

In the Supreme Court of the State of California

ALFREDO GOMEZ,

Petitioner,

v.

**THE SUPERIOR COURT OF LASSEN
COUNTY,**

Respondent,

TOM FELKER, Warden, et al.,

Real Party in Interest.

Case No. S179176

**SUPREME COURT
FILED**

JUN - 3 2010

Frederick K. Ohlrich Clerk

Deputy

Third Appellate District, Case Nos. C060773, C060710
Lassen County Superior Court, Case Nos. CHW-2530, 47543
The Honorable Dawson Arnold, Superior Court Commissioner

**REAL PARTY IN INTEREST'S ANSWERING
BRIEF**

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ISSUE PRESENTED

Is a commissioner's summary denial of a petition for writ of habeas corpus or mandate a "subordinate judicial duty" within the meaning of article VI, section 22 of the California Constitution, or can only a judge or justice exercise the judicial power of final adjudication of a habeas or mandate petition?

STATEMENT OF THE CASE AND FACTS

Petitioners and state inmates Alfredo Gomez and Manuel Juarez filed separate petitions for writ of mandate in Lassen County Superior Court, challenging the processing of their administrative appeals at High Desert State Prison. The Lassen County Court Commissioner summarily denied Gomez's petition. The commissioner converted Juarez's petition to a writ of habeas corpus and denied it for failing to state a prima facie case for relief. Petitioners filed writs in the Third District Court of Appeal, claiming that the commissioner lacked authority to rule on their superior court petitions. The Court of Appeal consolidated the matters and issued alternative writs of mandate to decide whether the commissioner had authority to deny the petitions. The Court of Appeal deemed the superior court the respondent and Tom Felker, Warden of High Desert State Prison, the Real Party in Interest.

The Court of Appeal concluded that under the California Constitution, Code of Civil Procedure section 259, subdivision (a), and this Court's decision in *Rooney v. Vermont Investment Corp.* (1973) 10 Cal.3d 351, court commissioners are authorized to deny petitions for writ of habeas corpus or mandate before an order to show cause or alternative writ is issued. (*Gomez v. Super. Ct.* (2009) 179 Cal.App.4th 614, 625-628.) But "if the petition states a prima facie case and an order to show cause issues the matter will no longer be construed as an ex parte motion for writ of

habeas corpus. A cause will have been created, and the cause must be tried by a superior court judge, unless the court appoints a commissioner as a temporary judge and the parties stipulate to the cause being tried by the commissioner.” (*Id.* at pp. 628-629.) This Court granted petitioners’ petition for review.

SUMMARY OF THE ARGUMENT

Neither the Court of Appeal decision nor petitioners’ position is adverse to the California Department of Corrections and Rehabilitation (CDCR) as the Real Party in Interest. CDCR is only potentially impacted if a court commissioner has the authority to grant a writ petition and order affirmative relief. Because the Court of Appeal and petitioners agree that commissioners may not grant habeas or mandamus relief without the parties consenting to a commissioner serving as a temporary judge, CDCR is not opposed to this Court affirming the Court of Appeal’s reasoning or reversing the decision below based on the grounds asserted by petitioners.

ARGUMENT

I. NEITHER THE OPINION BELOW NOR PETITIONERS’ POSITION IS ADVERSE TO THE REAL PARTY IN INTEREST.

The Court of Appeal determined that “the summary denial of a prison inmate’s ex parte application for the issuance of a writ of habeas corpus or a writ of mandate is a subordinate judicial duty that a commissioner may perform pursuant to section 259, subdivision (a) of the Code of Civil Procedure, without violating the Constitution, because it is not the ‘trial’ of a ‘cause.’” (*Gomez, supra*, 179 Cal.App.4th at p. 619.) If, however, “the court commissioner determines that the inmate’s petition has stated a prima facie case for writ relief, and therefore issues an alternative writ or order to show cause why relief should not be granted, then a cause is created and the commissioner may not try the cause without a stipulation from the parties.”

(Ibid.) Petitioners dispute this conclusion, arguing that no denial of a habeas or mandamus petition is a subordinate judicial duty. (*See generally* Opening Brief on the Merits.)

In the proceedings below, the Court of Appeal ordered CDCR to address the propriety of commissioners adjudicating writ petitions. CDCR responded as the Real Party in Interest and expressed its belief that adjudicating habeas petitions is not a subordinate judicial duty. CDCR's interest in this case is limited to whether commissioners have the authority to grant a petition for writ of habeas corpus or mandate. The Court of Appeal's ultimate conclusion that commissioners may summarily denying a writ petition has no adverse impact on CDCR. The Court of Appeal and petitioners agree that commissioners are not empowered to grant writ petitions and order affirmative relief absent consent of the parties. Thus, CDCR is not opposed to the reasoning set forth by petitioners or the Court of Appeal.

CDCR notes that its interests would be implicated if respondent, the superior court, seeks to have this Court consider whether commissioners may grant habeas petitions as well as summarily deny them. Therefore, CDCR reserves the opportunity to reply to any such contention.

CONCLUSION

CDCR is not adversely impacted by the Court of Appeal decision or petitioners' contentions. Thus, CDCR, as the Real Party in Interest, is not opposed to this Court affirming the Court of Appeal's opinion or adopting the reasoning set forth by petitioners.

Dated: June 2, 2010

Respectfully submitted,

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SA2009307387

CERTIFICATE OF COMPLIANCE

I certify that the attached **REAL PARTY IN INTEREST'S ANSWERING BRIEF** uses a 13 point Times New Roman font and contains **1,026** words.

Dated: June 2, 2010

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DECLARATION OF SERVICE BY U.S. MAIL

Alfredo Gomez v. Lassen Superior Court; Tom Felker (Real Party In Interest)
Supreme Court of the State of California S179176

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On June 2, 2010, I served the attached **REAL PARTY IN INTEREST'S ANSWERING BRIEF** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

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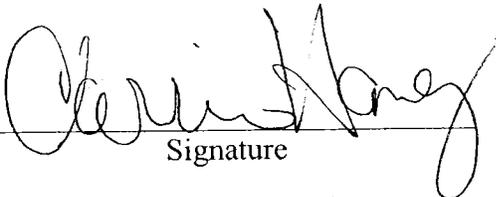
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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 2, 2010, at Sacramento, California.

Carrie Haney
Declarant



Signature