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May 2, 2013

SUPREME COURT
FILED

MAY - 7 2014

Frank A. McGuire Clerk

Deputy

Clerk
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Dear Sir:

Re: Steen v. Appellate Division
S-174773
(2d Dist.No. B217263; App.Div. No. BR046020; LASC No. 6200307)

Petitioner has invited this court's attention to the recent ruling of the Appellate Division of the Los Angeles County Superior Court, a party to this proceeding, in People v. Simpson (2014) 223 Cal.App.4th Supp. 6. Both the Appellate Division and the People have filed responses to that citation. Petitioner respectfully requests that this court receive and consider this letter in reply.

In the response filed by the Appellate Division, it is claimed that the sole reason for the result in Simpson was the lack of a statute authorizing a court to file an amended accusatory pleading; apparently suggesting that such a statute could be enacted and would be constitutional. (Let. AD, pp. 3-4.) The response proceeds to assert that the Appellate Division's discussion of the constitutional bar upon the judiciary filing charges is "pure dictum." (Id., p. 4.)

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The response errs. It is obvious that the Appellate Division rested its ruling in Simpson upon two grounds: 1) there is no statutory authority for a court amending an accusatory pleading, and 2) such conduct by a court is constitutionally barred. It is, of course, well-settled that "When an appellate court bases its decision on alternative grounds, none is dictum." (People v. Minor (1991) 227 Cal. App. 3d 37, 42; People v. Rolon (2008) 160 Cal.App.4th 1206, 1214-1215.)

In fact, the primary ruling of the Simpson court is that there is a constitutional bar to a court filing a criminal charge. The Appellate Division's discussion of the constitutional issue is more than three times as lengthy as its discussion of the statutory point (seventeen lines compared to five lines). If either of these points is to be disregarded, it would seem that the statutory discussion is of lesser importance to the Simpson court.

Moreover, even if it could be claimed that the Appellate Division's discussion is dictum, the importance of Simpson does not lie merely in the fact that it is a relevant appellate ruling, but that it is a statement of a party to these proceedings. Whether the constitutional discussion in Simpson would be binding upon a lower court in a later case is in great measure beside the point. The more salient point is that the Simpson discussion represents a reasoned analysis by one of the parties to this proceeding of the legal issue presented–an analysis that fully supports petitioner's argument.

The claim made in the response that the discussion of separation of powers in Simpson is "confined to a situation in which no statutory authority exists for the court to institute a criminal prosecution" (Let. AD, p. 5) is legally absurd. A statute cannot overturn the Constitution–if a court filing criminal charges is constitutionally barred, that bar cannot be changed by an authorizing statute. No support whatsoever for this claim regarding the meaning of Simpson can be found in the opinion. If the only problem in Simpson was the absence of statutory authority, then the Legislature would be empowered to enact statutes allowing courts to amend pleadings, or to initiate criminal proceedings, for any criminal offense. It is clear that the

Appellate Division concluded in Simpson that any such statute would be unconstitutional–whatever contrary argument is now being presented to this court.

Indeed, in this case this court is presented with what must be an unusual circumstance: the response by the Appellate Division appears to take issue with the statements of that very represented party. The response takes the Simpson discussion to task: "It is also questionable whether Pellegino, which Simpson cited, supports Simpson's broad statement that '[a] court cannot authorize the institution of a criminal prosecution without the approval of the prosecutor.'" (Let. AD, pp. 5-6.) Petitioner assumes that the Appellate Division believed that its citations supported its conclusions when it published the Simpson decision. Is this court now to conclude that the Appellate Division, as a party before this court, does not believe that its discussion of constitutional law in Simpson was legally correct? Frankly, that hardly seems likely to petitioner.

The Appellate Division also argues that even if a court cannot institute criminal proceedings, the court can still file a criminal charge which then becomes effective when and if a prosecutor approves, authorizes, or concurs in the filing. (Let. AD, p. 7.) Petitioner doubts that the constitutional mandate of separation of powers is satisfied when the accusatory pleading is signed by the judge (or the judge's clerk), even if a prosecutor later "concurs" in the judge's action. But even if a court can file the charge, the Appellate Division admits that it is not effective until the prosecutor acts–which in this case was more than one year after the commission of an offense with a one-year statute of limitations.

The Appellate Division also makes a curious argument that the filing of criminal charges is somehow akin to a contempt, and thus a court may initiate a criminal proceeding if the evidence of the crime is known to the judge (or the judge's clerk). (Let. AD, p. 8.) Fortunately, petitioner need not point out the fallacy in this argument, since the People (whose interest in protecting their ability to independently file criminal charges would seem to be at risk in

this case) have persuasively shown the argument's invalidity. (See Let. People, pp. 4-7.)

However, despite petitioner's agreement with the People as to that aspect of the matter, petitioner must remain in disagreement with the balance of their argument. The People assert that the filing of criminal charges by the judiciary comports with the separation of powers because "if the prosecutor decides that the prosecution is not authorized or warranted and refuses to approve it, then the complaint is a nullity and the trial court must dismiss it." (Let. People, p. 4; emphasis added.) The People cite nothing in support of the claim that dismissal of a properly-initiated criminal proceeding becomes mandatory if the People fail to approve of it. In fact, Penal Code section 1386 is directly to the contrary: " . . . neither the Attorney General nor the district attorney can discontinue or abandon a prosecution for a public offense, except as provided in Section 1385." Nothing in section 1386 suggests that the rule is different if the criminal proceeding has been initiated by the judiciary, rather than the executive.

The People's answer to this is problematic: "In the unlikely event that a court refused a prosecution request to dismiss when society as represented by the People did not have a legitimate interest in the prosecution of the offense, the court's ruling would be reviewable for abuse of discretion." (Let. People, p. 4.) The People do not explain why it is "unlikely" that a court would refuse to dismiss a prosecution which the court itself initiated. Assuredly, if a court can initiate criminal proceedings, it can do so in order to advance the legitimate interests of the court, rather than the People. It would hardly be surprising should the court not find favor in a prosecutor's attempt to hinder the court's protection of its perceived interests.

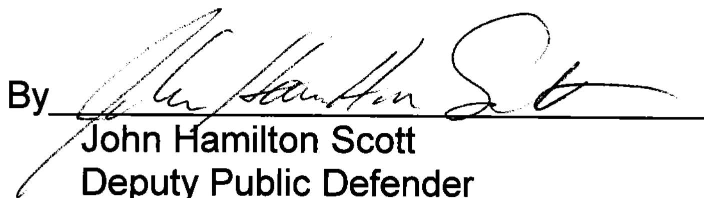
Nor is there any merit to the implication that denial of a motion to dismiss would inevitably be reversed on appeal. The People would have no right to appeal such a ruling; the People can appeal only the granting of a motion to dismiss. (See Pen. Code §§ 1238, 1466.) Even if a defendant chose to appeal, it is hardly a given that a reviewing court would find a court's

reasons for not dismissing to be illegitimate. The mere fact that the prosecutor wants to dismiss does not itself provide justification for a dismissal, and a court is fully empowered to disagree with a prosecutor's assessment of the "interests of justice." (See People v. Ritchie (1971) 17 Cal.App.3d 1098, 1105-1106.) A court's disagreement with the prosecutor would not inevitably, or even usually, be found to be an abuse of discretion.

The People are thus left in the same position as the Appellate Division, arguing that the People validly initiated this criminal proceeding when they eventually approved of the charges filed by the court's clerk. And, again, even if the separation of powers doctrine can comport with criminal proceedings based upon complaints initially filed by judges or their clerks, that event occurred more than one year after the commission of an offense with a one-year statute of limitations.

Respectfully submitted,

RONALD L. BROWN, PUBLIC DEFENDER
OF LOS ANGELES COUNTY, CALIFORNIA

By 
John Hamilton Scott
Deputy Public Defender

Attorneys for Petitioner

JHS/hs

DECLARATION OF SERVICE

I, the undersigned, declare I am over eighteen years of age, and not a party to the within cause; my business address is 320 West Temple Street, Suite 590, Los Angeles, California 90012; that on May 5, 2014, I served the within LETTER, JEWERELENE STEEN, on each of the persons named below by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail in the City of Los Angeles, addressed as follows:

ATTORNEY GENERAL
STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
300 SOUTH SPRING STREET
LOS ANGELES, CA 90013

KATHARINE H. MACKENZIE
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200 NORTH MAIN STREET
500 CITY HALL EAST
LOS ANGELES, CA 90012

PRESIDING JUDGE
LOS ANGELES SUPERIOR COURT
111 NORTH HILL STREET
LOS ANGELES, CA 90012

CLERK, COURT OF APPEAL
SECOND APPELLATE DISTRICT
300 SOUTH SPRING STREET
LOS ANGELES, CA 90013

CLERK, APPELLATE DIVISION
LOS ANGELES SUPERIOR COURT
111 NORTH HILL STREET
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REED SMITH, LLP
PAUL D. VOGEL, ESQ.
101 SECOND AVENUE, SUITE 1800
SAN FRANCISCO, CA 94105

I further declare that I served the above referred-to document by hand delivering a copy thereof addressed to:

JACKIE LACEY, DISTRICT ATTORNEY
APPELLATE DIVISION
320 WEST TEMPLE STREET, SUITE 540
LOS ANGELES, CA 90012

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 5, 2014, at Los Angeles, California.

EDNA R. SANTOS