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STAY REQUESTED: CONTEMPT FINDING

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT, DIVISION _____

CALIFORNIA HIGHWAY PATROL,

Petitioner,

v.

**SUPERIOR COURT OF THE STATE OF
CALIFORNIA, COUNTY OF SANTA CRUZ,**

Respondent.

RICHARD J. QUIGLEY,

Real Party in Interest and Defendant.

Santa Cruz County Superior Court Nos. 4SM21812; 4SM028271;
4SM044470; 4WM023363; 4WM034801
The Honorable Michael Barton, Judge

**PETITION FOR WRIT OF MANDATE
AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF**

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INTRODUCTION

This case presents an issue of urgent, statewide importance because it directly impacts the safety of the motoring public and the ability of California law enforcement to enforce the provisions of Vehicle Code section 72803(b), the "Helmet Law," on the state's roadways. Petitioner CHP needs this Court to clarify:

1. Whether a violation of the Helmet Law is ever a correctable violation,
- and
2. If so, whether the statute governing correctable violations applies here.

**PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION
OR OTHER APPROPRIATE RELIEF**

A. Authenticity of Exhibits

1. All exhibits accompanying this petition are true copies of original documents on file with the respondent court, except Exhibits 3 and 4,, which are correct copies of transcripts of the original reporter's transcript of the hearings held January 24, 2005 and July 15, 2005. The exhibits are incorporated herein by reference as though fully set forth in this petition. The exhibits are paginated consecutively from page 001 to 051, and page references in this petition are to the consecutive pagination.

B. Beneficial Interest of Petitioner; Capacities of Respondent and Real Party in Interest

2. Petitioner State of California Highway Patrol ("CHP") enforces laws regarding motorists, including the Helmet Law. It is the law enforcement agency that issued 5 citations to Real Party in Interest, motorist Richard Quigley ("Quigley"), for violation of Vehicle Code section 72803(b), the "Helmet Law." Respondent is the Superior Court of the County of Santa Cruz, which issued the May 20, 2005 Order directing the CHP to "sign-off" on all 5 of Quigley's citations. Real Party in Interest is Richard Quigley, the criminal defendant in the action pending in respondent superior court titled People v. Quigley, Santa Cruz County Superior Court. Five of nine recent cases against Quigley for

violation of the helmet law, case nos. 4SM021812; 4WM023362; 4SM023894; 4SM028271, and 4SM044470, arise from citations issued to him by petitioner CHP. In connection with the matters underlying this petition, Quigley has submitted evidence of over 30 prior helmet violations. (Exhibit 2, People's January 13, 2005 Statement of the Case, 007:5-9, People v. Quigley, nos. 3WM01853B; 4SM011246; 4SM021812; 4SM023894; 4SM0238271; 4WM034801; 4SM044470; 4WM021512; 4WM023363.)

C. Chronology of Pertinent Events

3. On May 20, 2005, respondent court ordered Petitioner State of California Highway Patrol ("CHP") to "sign-off" on 5 traffic citations received by Real Party in Interest Richard Quigley ("Quigley") for violation of California Vehicle Code 27803(b), commonly known as the "Helmet Law." (Exhibit 1.)

4. In doing so, respondent court determined section 27803(b) violations to be correctable, and indeed the dismissal of such violations mandatory, so long as Quigley presented, *ex post facto*, any fashion of helmet so long as it bore "the symbol DOT" thereon. (Exhibit 1, May 20, 2005 Order, 1:23-25.)

5. On June 22, 2005, respondent court issued an Order to Show Cause and Affidavit for Contempt to the CHP, set for hearing July 15, 2005, for CHP's refusal to "sign-off" on these violations.

6. On July 15, 2005, respondent postponed ruling on the contempt issue so as to afford the CHP an opportunity to file the instant writ. (Exhibit 4,

Reporter's Transcript of July 15, 2005 hearing, 046:16-25).

D. Basis for Relief

7. This petition presents two discrete issues:

a. Is a violation of Vehicle Code section 27803 a violation “involving a registration, license, or mechanical requirement” within the meaning of Vehicle Code section 40610?

b. If so, would section 40610 apply to the present facts?

8. Respondent court apparently answered both these questions in the affirmative in reaching its determination that “Helmet Law” violations were *per se* correctable, and that none of the three exceptions explicitly stated in the statute applied to real party's citations.

9. This was an abuse of discretion because the helmet law does not “involv(e) a registration, license, or mechanical requirement.”

10. Even if it did, the facts surrounding the citations of real party in interest fit squarely within all three of the specifically enunciated exceptions to the statute. In the case of such exceptions, the statute plainly, explicitly renders the correction provision “inapplicable.” (emphasis added).

E. Absence of Other Remedies

11. The present order directing the CHP to “sign-off” on the violations is not appealable. (See Code Civ. Proc., section 904.1). It undermines the validity and enforcement of California's Helmet Law. Therefore, writ relief is

essential to immediately clarify an issue of widespread importance interest, and public safety. Specifically, for the over 7,100 sworn CHP officers, and the over 24 million licensed California drivers, whether Vehicle Code section 27803(b) is enforceable. Petitioner, the law enforcement agency to whom the order was directed, has a beneficial interest at stake in this matter and no adequate remedy other than the relief sought in this petition.

PRAYER

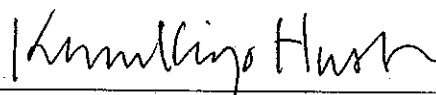
Petitioner CHP prays that this court:

1. Issue an alternative writ of mandate directing respondent superior court to vacate and set aside its order of May 20, 2005, directing the CHP to "sign-off" on the 5 citations issued to Real Party in Interest for violation of Vehicle Code section 27803(b), and
2. Grant such other relief as may be deemed just and proper.

Dated: October 6, 2005

Respectfully submitted,

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JAMES M. HUMES
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JACOB A. APPELSMITH
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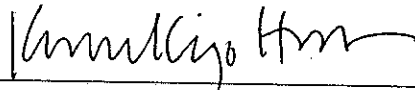
Attorneys for Petitioner
California Highway Patrol

VERIFICATION

I, Karen Kiyo Huster, declare as follows:

I am an attorney with the California Department of Justice. I have read the foregoing Petition for Writ of Mandate/Prohibition and Request for Stay and know its contents. The facts alleged in the petition are within my knowledge, or within the scope of my research, and I believe the facts to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed on October 6, 2005 at Oakland, California.



KAREN KIYO HUSTER

MEMORANDUM OF POINTS AND AUTHORITIES

I.

WRIT RELIEF IS ESSENTIAL TO CLARIFY AND CONFIRM CALIFORNIA LAW ENFORCEMENT'S ABILITY TO ENFORCE AN IMPORTANT PUBLIC SAFETY LAW

Real party in interest Richard Quigley ("Quigley") appeared at a sentencing hearing on January 4, 2005. Quigley was charged, on separate occasions, with nine violations of Vehicle Code section 27803 (b), ("Helmet Law"), the law requiring motorcycle riders to wear a helmet. (Exhibit 3, 017:1-7, Reporter's Transcript of January 24, 2005 hearing.) The underlying citations were issued by both Watsonville Police officers and CHP officers. It is undisputed, that in one of these instances, Quigley was wearing nothing on his head, and that at other times he was wearing a cloth baseball cap. (Exhibit 3, p. 8:1-7.) At that hearing, respondent court determined that the offenses were "all correctable". (Exhibit 3, p. 025:17, Reporter's Transcript of January 24, 2005 hearing.)

On May 20, 2005, respondent court ordered the CHP to "sign-off" on the 5 these traffic citations issued by officers of the CHP. The effect of the C HPs "signing off" is that Quigley's violations would be treated as correctable offenses. The CHP contends that these violations are not correctable.

The helmet law is designed to protect the motoring public. This order casts doubt upon the enforceability of the helmet law across the state and will cause uncertainty and the risk of uneven application if left unaddressed. For these

reasons, a writ is urgently needed.

The issues presented in this petition are twofold:

1. Is a violation of Vehicle Code section 27803 a violation “involving a registration, license, or mechanical requirement” within the meaning of section 40610?

2. If so, would section 40610 apply to the present facts?

Both the plain language of the statutes at issue and the particular facts of this case compel the same conclusion: Helmet Law violations are not correctable in this case and it was abuse of discretion for respondent court to order the CHP to find these violations correctable under Vehicle Code section 40610.

II.

A VIOLATION OF VEHICLE CODE SECTION 27803 IS NOT A VIOLATION “INVOLVING A REGISTRATION, LICENSE, OR MECHANICAL REQUIREMENT” WITHIN THE MEANING OF SECTION 40610

Vehicle Code section 27803(a), California’s “Helmet Law,” is titled **“Safety Helmets: Required.”** It provides in pertinent part:

A driver and any passenger shall wear a safety helmet meeting requirements established pursuant to Section 27802 when riding on a motorcycle, motor driven cycle, or motorized bicycle.” Section 27803(b) provides that: “It is unlawful to operate a motorcycle, motor-driven cycle, or motorized bicycle if the driver or any passenger is not wearing a safety helmet as required by subdivision(a).”

Vehicle Code section 40610 is the statute authorizing correctable vehicle offenses in the event of arrest, accident investigation, or other law enforcement

action. It is titled “**Notice to Correct Violation.**” It states:

“Except as provided in paragraph (2), if, after an arrest, accident investigation, or other law enforcement action, it appears that a violation has occurred involving a registration, license, or mechanical requirement of this code, and none of the disqualifying conditions set forth in subdivision (b) exist and the investigating officer decides to take enforcement action, the officer shall prepare, in triplicate, and the violator shall sign, a written notice containing the violator’s promise to correct the alleged violation and to deliver proof of correction of the violation to the issuing agency.”

Here, in order to arrive at the subject order, respondent court had to must first conclude that section 40610 applied to a violation of the Helmet Law. But a Helmet Law violation falls outside the confines of this statute: its language is specifically limited to when “a violation has occurred involving a registration, license, or mechanical requirement of this code.” The failure to wear a helmet is simply outside this definition. As a preliminary matter, respondent’s determination that a Helmet Law violation qualifies as a correctable offense is unwarranted and an abuse of discretion.

III.

**EVEN IF IT WERE SUBJECT TO VEHICLE CODE SECTION
40610, ALL THREE “DISQUALIFYING CONDITIONS”
PRECLUDE ITS APPLICATION HERE.**

Even in the event this Court is inclined to interpret section 27803 as preliminarily applicable to Quigley’s violations, the statute sets forth three specific exceptions which render the correctable provision inapplicable. Specifically, section 40610(b) provides: “Pursuant to subdivision (a), a notice to correct violation shall be issued as provided in this section or a notice to appear shall be issued as provided in section 40522, unless the officer finds any of the following:

- (1) Evidence of fraud or persistent neglect.
- (2) The violation presents an immediate safety hazard.

(3) The violator does not agree to, or cannot, promptly correct the violation.

Subdivision(c) provides: "If any of the conditions set forth in subdivision (b) exist, the procedures specified in this section or section 40522 are inapplicable, and the officer may take other appropriate enforcement actions."

Though only one exception is required to render the provision inapplicable, here it is evident that Quigley fits well within the confines all three exceptions. At issue in this matter alone were 9 separate violations: a pattern of persistent neglect. The continued riding of a motorcycle without a helmet poses an obvious immediate safety hazard. And as shown through pages of his testimony at the hearings in this matter, Quigley has demonstrated that he does not agree to, or cannot, promptly correct the violations.

There is no valid authority for respondent court to order the CHP to find Quigley's citations correctable under the facts of this case. It was an abuse of discretion to do so.

CONCLUSION

For the reasons set forth above, petitioner CHP respectfully requests THAT this Court grant extraordinary writ relief as prayed and direct respondent court to vacate its May 20, 2005 order commanding the CHP to "sign-off" on Quigley's 5 helmet violations.

Dated: October 6, 2005

Respectfully submitted,

BILL LOCKYER

Attorney General of the State of California

JAMES M. HUMES

Chief Assistant Attorney General

JACOB A. APPELSMITH

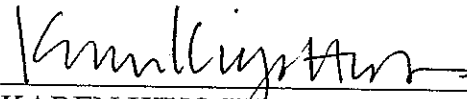
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KAREN KIYO HUSTER

Deputy Attorney General

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California Highway Patrol

CERTIFICATE OF WORD COUNT

California Court of Appeal, Sixth Appellate District, Division _____

Pursuant to California Rules of Court, Rules 56(b)(6) and 14(c), I certify that all text, including footnotes, in the attached **PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF** is proportionally spaced, uses 13 point Times New Roman font, and contains 2,490 words.

Dated: October 6, 2005

Respectfully submitted,

BILL LOCKYER

Attorney General of the State of California

JAMES M. HUMES

Chief Assistant Attorney General

JACOB A. APPELSMITH

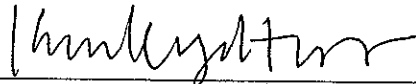
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