version of **Appellant’s Opening Brief** by TrueFiling electronic service or by e-mail to the e-mail service address(es) provided below. Transmission occurred at approximately **12:10 PM** For those marked “Served by Mail,” I enclosed a copy of the document identified above in an envelope or envelopes, addressed as provided below, and placed the envelope(s) for collection and mailing on the date and at the place shown below, following the Central California Appellate Program’s ordinary business practices. I am readily familiar with this business’s practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in sealed envelope(s) with postage fully prepaid.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **December 21, 2018**, at Sacramento, California.

/s/ Sebastian Lowe

Sebastian Lowe

STATE OF CALIFORNIA California Court of Appeal, Third Appellate District	<i>PROOF OF SERVICE</i> STATE OF CALIFORNIA California Court of Appeal, Third Appellate District
Case Name: The People v. Carlile	
Case Number: C087698	
Lower Court Case Number: 96F01396	

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **kwasley@capcentral.org**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

12/21/2018

Date

/s/Kendall Wasley

Signature

Wasley, Kendall (252294)

Last Name, First Name (PNum)

Central California Appellate Program

Law Firm