

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CRUZ
DEPARTMENT 12

COPY

BEFORE THE HONORABLE MICHAEL BARTON, JUDGE

THE PEOPLE OF THE
STATE OF CALIFORNIA,
Plaintiff,
vs.
RICHARD JAMES QUIGLEY,
Defendant.

Case No.s
3WM018538
4SM011246
4SM021812
4SM023894
4SM028271
4SM044470
4WM021512
4WM023363
4WM034801

2005/11/01 - 8 PM 12:23
FILED
SUPERIOR COURT
COUNTY OF SANTA CRUZ
CALIFORNIA

TERESA SANCHEZ

REPORTER'S TRANSCRIPT OF PROCEEDINGS

OSC HEARING

November 7, 2005

APPEARANCES:

For the CHP: KAREN KIYO HUSTER,
Deputy Attorney General

For the Defendant: IN PROPRIA PERSONA &
KATE WELLS,
Amicus Curae

Official Court Reporter: OSCAR A. MORENO,
CSR 3441

1 Watsonville, California

November 7, 2005

2 P R O C E E D I N G S

3 THE COURT: All right. Let's go on the record then
4 on the Quigley matters.

5 Mrs. Huster, are you present? Hello?

6 MS. KIYO HUSTER: Hello, Your Honor.

7 THE COURT: Good afternoon, Ms. Huster. Can you
8 hear me?

9 MS. KIYO HUSTER: Yes, Your Honor. Good afternoon,
10 Karen Huster on behalf of the California Highway Patrol.

11 THE COURT: Mr. Quigley is present along with Ms.
12 Wells present.

13 THE DEFENDANT:

14 THE DEFENDANT: Question, Your Honor, who else is on
15 the other end of that phone? Is she on desktop or she on a
16 phone?

17 THE COURT: I don't know. Are you on a speaker on
18 your end, Ms. Huster?

19 MS. KIYO HUSTER: No, Your Honor, I'm holding the
20 receiver in my hand in my office alone with the door closed.
21 Court Call doesn't allow Counsel to use a speaker phone.

22 THE COURT: Okay. So what's happening on your end?

23 MS. KIYO HUSTER: Well, we haven't heard anything
24 from the Court of Appeal, Your Honor.

25 THE COURT: Mr. Quigley, by any chance or have you
26 or Ms. Wells heard anything?

1 THE DEFENDANT: Yes, as a matter of fact, Your
2 Honor, I have.

3 THE COURT: All right.

4 THE DEFENDANT: It's not official, but I think it
5 will serve nicely for the basis of my request for today.

6 I called over to the Court and I'm running I'm --
7 I'm learning a lot about how petitioning for writ of mandamus
8 are handled by Appellate Courts and it appears that there is
9 an absence of any sense of urgency within the confines of this
10 petition. In other words, even though it says up here at the
11 top, so where it says, "Stay requested; when asked the clerk
12 about that, the clerk noted that, yes; that's correct it says,
13 "Stay requested," however it wasn't briefed, nobody asked for
14 any sort of expedition -- expediting of the ruling or any sort
15 of movement anything along or of an expedited hearing as to
16 the stay.

17 So it looks to me like this thing as I understand
18 stood the clerk this thing could sit there in per -- well,
19 forever except and unless of course I raise an issue with the
20 Court having something for over 90 days without ruling on it
21 at which point I could always challenge their next paycheck.
22 But other than -- well, you know.

23 THE COURT: No, you're right.

24 MS. KIYO-HUSTER: And I --

25 THE DEFENDANT: So, but I really don't -- I don't
26 think it's 90 days and I don't think that my personal feeling

1 is -- is that the brief doesn't address the issues that you
2 have ruled on, any way.

3 That if it is at best incompetent if not designed to
4 evade the issues and -- in front with great respect, page
5 four, Basis for Relief, it says, "This petition presents two
6 discrete issues, A, is a violation of Vehicle Code section
7 27803 a violation quote involving the registration of license
8 or mechanical -- slow down just a tad. He's quick but --

9 THE DEFENDANT: I apologize. A, is a violation of
10 Vehicle Code Section 27803 a violation quote, " involving a
11 registration, license or mechanical requirement " end quote
12 within the meaning of Vehicle Code Section 40610?

13 I think if that issue were put before the Court,
14 that I would win on that anyway, but that's not what you were
15 ruling on and it is certainly not the basis of your decision.

16 40303.5 is where the language resides that says that
17 this is a correctible equipment violation as you might
18 remember from all the discussions that we had on that issue.

19 So, it's definitely best to go there and then (b),
20 so would Section 40610 apply to the present question, too.
21 Again, that's fine, Your Honor, as far as the subsection (b)
22 goes, 40610 -- but 40610 doesn't -- it is not the basis of my
23 demur or my argument or whatever finding we made is 40303.5.

24 THE COURT: Mr. Quigley.

25 THE DEFENDANT: Yes, Your Honor.

26 THE COURT: You said at page four?

1 THE DEFENDANT: Page four. I'm going -- if you have
2 the same paperwork that I do.

3 THE COURT: I don't think so, that's why I'm asking.

4 THE DEFENDANT: Okay. Yeah, it's numbered page
5 four, Your Honor.

6 THE COURT: Does your front cover say Petition For
7 Writ of Mandate And/Or Prohibition Or Other Appropriate
8 Relief?

9 THE DEFENDANT: That's correct. And then the first
10 page in there is table of contents and a little letter i and
11 then the next one is table of authorities and two little i's,
12 and then there is an another page which is a cover page.

13 THE COURT: Does your page one at the top say "Stay
14 Requested: Contempt Finding"?

15 THE DEFENDANT: Yes, it does.

16 THE COURT: And you are on then page four?

17 THE DEFENDANT: I'm on page four. Yes, and it's
18 section D, Basis for Relief.

19 THE COURT: Okay, I see it. I'm sorry.

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Ms. Huster.

22 MS. KIYO-HUSTER: Yes, Your Honor, it's Huster.

23 THE COURT: Ms. Huster, excuse me.

24 Your concluding page five and then your request for
25 relief, relief indicates that request for the Appellate Court
26 to immediately clarify the issue or issues. Do you have any

1 idea or response as to what the clerk has told Mr. Quigley? I
2 mean --

3 MS. KIYO-HUSTER: Well, Your Honor, as an
4 evidentiary matter I would object to the Court accepting
5 hearsay testimony from Mr. Quigley.

6 THE COURT: I'm not.

7 MS. KIYO-HUSTER: On the impressions of the clerk at
8 the Court of Appeal, it sounds like what he would like to do
9 is argue the opposition to the position to you.

10 THE COURT: I'm not going there. All I want --

11 MS. KIYO-HUSTER: It sounds like we are.

12 THE COURT: No.

13 MS. KIYO-HUSTER: I don't -- I don't know what the
14 Court is doing. It's not my office's practice to call the
15 clerk and try to end-run around procedure. We wait for the
16 Court of Appeal when they notify us about when they want to do
17 the petition and so we're waiting to hear. We're not placing
18 calls to the clerk to get their impression of the substance of
19 the petition.

20 THE COURT: Basically --

21 MS. KIYO-HUSTER: We're waiting to hear from them.

22 That is --

23 THE COURT: All I was asking --

24 MS. KIYO-HUSTER: -- for the Court for the correct
25 procedure.

26 THE COURT: All I was asking and all I'm trying to

1 figure out is what's happening with this petition.

2 I am -- I just wanted to make sure we were all on
3 the same page and if Mr. Quigley had gotten information that
4 you could explain, that was my question. I'm not arguing
5 anything, I'm not doing anything else. I just want this not
6 to languish and I wanted to know if you had an explanation
7 that was all the question was.

8 MS. KIYO-HUSTER: No, Your Honor, I can't speak for
9 the Court of Appeals.

10 THE COURT: You work through the Court of Appeals
11 more than I do and that's all the question was.

12 MS. WELLS: Your Honor, could we ask why they didn't
13 brief the issue of the stay?

14 MS. KIYO-HUSTER: Your Honor, in bringing the
15 petition we make a determination as to what the issues are as
16 we would like to see them framed to you. If Mr. Quigley would
17 like to frame a different issue and make a different argument
18 he can do that in the opposition and we would reply.

19 THE COURT: So let me ask then as a general
20 question.

21 And I'm trying to see -- what day was this filed, do
22 you know?

23 THE DEFENDANT: The 6th --

24 THE COURT: Of --

25 MS. KIYO-HUSTER: October.

26 THE COURT: Of October?

1 When would you -- I would think that we would have
2 heard something by now. When do you normally, especially on
3 this type of a situation, when would you normally expect some
4 type of a response or indication as to whether the Court is
5 going to hear it?

6 MS. KIYO-HUSTER: Are you asking me, Your Honor?

7 THE COURT: Yes.

8 MS. KIYO-HUSTER: You know, I've never handled a
9 petition of this nature before so it's the same question you
10 asked me a month ago when I came for the last hearing and I
11 don't know the answer.

12 If the Court would like me to contact the Court of
13 Appeals and find out as a matter purely of procedure not of
14 substance what the status of the petition is, I would be happy
15 to do that and if I get any information that's usable or any
16 information at all I'd be happy to share that with the Court
17 and with parties at that time, but I don't have any
18 information on that right now and I am very reluctant to
19 guess.

20 THE COURT: Again, you practice there more than I
21 do, obviously. That was just my thoughts and hopes.

22 Do you think you could make that call and have some
23 information within a week?

24 MS. KIYO-HUSTER: I can have my office make the call
25 and inquire, but I certainly can't predict what the Court will
26 do.

1 THE COURT: I understand. I'm just asking -- today
2 is the 7th, if I put it back on in one week your office or
3 yourself could make the call and get either, we don't care,
4 answer or an approximate date or anything -- some information.

5 MS. KIYO-HUSTER: Well, could I propose this: Could
6 I get any information and just provide it to the Court and to
7 parties in writing and if the Court is inclined to hold a
8 hearing on the matter at that time we can then schedule a
9 hearing?

10 THE COURT: I'm not worried about a hearing I just
11 don't want this -- these are still kind of floating on my
12 calendar so I can't just take them off calendar.

13 MS. KIYO-HUSTER: Right. They are floating on my
14 calendar.

15 THE COURT: I just can't not do anything. So if I
16 put a new date then we have something that we're looking
17 forward too even if it's picking a new date after that. Any
18 information is helpful, that's all I'm trying to do. I need
19 to leave these on calendar so that I don't lose them and as
20 Mr. Quigley alluded to, something under submission to a
21 Superior Court Judge of over 90 days I don't get paid so there
22 is that issue.

23 MS. KIYO-HUSTER: Well, then would it make sense for
24 the Court to schedule an appearance 90 days from October 6th?

25 THE COURT: No, because I don't want it out that far
26 so I'll put them back on the 14th.

1 THE DEFENDANT: Your Honor --

2 THE COURT: Hang on.

3 And hopefully then your office may have more
4 information for all of us.

5 Mr. Quigley.

6 THE DEFENDANT: Your Honor, first I -- I don't want
7 to -- I'm not trying to tell you how to read, Your Honor, but
8 I know that you were looking for something that would indicate
9 that she was looking at -- she had approached them for
10 immediate relief. In the context of the sentence in which the
11 word immediately appears, it doesn't really request that they
12 do anything immediately. It is in general terms that under
13 CCP 904.1, it's in general terms, it's not specific to this,
14 would you please get it on.

15 And to be perfectly honest with you, Your Honor, and
16 I don't know whether this motion is best made by me or the
17 moving party as to the contempt order, but -- under the moving
18 -- my lawyer moved in on that, but I'd -- I think that the
19 People start moving, Judge, right after you had some kind of
20 ruling down as to that on contempt. I believe things are
21 going to start moving real quick right after that and I would
22 guess they would move right back into the 6th and in line with
23 that, I would request that if there are going to be sanctions
24 for this, first of all, it's probably unusual for someone in
25 my position to be that way, but I'm very protective of
26 Lieutenant Walker. I happen to think that he's a man that's

1 acting honorably within the confines of his job and that
2 somebody is telling him what to do and I'd hate to see
3 anything bad happen to him.

4 Secondly, I think that -- an Attorney General's
5 opinion is long over due on this. The Attorney General could
6 have provided that a long time ago. I think that one of the
7 reasons I haven't moved harder in your denial of my request to
8 get the Attorney General out of this as Counsel for the CHP
9 and bring in their lawyers is because they have that ability
10 and that's not available to me either because they are
11 representing the CHP.

12 And I think that this is exactly the reason that the
13 courts have ruled that the District Attorney -- and the
14 District Attorney's job is to protect my rights as much as it
15 is to see that the laws are strictly enforced and this is one
16 of these times when that particular benefit that I would have
17 from the AG'S Office acting independently and -- without a
18 position would serve me well and I think I'm being really hurt
19 by the fact that the Attorney General is in spite of the fact
20 that I believe the head of the Attorney General's office would
21 support your decision in total, I am dealing with someone who
22 doesn't seem to worry about the day of reckoning facing him,
23 who does not, and that's creating a real problem for me and
24 the time just keeps going.

25 So, this -- you made your ruling, your ruling was a
26 year ago, Your Honor. You made the determination these are

1 correctible tickets a year ago. We all ought to be a year
2 into something else with our lives by now.

3 THE COURT: I would think.

4 THE DEFENDANT: And so I would ask on my own behalf
5 or Ms. Wells behalf since if this is her job, since she's the
6 one that asked for the contempt hearing to begin with if we're
7 going to meet again, we're not going to do it today, when we
8 meet again it's going to be for the purpose of handing down
9 some sort of a sanction on this contempt so there is no longer
10 any question in anybody's mind whether or not the Superior
11 Court of California can order California Highway Patrol to
12 follow the law.

13 THE COURT: I'll consider that. How about then the
14 14th? 1:30, here.

15 MS. WELLS: Your Honor, I guess I have a question as
16 to what's going to happen on the 14th.

17 THE COURT: There is a request for me to consider
18 sanctions for contempt which I'll consider.

19 MS. WELLS: Right.

20 THE COURT: And hopefully then we'll have more
21 information what the Appellate, the 6th District, is
22 considering as far as either my answers or the Attorney
23 General's action also or Mr. Quigley's actions, somebody's
24 action, also our inactions.

25 THE DEFENDANT: They will appeal your sanctions,
26 Judge. You make them strong enough I guarantee we'll get into

1 the 6th.

2 MS. WELLS: The question being if she comes back
3 with the same information that Mr. Quigley has that it can
4 languish there for a long time.

5 THE COURT: Then we can finish the contempt hearing.

6 MS. WELLS: Okay. That's what I wanted to know.

7 THE COURT: The 14th here at 1:30.

8 THE DEFENDANT: Thank you, Your Honor.

9 MS. KIYO-HUSTER: Your Honor, may I appear for court
10 call for that hearing?

11 THE COURT: If you want to do that, sure. But we'll
12 see where we get to.

13 MS. KIYO-HUSTER: I'm sorry, Judge, could you repeat
14 that? I'm having trouble hearing too. "If you want --"

15 THE COURT: If you want to take that option. If we
16 go for a full hearing I don't know who you want to be on the
17 phone for that but it's your choice.

18 MS. KIYO-HUSTER: Thank you, Your Honor.

19 THE COURT: 1:30.

20 MS. KIYO-HUSTER: All right.

21 THE DEFENDANT: Thank you, Your Honor.

22 THE COURT: You're welcome.

23

24

25

26