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CLERK/EXECUTIVE OFFICER
BRANDON L. HENSON

ASSISTANT CLERK/EXECUTIVE OFFICER
JANET A. GAMBOA

OFFICE OF THE CLERK
COURT OF APPEAL

FOURTH APPELLATE DISTRICT
DIVISION THREE

SUPREME COURT
FILED

APR 8 - 2025

Jorge Navarrete Clerk

Deputy

Mr. Jorge Navarrete
Clerk/Executive Officer
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

April 8, 2025

Re: G064565 – *People v. Mataele*

Dear Mr. Navarrete,

Appellant Tupotoe Mataele was sentenced to death. In *People v. Mataele* (2022) 13 Cal.5th 372, the Supreme Court affirmed the judgment “in its entirety.” However, the Supreme Court remanded the matter to the trial court to consider striking certain enhancements.

On August 16, 2024, following proceedings on remand, appellant filed a notice of appeal in Orange County Superior Court, which was directed to the Court of Appeal. The notice of appeal referenced a postjudgment order denying relief requested by appellant. A copy of the notice of appeal is enclosed with this letter.

It is unclear whether this appeal is correctly pending in the Court of Appeal or if it should be pending in the Supreme Court. (See Cal. Const., Art. VI, § 11; Cal. Rules of Court, rule 8.603; *People v. Coleman* (1991) 53 Cal.3d 949.)

We request that the Supreme Court consider whether it should transfer this proceeding to itself. (Cal. Rules of Court, rule 10.1000(a)(1)(A).)

We would appreciate you calling this matter to the attention of the court.

Very truly yours,

Janet Gamboa,
Assistant Clerk/Executive Officer

cc: All Parties

COA No. Arresting Agency Name and No.:
APD

OCSC Case No.:
00NF1347

THE PEOPLE OF THE STATE OF CALIFORNIA vs. Matnele, Tupotae

Appeal to the District Court of Appeal, 4th District, Division Three

From the Judgment of: 06/26/24
Judge: Honorable Richard M. King

Attorneys for Appellant: none

Attorneys for Respondent: Attorney General

Notice of Appeal Filed: 08/16/24

COURT OF APPEAL
4TH DISTRICT DIVISION 3
ELECTRONICALLY RECEIVED
Aug 19, 2024
Brandon Henson, Clerk
By: J. Luna

G064565

ATTORNEY OR PARTY WITHOUT ATTORNEY: NAME: ROBISON D. HARLEY JR. FIRM NAME: ATTORNEY AT LAW STREET ADDRESS: 825 N. ROSS ST. CITY: SANTA ANA TELEPHONE NO.: (714) 972-8141 E-MAIL ADDRESS: ROB.HARLEY@SBGGLOBAL.NET ATTORNEY FOR (party): TUPOTAE MATAELE		STATE BAR NO.: 68684 STATE: CA ZIP CODE: 92701 FAX NO.: (714) 972-8108	CR-120 FOR COURT USE ONLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE AUG 16 2024 DAVID H. YAMASAKI, Clerk of the Court BY: D. HAGAN, DEPUTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE PEOPLE OF THE STATE OF CALIFORNIA vs. Defendant: TUPOTAE MATAELE Date of birth: 10-19-1974 Cal. Dept. of Corrections and Rehabilitation No. (if any): CHCF V98936		RECEIVED AUG 16 2024 NOTICE OF APPEAL—FELONY (DEFENDANT) (Pen. Code, §§ 1237, 1237.5, 1538.5(m); Cal. Rules of Court, rule 8.304)	
		CASE NUMBER: 00NF1347	

NOTICE

- You must file this form in the SUPERIOR COURT WITHIN 60 DAYS after the court rendered the judgment or made the order you are appealing.
- IMPORTANT: If your appeal challenges the validity of a guilty plea, a no-contest plea, or an admission of a probation violation, you must also complete the Request for Certificate of Probable Cause on page 2 of this form. (Pen. Code, § 1237.5.)

1. Defendant appeals from a judgment rendered or an order made by the superior court.
NAME of defendant: TUPOTAE MATAELE
DATE of the order or judgment: JUNE 26, 2024

2. Complete either item a. or item b. Do not complete both.

- a. If this appeal is after entry of a plea of guilty or no contest or an admission of a probation violation, check all that apply:

- (1) ☐ This appeal is based on the sentence or other matters occurring after the plea that do not affect the validity of the plea. (Cal. Rules of Court, rule 8.304(b).)
(2) ☐ This appeal is based on the denial of a motion to suppress evidence under Penal Code section 1538.5.
(3) ☐ This appeal challenges the validity of the plea or admission. (You must complete the Request for Certificate of Probable Cause on page 2 of this form and submit it to the court for its signature.)
(4) ☐ Other basis for this appeal (you must complete the Request for Certificate of Probable Cause on page 2 of this form and submit it to the court for its signature) (specify):

- b. For all other appeals, check one:

- (1) ☐ This appeal is after a jury or court trial. (Pen. Code, § 1237(a).)
(2) ☐ This appeal is after a contested violation of probation. (Pen. Code, § 1237(b).)
(3) ☒ Other (specify): DENIAL OF §1385 MOTION TO STRIKE AND IN LIMINE RESTITUTION

3. ☐ Defendant requests that the court appoint an attorney for this appeal. Defendant ☒ was ☐ was not represented by an appointed attorney in the superior court.

4. Defendant's mailing address is: ☒ same as in attorney box above.

☒ as follows:
TUPOTAE MATAELE CDCR#V98936
7707 AUSITN ROAD, CA, 95215

Date: 8/16/2024

ROBISON D. HARLEY

(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT OR ATTORNEY)

Page 1 of 2

Form Approved for Optional Use
Judicial Branch of California
CR 120 (Rev. January 1, 2017)

NOTICE OF APPEAL—FELONY (DEFENDANT)
(Criminal)

Penal Code, §§ 1237, 1538.5(m);
Cal. Rules of Court, rule 8.304
www.courtinfo.ca.gov

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

THE PEOPLE OF THE STATE OF CALIFORNIA)
Plaintiff)

VS.)

Mataele, Tupotoe)

Defendant)

Case Number: 00NI1347

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

) NOTICE OF FILING

AUG 19 2024

) NOTICE OF APPEAL

DAVID H. YAMASAKI, Clerk of the Court

BY: D. HAGAN, DEPUTY

To:

DISTRICT ATTORNEY
P.O. Box 808
Santa Ana, CA 92702

DISTRICT COURT OF APPEAL
4TH DISTRICT DIVISION III
601 W. Santa Ana Boulevard
Santa Ana, CA 92701

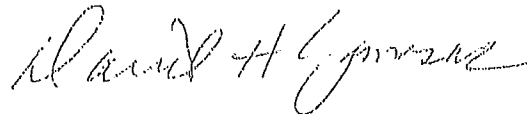
YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE THAT IN THE ABOVE ENTITLED
MATTER

☒ NOTICE OF APPEAL

☐ ABANDONMENT OF APPEAL

was filed on 08/16/24, reference to which is made for further particulars.

Dated: 08/19/24



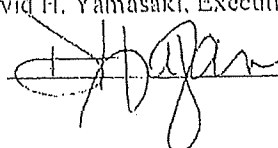
Executive Officer and Clerk of the Superior Court of the
State of California, in and for the County of Orange

CERTIFICATE OF MAILING

I, the undersigned, a Deputy Clerk of the Superior Court of the State of California for the County of Orange, and not a party to the within action hereby certify that I served on 08/19/24 the foregoing notice on the parties whose names first appear herein above, addressed as therein shown, by depositing true copies thereof enclosed in sealed envelopes and postage thereon fully prepaid in a United States Postal Service mail box at Santa Ana, California.

David H. Yamasaki, Executive Officer and Clerk

Dated: 08/19/24

By , Deputy Clerk

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

THE PEOPLE OF THE STATE OF CALIFORNIA
Plaintiff

VS.

Mataele, Tupotoe

Defendant

) Case No. 00NF1347

) NOTICE OF FILING

) NOTICE OF APPEAL AND **DAVID H. YAMASAKI**, Clerk of the Court

) NOTICE RE: PREPARATION

) OF TRANSCRIPTS BY: DAVID H. YAMASAKI DEPUTY

AUG 19 2024

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that in the above-entitled matter a Notice of Appeal was filed timely on 08/16/24, therefore a Reporter's Transcript shall be filed with the clerk on or before as listed below. YOU AND EACH OF YOU WILL PLEASE TAKE FURTHER NOTICE that only the normal record shall be prepared pursuant to Rule 8.320(c).

The minutes of the court indicate the presence of certain reporter's on the following dates:

Jennifer Scott (PRIMARY) CSR# 9218, CJC Court Reporter Services: May 31, 2024

Kristi Johnson CSR# 12585, CJC C45: December 15, 2023.

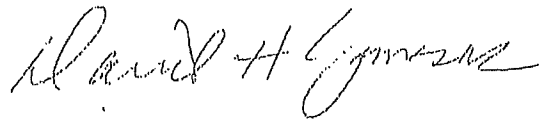
Effective February 1, 2023, an official reporter or official reporter pro tempore of the superior court shall deliver a transcript in electronic form as specified in Code of Civil Procedure section 271. Please visit the Court's Public website for additional details:

<https://www.occourts.org/directory/cris/>

Due Date: 10/05/24

**Original + 2 copies **

Dated: 08/19/24



Executive Officer and Clerk of the Superior Court of the
State of California, in and for the County of Orange

Attorney for Plaintiff and Respondent
ATTORNEY GENERAL
600 West Broadway # 1800
San Diego, CA 92101

Attorney for Defendant and Appellant
APPELLATE DEFENDERS, INC.
555 W. Beech St. #300
San Diego, CA 92101*

CERTIFICATE OF MAILING

I, the undersigned, a Deputy Clerk of the Superior Court of the State of California for the County of Orange, and not a party to the within action hereby certify that on 08/19/24, I served the foregoing notice on the parties whose names first appear herein above, addressed as therein shown, by depositing true copies thereof enclosed in sealed envelopes and postage thereon fully prepaid in a United States Postal Service mail box at Santa Ana, California.

David H. Yamasaki, Executive Officer and Clerk

Dated: 08/19/24

By David H. Yamasaki, Deputy Clerk

*(Subject to Change)

AUG 19 2024

PRELIMINARY INFORMATION
RE: APPEAL

DAVID H. YAMASAKI, Clerk of the Court

BY: D. HAGAN DEPUTY

Appellant's Name: Mataele, Tupotoe
Appellant's DOB: 10/19/72
Superior Court Case No.: 00NF1347
Length of Proceedings: 2 days
Trial Court Judge: Honorable Richard M. King
Trial Counsel Name and Address: Robison Harley, Jr. Conflict Attorney 825 N. Ross Street,
Santa Ana, CA 92701

TYPE OF PROCEEDING

Further Proceedings

Please see attached sentencing minute order and judgment for specifics.

Length of Sentence: Motions are Denied

Co-Defendants (if any):

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE
MINUTES

Case : 00NF1347 F A
Name : Mataele, Tupoutoe

Date of Action	Seq Nbr	Code	Text
05/31/24	1	HHELD	Hearing held on 05/31/2024 at 09:00:00 AM in Department C45 for Further Proceedings .
	2	OFJUD	Judicial Officer: Richard M. King, Judge
	3	OFJA	Clerk: B. Raab
	4	OFBAL	Bailiff: D. Heying
	5	OFREP	Court Reporter: Jennifer Scott
	6	TRIOC	In open court at 10:21 AM
	7	APNDC	Defendant not present in Court represented by Robison Harley, Conflict Attorney.
	8	APDAR	Defendant appearing by video.
	9	APDDA	People represented by Seton Hunt, Deputy District Attorney, present.
	10	MOTBY	Motion by Defense to vacate any restitution fines/fess above \$300.00.
	11	TEXT	The Court hears from defense counsel. The People submit on the restitution issue.
	12	TEXT	Court accepts defense Offer of Proof.
	13	MOTBY	Oral motion by Defense to allow defendant testify on restitution issue.
	14	MOTION	Motion denied.
	15	MOTION	Motion taken under submission.
	16	MOTBY	Motion by Defense to strike the gun enhancements pursuant to Penal Code section 12022.5(a) and to strike the prior pursuant to Penal Code section 667(a)(1)-1192.7(c).
	17	MOTION	Motion taken under submission.
	18	TEXT	The Court will rule by Minute Order.

JUN 26 2024

DAVID H. YAMASAKI, Clerk of the Court

BY: B. RAAB, DEPUTY

ORDER- People v. Mataele 00NF1347

The defendant seeks to strike the punishment of a prior serious felony and requests a modification of the \$10,000 restitution fine, both imposed at the time of sentencing on October 7, 2005. For the reasons below, both motions are DENIED.

I

Striking the prior serious felony enhancement and firearm enhancement

The California Supreme Court (CASC), in its affirmance of the judgment of death,¹ remanded the case back to the trial court "to consider whether to strike the prior serious felony enhancement under section 667, subdivision (a) and the firearm enhancements under section 12022.5, subdivision(a)."²

The Court considered the facts outlined in the published opinion by the CASC, the documents offered by the defendant attached to his briefs, and the arguments of counsel at the remand hearing on May 31, 2024,³ and took the matter under submission. In exercising its discretion, the Court declines to strike either the prior serious felony enhancement or the firearm enhancement for the following reasons.

1. The Court considered mitigating factors offered by the defendant at the penalty phase, as outlined in the CASC opinion, and concludes the commission of the capital crime was not connected to a mental illness (section 1385(c)(2)(D)), and that the prior serious felony was

¹ People v. Mataele (2022)13Cal.5th 372

² Id. @ p.438

³ Neither the People nor the defense presented additional testimonial evidence.

not over five years old at the time of the filing of the capital crime (section 1385(c)(2)(H)).

2. The Court considered the defendant's present health condition and the documents attached to its resentencing brief setting forth the defendant's behavior and accomplishments while incarcerated.
3. The Court considered the facts of the commission of the capital crime, as outlined in the CASC opinion.⁴
4. The Court concludes that the aggravating nature of the facts of the commission of the capital crime substantially outweighs the mitigating factors offered at trial and the facts contained in the documents provided relating to the defendant's health and behavior while incarcerated.

II

Restitution

Although the Court always retains jurisdiction over victim restitution,⁵ it does not have it for a post-judgment motion to modify a restitution fine. People v. Turrin (2009) 176 Cal. App.4th 1200, 1203. Absent a remand order to consider such a modification, the Court lacks jurisdiction to consider the defendant's request to modify the \$10,000 restitution fine ordered when the defendant was sentenced to death nineteen years ago.



Richard M. King
Judge

June 26, 2024

⁴ People v. Mataele (2022)13Cal.5th 372, 385- 392

⁵ Section 1202.46 Penal Code. On the sentencing date, the minutes indicate the "Court retains jurisdictions on restitution." For the reasons stated, as a matter of law, this only could be for victim restitution. To date, no such restitution was ever requested.

PEOPLE OF THE STATE OF CALIFORNIA vs. Defendant: TUPOTOE MATAELE	CASE NUMBER: 00NF1347
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REQUEST FOR CERTIFICATE OF PROBABLE CAUSE

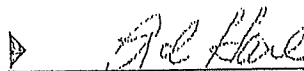
I request a certificate of probable cause. The reasonable constitutional, jurisdictional, or other grounds going to the legality of the guilty plea, no-contest plea, or probation violation admission proceeding are (specify):

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

Date: 7/17/2024

ROBISON D. HARLEY

(TYPE OR PRINT NAME)



(SIGNATURE OF DEFENDANT OR ATTORNEY)

COURT ORDER

This Request for Certificate of Probable Cause is (check one): ☐ granted ☐ denied.

Date:

JUDGE