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Your Responsibility When Using the Information Provided Below:

When putting this material together, we did our best to give you useful and accurate information because we know that incarcerated people often have trouble getting legal information and we cannot give specific advice to everyone who asks for it. The laws change often and can be looked at in different ways. We do not always have the resources to make changes to this material every time the law changes. If you use this pamphlet, it is your responsibility to make sure that the law has not changed and still applies to your situation. Most of the materials you need should be available in the prison law library.

**CHALLENGING A CALIFORNIA CRIMINAL CASE
 GUILTY OR NO CONTEST PLEA**

Updated December 2022

We received your letter asking for information, advice, or representation in challenging your criminal conviction or sentence resulting from a plea of guilty or no contest. Unfortunately, we are not able to provide individual assistance or advice in criminal cases. This letter explains the general rules on when, how, and why you can challenge your conviction or sentence after a plea. Section IV of this letter describes how you can get more detailed information on the various types of legal actions you might be able to you to challenge your conviction and/or sentence following a plea. We hope this information is helpful to you.

Table of Contents

I. What Issues Did I Give Up or Keep When I Entered a Guilty or No Contest Plea?.....2

II. What Types of Legal Actions Can I File?3

 (1) Direct Appeal (Without a Certificate of Probable Cause).....4

 (2) Direct Appeal With a Certificate of Probable Cause6

 (3) State Habeas Corpus Petition.....7

 (4) Special Petition to Vacate a Conviction or for Resentencing.....8

 (5) Federal Habeas Corpus Petition9

III. What Would I Have to Show to Establish that My Plea is Not Legally Valid?.....10

IV. Where Can I Get More Information?12

I. What Issues Did I Give Up or Keep When I Entered a Guilty or No Contest Plea?

A “negotiated plea” or a “plea bargain” means that you admit you are guilty and give up your right to go to trial, and in exchange the District Attorney promises you something (like dismissal of some charges or sentencing to less than the maximum term). An “open plea” means that you admit you are guilty of all the charges and give up your right to go to trial with no particular promises by the District Attorney.

“Buyer’s remorse” is not grounds for undoing your plea, even though you might second-guess yourself or your attorney after the deal is done. By pleading guilty or no contest, you “waived” (gave up) your right to claim that you are innocent or that the prosecutor did not have reliable, lawful, and sufficient evidence against you. For example, you cannot argue that there was not enough evidence to prove the charges, a police lineup was unfair, police illegally coerced you to confess, witnesses were not credible, or (except in limited situations) the court was wrong in ruling that evidence would be admissible if you went to trial.¹ You cannot argue that the court made improper rulings that might have affected the fairness of a trial, such as denying a motion to separate your case from those of your co-defendants or denying a motion to continue the trial to a later date.² Except in limited circumstances, you do not have a right to challenge a sentence that you agreed to as part of your plea.³ You might have given up your right to appeal any issues related to your case, but only if that was a specific part of your plea agreement.

However, you did not necessarily give up all of your legal rights when you entered your plea. Whether or not you have good legal grounds to challenge your conviction or sentence and whether there is a legal action you can use to bring your challenge will depend on various factors. There are some situations in which you might not have an available legal remedy. The factors that will affect your rights and the types of legal actions that you might be able to bring include:

- the agreements you made when you took your plea,
- the type of issue you want to raise,
- whether all the information you need to support your claim was presented in court during your criminal case or whether you need to present additional evidence,
- how long ago you were sentenced and whether the judgment in your case has become final, and
- whether or not you could or did already raise the issue in a prior court proceeding.

¹ See, e.g., *People v. Hunter* (2002) 100 Cal.App.4th 37, 42; *People v. Batista* (1988) 201 Cal.App.3d 1288, 1291-1292; *People v. Devaughn* (1977) 18 Cal.3d 889, 896.

² *People v. Sanchez* (1982) 131 Cal.App.3d 323, 335; *People v. Kaanehe* (1977) 19 Cal.3d 1, 8-9.

³ See Cal. Rules of Ct., rule 4.412(b); *People v. Hester* (2000) 22 Cal.4th 290, 295 (even though court acted in excess of jurisdiction in calculating sentence length, person was not entitled to remedy because they agreed to a specific sentence); *People v. Jones* (2013) 217 Cal.App.4th 735, 743 (similar).

In general, there are four categories of legal issues that you might be able to raise:

- evidence against you was obtained in an illegal search (if you challenged the search during your pre-plea proceedings);
- after you entered your plea, the prosecutor or court violated your plea agreement or abused their discretion (in a way that does not affect the validity of your plea agreement);
- favorable changes in the statutes or case law after you entered your plea should be applied to your case; or
- your plea was not legally valid.

Beware!

You should think very carefully before you challenge your plea bargain as being not legally valid.

If you claim that your plea bargain is invalid, and a court agrees with you, it is highly unlikely that the court will vacate your conviction and allow you to be released from custody. Rather, in most situations, the court will give you an opportunity to withdraw your guilty or no contest plea.⁴ If you withdraw your plea, you will be in the same position as before you entered your plea.⁵ This means that the District Attorney could re-instate the same charges you faced before you took your plea, including any charges that were dismissed due to your plea agreement. The District Attorney might even add new charges. The District Attorney might or might not offer you a new plea bargain, and any plea offer might be better, the same, or worse than your original plea terms.⁶ You could be facing the possibility of a trial on the same (or more) evidence as when you first decided to plead guilty. If you are convicted again, you could get a longer sentence than you have now.⁷ Thus, before you seek to withdraw your plea, you should realistically weigh your chances of ending up with a better outcome against the risks of ending up with more numerous or more serious convictions and/or a longer sentence.

II. What Types of Legal Actions Can I File?

The following sections provide an overview of the five main types of actions you might be able to bring: a direct appeal, a direct appeal with a certificate of probable cause, a state habeas corpus petition, a special state petition or motion (for limited types of issues), or a federal habeas corpus petition.

⁴ *People v. Kaanebe* (1977) 19 Cal.3d 1, 13-14.

⁵ *People v. Aragon* (1992) 11 Cal.App.4th 749, 756-757.

⁶ *People v. Schuler* (1977) 76 Cal.App.3d 324, 336.

⁷ *People v. Aragon* (1992) 11 Cal.App.4th 749, 759-760.

(1) Direct Appeal (Without a Certificate of Probable Cause)

Issues you can raise:

California law forbids from using a direct appeal to challenge the validity of your plea agreement unless you ask for and get a “certificate of probable cause.”⁸ This section discusses the limited issues that you can raise in a regular direct appeal *without* a certificate of probable cause. Direct appeals with a certificate of probable cause are discussed in section II-2 of this letter.

There are only two types of issues that you can raise on a regular direct appeal following a guilty or no contest plea:

- You can challenge the denial of a motion to suppress evidence from an illegal search or seizure.⁹
- You can raise an issue about something that happened after you entered your plea, so long as you are not “in substance” challenging the validity of your plea.¹⁰ For example, you might argue that your plea agreement was violated if the court allowed the District Attorney to add new charges after you entered your plea, if the prosecutor did not fulfill promises about sentencing recommendations, or if the court sentenced you to a harsher sentence than you agreed to take.¹¹ You might argue that your right to be notified about the direct consequences of your plea was violated if you were not advised or were misadvised about a

⁸ Penal Code § 1237.5. In rare cases challenging the court’s jurisdiction and an inherent incurable defect in the prosecution, a court may treat a barred direct appeal as a petition for writ of habeas corpus and address the validity of the plea. (*People v. Jerome* (1984) 160 Cal.App.3d 1087, 1094-1095; *People v. Richardson* (2021) 65 Cal.App.5th 360, 369.

⁹ Penal Code § 1538.5, subd. (m); *People v. Kaanebe* (1977) 19 Cal.3d 1, 7-8; but see *People v. Mashburn* (2013) 222 Cal.App.4th 937 (where person gave up right to appeal as a specific part of the plea, a certificate of probable cause is required to bring an appeal challenging the search).

¹⁰ *People v. Buttram* (2003) 30 Cal.4th 773, 781-782.

¹¹ *Santobello v. New York* (1971) U.S. 257, 261-262 (constitutional due process right to enforce terms of plea agreement); *People v. Johnson* (2009) 47 Cal.4th 668, 678-679, fn. 5; *Kernan v. Cuero* (2017) ___ U.S. ___, 138 S.Ct. 4 (accepting that plea violated when court allowed prosecutor to add a prior strike allegation after plea entered); *People v. Kaanebe* (1977) 19 Cal.3d 1, 11-12 (prosecutor broke promise not to argue for a prison term); *People v. Newton* (1974) 42 Cal.App.3d 292, 297-299 (prosecutor broke promise to recommend civil drug treatment commitment); *People v. Mancheno* (1982) 32 Cal.3d 855, 861-862 (judge broke promise to order diagnostic study prior to deciding whether to impose prison term); *People v. Williams* (2002) 83 Cal.App.4th 936, 943-944 (court violated person’s reasonable expectation about how many credits he would receive); *People v. Olea* (1997) 59 Cal.App.4th 1289 (where sex offender registration was not mandatory, court violated person’s reasonable expectations by exercising discretion to order registration); *People v. Villalobos* (2012) 54 Cal.4th 177, 182 (court violated plea bargain by sentencing person to longer than maximum agreed term); *People v. Silva* (2016) 247 Cal.App.4th 578(similar). Note: you may have waived your right to challenge your sentence as exceeding the terms of the plea bargain if the court advised you of your right to withdraw the plea and you did not object or move to withdraw your plea when the court informed you about sentence. See Penal Code § 1192.5. Also, many later changes in the law that result in new consequences of a conviction do not violate a plea agreement. (*Doe v. Harris* (2013) 57 Cal.4th 64 (sex offender registration changes affecting privacy); *People v. Gipson* (2004) 117 Cal.App.4th 1065, 1068-1070 (new recidivist laws that result in increased sentence when person later convicted of new crimes).

mandatory parole term, restitution fine, fee, or registration requirement and you would not have taken the plea if you had known about the requirement.¹² If your plea left some sentencing choices or calculations up to the judge, you could challenge those parts of your sentence if they were unauthorized by law were an abuse of discretion.¹³ You can challenge a clerk's mistake in recording your convictions or sentence on the abstract of judgment or other sentencing document.¹⁴ In some situations, you may be able to argue that a favorable new law or court case that took effect after you were sentenced must be applied in your case.¹⁵

Evidence you can rely on:

You can rely only on information that is in the court record from your charges, preliminary hearing, other motions and hearings, plea, and sentencing. This means that the problem must be apparent from written documents that were already filed in the superior court or from the transcripts of hearings that the superior court already held in your case.¹⁶

When and how to file:

You must file a Notice of Appeal in the superior court within 60 days after the judgment was pronounced (usually the date of your sentencing hearing).¹⁷ A court may allow you to file the notice of appeal after 60 days in exceptional circumstances, such as if your lawyer promised to file the notice but didn't do so, or if you tried to file the notice in a timely manner but were unsuccessful due to no fault of your own.¹⁸

After you file a notice of appeal, the court of appeal will appoint a lawyer to represent you at state expense if you do not have money to pay for a lawyer.

¹² *People v. Villalobos* (2012) 54 Cal.4th 177,185-186 (restitution fine); *People v. Crandell* (2007) 40 Cal.4th 1301, 1308 (restitution fine); *In re Moser* (1993) 6 Cal.4th 342, 357 (length of parole term); *People v. McClellan* (1993) 6 Cal.4th 367, 379-380 (sex offender requirement). Note that challenges to credits and to fees or fines usually must be first raised in the sentencing court, either at sentencing or by a post-sentencing letter or motion. Penal Code §§ 1237.1 and 1227.2.

¹³ *People v. Buttram* (2003) 30 Cal.4th 773, 777 (can appeal imposition of maximum term and denial of diversion absent contrary provisions in the plea agreement); *People v. Lloyd* (1998) 17 Cal.4th 658 (appeal of denial of motion to strike priors); *People v. Cole* (2001) 88 Cal.App.4th 850 (appeal of denial of motion to strike priors); *People v. Myers* (2009) 170 Cal.App.4th 512, 515-516 (appeal of denial of motion to reduce felony to misdemeanor);

¹⁴ *People v. Mitchell* (2001) 26 Cal.4th 181.

¹⁵ *People v. Stamps* (2020) 9 Cal.5th 685. A person who plead guilty or no contest cannot be required to waive benefits of future changes to the statutes that may apply retroactively. Penal Code § 1016.8;

¹⁶ See Cal. Rules of Ct., rules 8.320-8.344

¹⁷ Cal. Rules of Ct, rule 8.308(a). If you are in prison or jail, and the envelope shows that you mailed your notice of appeal or delivered it to prison or jail officials for mailing within the 60 day time period, your the notice is considered timely. Cal. Rules of Ct, rule 8.25(b)(5); *In re Jordan* (1992) 4 Cal.4th 116.

¹⁸ *People v. Chavez* (2003) 30 Cal.4th 643, 657; *People v. Zarazua* (2009) 179 Cal.App.4th 1054; *In re Benoit* (1973) 10 Cal.3d 72.

(2) Direct Appeal With a Certificate of Probable Cause

Issues you can raise:

If you get a “certificate of probable cause,” you can argue in your direct appeal that you should be allowed to withdraw your plea because your plea is not legally valid.¹⁹ For example, you need a certificate of probable cause if you want to challenge a part of your sentence that you agreed to when you entered your plea, whether that be a specific length term or a term up to a specified maximum sentence “*lid*.”²⁰ (Note: if you get a certificate of probable cause, you can also still raise the same issues that you can raise in a regular direct appeal, as described in section II-1 of this letter.)

Evidence you can rely on:

Just like a regular direct appeal (see section II-1 of this letter), you can rely only on information that is in the court record from your charges, preliminary hearing, other motions and hearings, plea, and sentencing.

When and how to file:

As with a regular direct appeal (see section II-1 of this letter), you must file a Notice of Appeal in the superior court within 60 days after the judgment was pronounced. Within that same deadline, you must also file an application asking the superior court to issue a certificate of probable cause and describing why you want to challenge your plea.²¹ (Note: a court may allow you to file an application for a certificate of probable cause after 60 days in the same types of limited situations that apply to notices of appeal, as discussed in section II-1 of this letter.) The superior court should grant your request for a certificate of probable cause if your application “presents any cognizable issue for appeal which is not clearly frivolous and vexatious.”²²

After you file a notice of appeal and the superior court grants a certificate of probable cause, the court of appeal will appoint a lawyer to represent you at state expense if you do not have money to pay for a lawyer.

¹⁹ Penal Code § 1237.5; *People v. Mendez* (1999) 19 Cal.4th 1084, 1088.

²⁰ *People v. Cuenas* (2008) 44 Cal.4th 374, 376; *People v. Panizxon* (1996) 13 Cal.4th 68, 73.

²¹ Cal. Rules of Ct., rules 8.304(b)(1) and 8.308(a).

²² *People v. Hoffard* (1995) 10 Cal.4th 1170, 1178-1179.

(3) State Habeas Corpus Petition

Issues you can raise:

You can raise many types of legal issues in a petition for writ of habeas corpus filed in state court, including challenging the validity of your plea.²³ However, you cannot use a habeas corpus petition to raise an issue that was already rejected in your direct appeal.²⁴ Also, if you could have raised your issue in a direct appeal, you must give a good explanation of why you did not do so.²⁵

Evidence you can rely on:

In a state habeas petition, you can rely on documents and hearing transcripts from your superior court case and you can also present additional new evidence. That new evidence could include your written sworn declaration (“under penalty of perjury”) about information your lawyer told you that is not in the court record, about why you did not understand the terms of your plea agreement, or about why you would not have agreed to the plea if you had full and accurate information. New evidence could also include sworn declarations or testimony by other people, new test results, or documents that were not previously provided to the superior court. In addition, if the court allows your case to proceed, it can hold an evidentiary hearing.²⁶

When and how to file:

There is no set deadline for filing a petition for writ of habeas corpus. However, you should file the petition as soon as you can because if you delay too long, the court may deny your petition as being untimely.²⁷ (Note: the date when you file your state habeas petition also may affect whether you later can raise the issues in a federal habeas petition, as discussed in section II-5 of this letter.)

There is a standard form you can use to file a petition for writ of habeas corpus. Usually, you should file your petition in the superior court in which you entered your plea and were sentenced, though you may be able to file your petition in the court of appeal if you have a direct appeal pending from the same case. If the court issues an “order to show cause” after you file your petition, it must appoint a lawyer to represent you in the rest of the habeas corpus proceedings.

²³ You can bring a petition for writ of habeas corpus only if you are “in custody” (in prison or jail or on parole, PRCS, probation, or supervised release) for the conviction that you are challenging. For some types of issues, it is possible to file a motion to vacate a conviction or sentence after you are released from custody. See Penal Code § 1473.6 (material prosecution evidence discovered to be false); Penal Code § 1473.6 (evidence of inability to meaningfully understand immigration consequences, newly discovered evidence of actual innocence, racial bias tainted conviction or sentence). Note also that you can bring a different type of action (a petition for writ of *coram nobis*) if you want to *enforce* the terms of your plea bargain rather than *challenge* the validity of the plea. *People v. Collins* (1996) 45 Cal.App.4th 849, 863; *People v. McElwee* (2005) 128 Cal.App.4th 1348, 1351.

²⁴ *In re Reno* (2012) 55 Cal.4th 428, 476-477; *In re Harris* (1993) 5 Cal.4th 813, 829.

²⁵ *In re Harris* (1993) 5 Cal.4th 813, 829.

²⁶ See Cal. Rules of Ct., rule 4.551(f).

²⁷ See *In re Harris* (1993) 5 Cal.4th 813; *In re Clark* (1993) 5 Cal.4th 750.

(4) Special Petition to Vacate a Conviction or for Resentencing

Issues you can raise:

Because of recent changes in the laws, some people who pled guilty or no contest can file special petitions or motions to get their plea convictions vacated or to get resentenced in accord with the new laws. However, be aware that if the court decides to impose a new sentence that is not consistent with your plea, and the District Attorney objects, the court will give the District Attorney an opportunity to decide whether to withdraw the plea agreement and whether to make you a new plea offer.²⁸

Among the laws under which people can file special petitions or motions are:

- Penal Code § 1170(d) allows some people who were sentenced to life without parole (LWOP) for crimes committed when they were under age 18 to petition for resentencing to a lower term after serving at least 15 actual years of incarceration.
- Penal Code § 1172.6 (former § 1170.95) allows some people who were convicted of murder, attempted murder, voluntary manslaughter, or attempted voluntary based on old felony murder or “natural and probable consequences” laws to petition for resentencing to lesser offenses.
- Penal Code § 1170.91 allows some former U.S. military members to seek resentencing if the court did not previously consider the effect of trauma, substance abuse, or mental health problems that resulted from their military service.
- Penal Code §§ 745, 1473, and 1437.7 (the “Racial Justice for All Act”) allow some people to petition to have their convictions vacated or to be resentenced if their case was affected by specific or systemic discrimination on the basis of race, ethnicity, or national origin.
- Penal Code § 1172.1 (former § 1170(d)(1) and § 1170.03) allows CDCR, county sheriffs, and District Attorneys to recommend people for resentencing in the “interest of justice” based on changes in the laws that would not normally apply retroactively or on exceptionally good conduct in prison or jail. You cannot file a petition for this type of resentencing, but you can communicate with CDCR or jail staff or the District Attorney’s office to ask if they will consider making a recommendation.
- Penal Code § 1172.2 (former § 1170(e)) allows CDCR to recommend some people for “compassionate release” resentencing if they have a serious and advanced fatal illness or are “permanently medically incapacitated.” You cannot file a petition for this type of relief, but you or your family member or advocate can ask CDCR to make a compassionate release recommendation.

²⁸ *People v. Stamps* (2020) 9 Cal.5th 685.

Evidence you can rely on:

The evidence you can present will depend on the laws that govern the issue you are raising.

When and how to file:

The process and deadlines will be set by the specific laws that govern the particular type of issue you are raising. Be aware that some new laws apply only in future case, some apply to cases that are not yet final because they are still appealable or on appeal (or are being resentenced for some other reason), and some apply even if the case happened a long time ago and is no longer on appeal. Also, some of the new laws allow people who are no longer in prison and no longer on parole, probation or other form of supervision to file motions for relief and some do not.

(5) Federal Habeas Corpus Petition

Issues you can raise:

You can challenge your plea conviction or sentence in a federal court habeas corpus petition if (1) you have already presented the issue(s) through the highest level of state court review, including the California Supreme Court AND (2) your legal argument is based on federal law that applies to the states, such as the U.S. Constitution.²⁹ You must show that the state court decisions on the issue(s) were “contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States” or were an “unreasonable determination of the facts in light of the evidence presented in the State court proceeding.”³⁰

Evidence you can rely on:

You can only rely on information and evidence that has already been reviewed by the state courts in your prior direct appeal, habeas corpus petition, or other special petition. There are very limited situations in which the court might allow you to present new evidence or hold an evidentiary hearing -- when the claim relies on a new and previously unavailable rule or constitutional law that is retroactive or relies on “a factual predicate that could not have been previously discovered through the exercise of due diligence.”³¹

²⁹ 28 U.S.C. § 2254(b)(1)); *Roman v. Estelle* (9th Cir. 1990) 917 F.2d 1505, 1506. Note that there is one type of federal law claim you cannot raise in a federal habeas petition -- you cannot argue that a search or seizure was unreasonable under the Fourth Amendment if there has been a full and fair review of the issue by the state courts. *Stone v. Powell* (1976) 428 U.S. 465, 489-495.

³⁰ 28 U.S.C. § 2254(d).

³¹ 28 U.S.C. § 2254(2)(2)(A); *Cullen v. Pinholster* (2011) 563 U.S. 170; *Shinn v. Ramirez* (2022) ___ U.S. __; 142 S.Ct. 1718 (no exception for ineffective assistance of counsel).

When and how to file:

There are standard forms you can use to file a federal habeas corpus petition. The petition should be filed in the federal district court (U.S.D.C.) that covers the area where you were convicted and sentenced.

There are strict deadlines for filing federal habeas corpus petitions. The general rule is that you must file your petition within one year after the end of your direct appeal process (which includes the time in which you could have filed a petition for certiorari in the U.S. Supreme Court). However, periods during which properly filed habeas corpus petitions are pending in the state courts stop the clock and extend the timeline.³² Also, in some cases, a federal court might allow you to file a petition after the normal deadline if extraordinary circumstances beyond your control made it impossible to file your petition on time; this is called “equitable tolling.”³³

III. What Would I Have to Show to Establish that My Plea is Not Legally Valid?

There are many different situations in which someone could argue that that they should be allowed to withdraw their plea because their plea was not legally valid.³⁴ The law is complicated and this letter only summarizes a few basic legal principles that apply to plea cases. Here are some examples of situations in which you might be allowed to withdraw your plea:

- Your lawyer provided “ineffective assistance” during the plea proceedings (or during a motion to withdraw your plea) (often called an “IAC claim”). You must show that your lawyer’s conduct fell below a reasonable professional standard and there is a reasonable probability that you would have gone to trial (or would have taken an earlier and more favorable plea offer) if you had received competent legal representation.³⁵
- You did not make your plea knowingly and voluntarily because you did not understand what your constitutional trial rights were and that you were giving up those rights. You do not

³² 28 U.S.C. § 2255(f); *Clay v. United States* (2003) 537 U.S. 522, 527-528.

³³ *Holland v. Florida* (2010) 560 U.S. 631, 633.

³⁴ *People v. Mendez* (1999) 19 Cal.4th 1084, 1088.

³⁵ *Hill v. Lockhart* (1985) 474 U.S. 52 (applying IAC standard and finding no IAC in case where counsel gave erroneous advice about parole eligibility date person did not show that would have insisted on going to trial if properly advised); *Padilla v. Kentucky* (2010) 559 U.S. 356 (IAC where lawyer failed to tell person that plea would subject them to automatic deportation); *People v. Nocelotl* (2012) 211 Cal.App.4th 206 (no IAC where person did not show they would not have taken plea even if their attorney did not give misleading advice about which evaluations would affect sentencing); *People v. Kunes* (2014) 231 Cal.App.4th 1438 (no IAC in recommending plea and not seeking dismissal of charge and where relevant facts were known and did not support a defense).see also *People v. Johnson* (2009) 47 Cal.4th 668, 679, 681 (IAC standard applied re: motion to withdraw plea); see also *Missouri v. Frye* (2012) 566 U.S. 134 (IAC standard applied where lawyer failed to tell a person about a favorable plea offer before it expired and there was reasonable probability that person would have taken that offer); *Lafler v. Cooper* (2012) 566 U.S. 156 (discussing appropriate remedies where IAC deprives person of fair opportunity to take favorable plea offer). See also Penal Code 1016.3 (lawyers have duty to provide “accurate and affirmative advice” about immigration consequences of a plea).

need to show that you would have decided not to enter the plea if you had understood what rights you were giving up.³⁶

- Your plea was not knowingly and voluntarily made because you did not understand the “direct consequences” of your plea like the maximum lawful length of the prison or jail term, ineligibility for probation, or requirements to pay restitution or other fines or fees, to serve parole, or to register as a sex offender. You must show that that you did not actually know about the consequence and that is “reasonably probable” that you would not have entered a plea if you knew about the consequence.³⁷
- Your plea was not knowingly and voluntarily made because the court did not fully or accurately advise you of the immigration/deportation consequences of your plea. You must show that it is “reasonably probable” that if you would not have entered the plea if you had been properly advised, but is not necessary to show that you would likely have obtained a more favorable outcome by not taking the plea.³⁸
- Your plea was not voluntary because you entered your plea based on false or misleading information or unfair pressure from the court or District Attorney, and not of your own free will. You must show by clear and convincing evidence that mistake, inadvertence, ignorance, or some such factor seriously impaired your understanding or judgment. You do not need to show that you would not have taken the plea if you had not been misinformed or unfairly pressured.³⁹
- The court acted in excess of its jurisdiction by allowing you to plead guilty or no contest to a legally impossible crime.⁴⁰

³⁶ These are the right to a jury trial, the right to confront and cross-examine the state’s witnesses, the right to present evidence, and the privilege against self-incrimination. See *In re Tahl* (1969) 1 Cal.3d 122, 132; *Boykin v. Alabama* (1969) 395 U.S. 238, 242-243; *In re Yurko* (1974) 10 Cal.3d 857. Even if you were not advised of your constitutional rights, a court will not allow you to withdraw your plea if it finds that you actually understood the rights you were giving up. *People v. Allen* (1999) 21 Cal.4th 424, 439, fn. 4; *People v. Howard* (1992) 1 Cal.4th 1132, 1175.

³⁷ *People v. Crandell* (2007) 40 Cal.4th 1301, 1308 (restitution fine); *In re Moser* (1993) 6 Cal.4th 342, 357 (length of parole term); *People v. McClellan* (1993) 6 Cal.4th 367, 379-380 (sex offender requirement); *People v. Moore* (1998) 69 Cal.App.4th 626, 630 (ineligibility for probation); *People v. Zaidi* (2007) 147 Cal.App.4th 1470, 1481 (sex offender registration).

³⁸ Penal Code § 1016.5; *People v. Superior Court (Zamudio)* (2000) 23 Cal.4th 183, 210. *People v. Martinez* (2013) 57 Cal.4th 555, 559.

³⁹ *People v. Superior Court (Giron)* (1974) 11 Cal.3d 793, 797; *People v. Coleman* (1977) 72 Cal.App.3rd 287, 292 (misinformation about right to appeal); *People v. Bonwit* (1985) 173 Cal.App.3d 828, 833 (judge promised to issue Certificate of Probable Cause on issue that was not appealable); *People v. Harvey* (1984) 151 Cal.App.3d 660 (lawyer failed to advise about favorable evidence); *Henderson v. Morgan* (1976) 426 U.S. 637 (lawyer failed to advise about nature of the charges); *People v. Gallantier* (1941) 47 Cal.App.2d 148, 150 (person was mentally incompetent to understand plea); *People v. Collins* (2000) 26 Cal.4th 297, 306 (judge misled person that he would receive “some benefit” for waiving right to trial).

⁴⁰ *People v. Soriano* (1992) 4 Cal.App.4th 781, 784 (court exceeded jurisdiction by allowing person to enter plea to attempting to file a forged “instrument” where the document was by law not an “instrument”); *People v. Richardson* (2021) (court exceeded jurisdiction by allowing person to plead to trafficking a minor for a sex act when it was undisputed the person who was subjected to the trafficking was 26 years old); but see *People v. Ellis* (1987) 195 Cal.App.3d 334, 342-343 (person who incorrectly agreed as part of plea that a prior conviction was a serious felony was not allowed to undo plea because of other benefits obtained); *People v. Miller* (2012) 202 Cal.App.4th 1450, 1452, 1458 (although it was error to

- The court failed to determine that there was a factual basis for the plea. A factual basis may be established in various ways, and is usually done by defense counsel stipulating to the factual basis set forth in the complaint, police report, preliminary hearing transcript, or probation report. A bare statement by the judge that a factual basis exists without any other evidence is not enough.⁴¹

IV. Where Can I Get More Information?

If you think you might have a reason to challenge your conviction or sentence, or to ask for resentencing, you should try to consult with a lawyer about the facts of your particular case. If you currently have a lawyer assigned to your criminal case, they should be able to give you advice and information. If you do not currently have an assigned lawyer, you could try to contacting the public defender's office in the county where you were convicted, the lawyer who represented you in your criminal case, or a lawyer who represented you on a direct appeal or habeas corpus petition in the past.

Prison Law Office has free self-help manuals with more detailed information about most of the types of legal actions discussed in this letter. Some of those manuals include court forms. There are manuals on direct appeals and certificates of probable cause, state habeas corpus, federal habeas corpus, and some of the special resentencing petitions. You can get these manuals by writing to Prison Law Office. People with internet access also can view and print the manuals on the Resources page of the Prison Law Office website -- www.prisonlaw.com.

In addition, there is information about legal actions in *The Prison and Parole Law Handbook*, which is published by the Prison Law Office. The book should be available in prison law libraries and should become available on tablets. You can get information about how to order a paper copy of the *Handbook* (or how to apply for a free copy if you do not have any money to order one) by writing to Prison Law Office. The *Handbook* is also available for free viewing and printing on the Resources page of the Prison Law Office website -- www.prisonlaw.com.

allow person to plead guilty and be sentenced for a felony when the charge was only a misdemeanor, person was not allowed to vacate plea because he received other benefits).

⁴¹ Penal Code § 1192.5 (requirement that court find a factual basis for negotiated plea); *People v. Hoffard* (1995) 10 Cal.4th 1170, 1181 (factual basis requirement does not apply to open pleas where no benefit is promised); *People v. Holmes* (2004) 32 Cal.4th 432, 436 (stipulation to facts in a particular document satisfies requirement); *People v. Palmer* (2013) 58 Cal.4th 110,118 (stipulation without reference to specific facts or document is sufficient where proceedings established that person discussed the elements of the crime and any defenses with counsel and was satisfied with counsel's advice).