

SIXTH DISTRICT APPELLATE PROGRAM

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

PEOPLE OF THE STATE OF CALIFORNIA,]
] NO. H024254
Plaintiff and Respondent,]
] (SANTA CLARA CO.
vs.] SUPERIOR COURT
] NO. 198740)
JOEL ROBERT TOBIAS,]
] MOTION TO
Defendant and Appellant.] AUGMENT THE
] RECORD AND
] REQUEST FOR
] EXTENSION OF TIME
]

Pursuant to California Rules of Court, rule 12(a), appellant moves this court for an order augmenting the record on appeal and for an extension of time in which to file appellant's opening brief.

With respect to the motion to augment the record, appellant requests that the court order preparation of a reporter's transcript for the argument and

ruling on appellant's motion to dismiss heard on January 31, 2002. (CT 69.) The court reporter was Jacqueline Barron. Although the present record contains a partial reporter's transcript for January 31, 2002, the argument and ruling on the motion to dismiss are not included in the present transcript.

The relevance of the requested transcript is as follows. Appellant filed a motion to dismiss the case on ex post facto and due process grounds. (CT 45-50.) After the motion was denied, appellant pled guilty and obtained a certificate of probable cause. (CT 82-83.) The requested transcript is needed in order to evaluate the potential appellate merit of the motion to dismiss.

Since the requested supplemental transcript constitutes an important part of the record on appeal, it will not be possible to file an opening brief without an extension of time of 30 days from the date of the filing of the augmented record with this court. Therefore, appellant also requests that the time for filing his opening brief be extended to 30 days from the filing with this court of the supplemental transcript.

Dated: May __, 2002

Respectfully submitted,

DALLAS SACHER
Attorney for Appellant,
JOEL ROBERT TOBIAS

DECLARATION OF DALLAS SACHER

I am an attorney licensed to practice in California. I am attorney of record for appellant Joel Robert Tobias.

The facts stated in this declaration are within my personal and firsthand knowledge. If called as a witness in this action, I could and would testify competently under oath to the following facts.

I have engaged in a preliminary review of the present record on appeal in this case. Based on my review, I have determined that the present record is incomplete in the respect noted in the attached motion to augment the record. In the interest of economy, the discussion in the motion to augment is hereby incorporated by reference.

As is reflected by the attached motion, it is my professional opinion that appellant cannot receive a full and fair review of the trial court proceedings unless the motion is granted. It is also my good faith belief that the item requested in the motion is essential for appellate review.

Given the present absence of a significant aspect of the record, it is manifest that I cannot prepare a thorough and authoritative brief without an extension of time. It is therefore respectfully submitted that the time for filing appellant's opening brief should be extended to 30 days from the date of the filing with this court of the augmented record on appeal. This is the second request for an extension of time.

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

Executed this ____ day of May, 2002, at Santa Clara, California.

DALLAS SACHER

PROOF OF SERVICE

I declare that I am over the age of 18, not a party to this action and my business address is 100 N. Winchester Blvd., Suite 310, Santa Clara, California 95050. On the date shown below, I served the within MOTION TO AUGMENT THE RECORD AND REQUEST FOR EXTENSION OF TIME to the following parties hereinafter named by:

X Placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Santa Clara, California, addressed as follows:

Attorney General's Office
455 Golden Gate Avenue
Suite 11,000
San Francisco, CA 94102-7004
[Counsel for People of the State of
California]

Joel Tobias
K-92393
A-1-123U
Salinas Valley State Prison
P. O. Box 1030
Soledad, CA 93960-1030

I declare under penalty of perjury the foregoing is true and correct. Executed this ___ day of May, 2002, at Santa Clara, California.

Sue Yarbrough