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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

WARREN MORRIS,

Petitioner,

v.

THE SUPERIOR COURT OF THE CITY
AND COUNTY OF SAN FRANCISCO,

Respondent;

THE PEOPLE,

Real Party in Interest.

A136688

(San Francisco City & County
Super. Ct. No. 12024871)

By the Court:¹

Petitioner Warren Morris received 22 citations for violating local ordinances and, in accordance with Penal Code section 853.5, subdivision (a), signed promises to appear in court for each of the infractions. He subsequently failed to appear for any of his different citations. Respondent, the San Francisco Superior Court, issued warrants for his arrest, he was arrested and held for arraignment. When the district attorney declined to pursue the charges, respondent court issued an order to show cause (OSC) requiring petitioner to show why he should not be held in contempt of court for failing to appear on the citations. Petitioner ultimately pleaded no contest to the contempt violations claiming

¹ Before Marchiano, P.J., Margulies, J., and Banke, J.

he did so only after the court told him he would be in custody for three weeks until a hearing could be held on the OSC. He contends in this petition² his failures to appear do not constitute “[d]isobedience of any lawful judgment, order, or process of the court” or “[a]ny other unlawful interference with the process or proceedings of a court” within the meaning of Code of Civil Procedure section 1209, subdivision (a)(5) and (9).³ We agree and annul the contempt violations.

At the outset, we note the superior court has appeared in this case, at our invitation. “[W]hile nominally the respondent in a writ proceeding, the superior court ordinarily is a neutral party, with a duty to remain impartial. [Citations.] Exceptions to this principle are infrequent, generally involving rulings as to which real party in interest ‘is not a real adverse party, has suffered no harm, or has no interest in the writ proceeding.’ [Citation.] The superior court also properly appears where its direct operating procedures are challenged.” (*Gressett v. Superior Court* (2010) 185 Cal.App.4th 114, 117–118, fn. 3.)⁴ It is undisputed the district attorney elected not to prosecute petitioner’s failures to appear on the infraction notices (Pen. Code, § 853.7), and the superior court issued a contempt OSC pursuant to its standard operating procedures. Thus the court has appropriately appeared.

I. BACKGROUND

From June 28, 2010 through June 30, 2012, petitioner was arrested 22 times by San Francisco police for violations of local ordinances. In each instance, he was released upon signing a form captioned “San Francisco Police Department [¶] City and County of

² Petitioner filed a petition for writ of habeas corpus, a traditional challenge to a contempt judgment. In the interest of judicial economy, we have deemed the petition to be one for a writ of prohibition. (See, e.g., *Evans v. Superior Court* (1939) 14 Cal.2d 563, 580; *Lister v. Superior Court* (1979) 98 Cal.App.3d 64, 69.)

³ It is undisputed the court purported to find petitioner in civil contempt, not criminal contempt. (Pen. Code, § 166.)

⁴ As the Attorney General correctly observes, the People have limited power to take a position in civil contempt proceedings. (See *Safer v. Superior Court* (1975) 15 Cal.3d 230, 241; *People v. Superior Court (Humberto S.)* (2008) 43 Cal.4th 737, 753.)

San Francisco [¶] NOTICE TO APPEAR.” The “infraction” box on the form was checked. Each form described the date and nature of the violation. Under the words “WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR AT THE TIME AND PLACE INDICATED BELOW,” petitioner signed. On each notice, the box “Criminal Division – SF Superior Court – 850 Bryant St., Room 145, San Francisco, CA 94103” was checked, and a date for his appearance was inserted.

The form itself states it is “approved by the Judicial Council of California.”⁵ The bottom right-hand edge of the form states “SEE REVERSE.” At the top of the reverse side of the form is an admonition: “IMPORTANT—READ CAREFULLY.” Thereafter, the form explains: “WARNING: If you fail to appear in court as you have promised, you may be arrested and punished by 6 MONTHS IN JAIL AND/OR A \$1,000 FINE regardless of the disposition of the original charge. (Veh. Code, § 40508 or Pen. Code, § 853.7.)”

Petitioner did not appear on any of the citations. In each case, upon his failure to appear, the court issued a warrant for his arrest in compliance with Penal Code section 853.8.⁶ Each warrant was entitled “Traffic Warrant” and specified the relevant code sections petitioner violated.⁷ The court has explained in its opposition brief that the warrants were issued from the “Traffic/Nontraffic—Infraction Division” but the “form of these warrants can apply to both traffic and non-traffic violations.”

⁵ We take judicial notice of the entirety of the form. (Evid. Code, §§ 450, 451, 459.)

⁶ Penal Code section 853.8 provides: “When a person signs a written promise to appear at the time and place specified in the written promise to appear and has not posted bail as provided in Section 853.6, the magistrate shall issue and have delivered for execution a warrant for his or her arrest within 20 days after his or her failure to appear as promised or within 20 days after his or her failure to appear after a lawfully granted continuance of his or her promise to appear.”

⁷ Some of the warrants specify “V40508A,” a Vehicle Code offense paralleling Penal Code section 853.7, which provides: “Any person who willfully violates his or her written promise to appear . . . is guilty of a misdemeanor . . .” The court states these references “appear to be a clerical error.” As we grant the petition, we need not address this issue.

Petitioner was arrested on all of the warrants on September 26, 2012. As explained in the court's opposition, petitioner "was held for an arraignment hearing on the morning of Friday, September 28, 2012. Despite [his] arrest and his multiple apparent misdemeanors, [the court] was made aware that the District Attorney's Office would not pursue charges."

On September 27, 2012, while petitioner was still in custody, a judge of the court⁸ issued an OSC (Code Civ. Proc., § 1211, subd. (a)) against him regarding his multiple failures to appear. The OSC directed petitioner to appear "to show cause, if any, why [he] should not be adjudged guilty of contempt of court, and punished accordingly, for the acts of willful disobedience of the orders of the . . . court, as provided in section 1209[, subdivision] (a)(5) of the California Code of Civil Procedure." It also stated petitioner had signed promises to appear, and had the power to comply with his promises but failed to appear without legal cause. Attached to the OSC were the relevant notices and warrants.

On September 28, 2012, petitioner appeared on the OSC. Through counsel he challenged the court's jurisdiction to proceed with the contempt hearing because there was no claim he violated a court order or process, and the affidavit in support of the OSC was deficient. The court rejected his arguments.

Next, petitioner asked for an immediate hearing on the OSC. The court also rejected this request, explaining petitioner would be held in custody for three weeks until the many officers who had issued the notices to appear could appear as witnesses.

Following further discussion, petitioner "pled no contest" to the 22 contempt violations, and was sentenced to 110 days with six months suspended on condition he participate in a service program supervised by the San Francisco Department of Public Health. He was then released to be supervised by Jail After-Care Services.

This petition followed.

⁸ The record does not specify which judge issued the OSC.

II. DISCUSSION

“The willful refusal to obey a valid court order is an act of contempt. (Code Civ. Proc., § 1209, subd. (a)(5).) . . . [¶] A trial court may take action to punish contempt under section 1218 of the Code of Civil Procedure. The elements of proof necessary to support punishment for contempt are: (1) a valid court order, (2) the alleged contemnor’s knowledge of the order, and (3) noncompliance. [Citations.] The order must be clear, specific, and unequivocal. [Citation.] ‘Any ambiguity in a decree or order must be resolved in favor of an alleged contemnor.’ ” (*In re Marcus* (2006) 138 Cal.App.4th 1009, 1014–1015, fn. omitted.)

The superior court apparently concedes as it must, that no court order required petitioner to appear in court upon his promise to appear. Instead, the court contends petitioner’s failure to honor his written promises to appear may be punished as violations of Code of Civil Procedure section 1209, subdivision (a)(5) (“[d]isobedience of any lawful judgment, order, or process of the court”) and subdivision (a)(9) (“[a]ny other unlawful interference with the process or proceedings of a court”).⁹ In the court’s view, “the service of the citation upon Petitioner, and Petitioner’s execution of the notice to appear, were necessary first steps in the criminal court proceeding . . . and thus must be considered part of the [court] ‘proceedings.’ ” Alternatively, the court argues petitioner’s “failures to appear clearly happened after each of the citations were filed, and thus, those failures to appear can be considered a ‘disobedience of [the] process of the Court.’ ” We do not agree with either argument.

“A fundamental rule of statutory interpretation requires that statutes be construed according to their plain meaning, absent persuasive evidence of a contrary legislative intent. [Citation.] [¶] In its most comprehensive sense, the term ‘process’ is synonymous with ‘proceeding’ and embraces the entire proceedings in an action from beginning to end. [Citations.] [¶] The word ‘proceeding’ or ‘proceedings’ in its general sense refers to

⁹ The OSC in this case did not cite subdivision (a)(9) of Code of Civil Procedure section 1209; however, as will be seen, we conclude it is inapplicable as well.

the form and manner of conducting judicial business before a court or judicial officer. [Citations.] It may also refer to a mere procedural step that is part of the larger action or special proceeding. [Citation.] ¶ Apart from its technical signification as a word of art in legal parlance, the term ‘proceeding’ or ‘proceedings’ undoubtedly has other more common meanings depending upon the context in which it appears and the subject to which it relates [citation]. However, we are satisfied that the term as it appears in [Code of Civil Procedure] section 1209 is used in its technical legal sense and refers to something done or to be done in a court of justice or before a judicial officer. . . . ¶ . . . ¶ Used in its more restrictive sense, the word ‘process’ refers to the means by which a court compels compliance with its demands. [Citation.] The most encompassing statutory definition of this usage of judicial ‘process’ refers to ‘all writs, warrants, summons, and orders of courts of justice, or judicial officers.’ (Gov. Code, § 26660, subd. (a); See also Gov. Code, § 22; Code Civ. Proc., § 17, subd. 6; Pen. Code, § 7, subd. 15.) A communication by court administrative personnel, even pursuant to general statutory authority and at the court’s direction, is not the equivalent of any of the matters included in the broadest statutory definition of ‘process.’ Writs, warrants, and orders are issued on authority of a judge’s signature; specific procedures for summons are statutorily prescribed (see § 225).” (*Lister v. Superior Court, supra*, 98 Cal.App.3d 64, 69–71.)

Viewed against the foregoing standard, the notices to appear petitioner signed are not equivalent to a judicial proceeding or process.

Penal Code section 853.6¹⁰ sets forth a “notice to appear” procedure for the release of persons arrested for certain crimes, including infractions. (Pen. Code, § 853.5.)¹¹ It

¹⁰ As relevant here, Penal Code section 853.6 provides: “(a)(1) . . . If the person is released, the officer or his or her superior shall prepare in duplicate a written notice to appear in court, containing the name and address of the person, the offense charged, and the time when, and place where, the person shall appear in court. . . . ¶ . . . ¶ (b) Unless waived by the person, the time specified in the notice to appear shall be at least 10 days after arrest if the duplicate notice is to be filed by the officer with the magistrate. ¶ (c) The place specified in the notice shall be the court of the magistrate

allows an arrestee to sign a notice to appear form, like those signed by petitioner. The peace officer then files a copy of the notice to appear with a magistrate. A peace officer's independent authority to arrest someone for a violation of an infraction and to issue a notice to appear in lieu of jail custody derives from the Penal Code (*id.*, §§ 853.5, 853.6), not from a court order.

When petitioner signed the notice to appear, no judicial proceeding had commenced. The notice to appear was not issued on authority of a judge's signature, and the use of a form approved by the Judicial Council changes nothing. It merely allows the form, if verified, to serve as a complaint when filed. (Pen. Code, § 853.9, subd. (b).)

Moreover, once a peace officer files the notice to appear with a magistrate, the Legislature has specified the penalties for failure to honor a promise appear. As we have previously noted, failure to honor a notice to appear is a misdemeanor. (Pen. Code,

before whom the person would be taken if the requirement of taking an arrested person before a magistrate were complied with, or shall be an officer authorized by that court to receive a deposit of bail. [¶] (d) The officer shall deliver one copy of the notice to appear to the arrested person, and the arrested person, in order to secure release, shall give his or her written promise to appear in court as specified in the notice by signing the duplicate notice which shall be retained by the officer . . . Upon the signing of the duplicate notice, the arresting officer shall immediately release the person arrested from custody. [¶] (e) The officer shall, as soon as practicable, file the duplicate notice, as follows: [¶] (1) It shall be filed with the magistrate if the offense charged is an infraction. [¶] . . . [¶] Upon the filing of the notice with the magistrate by the officer, . . . the magistrate may fix the amount of bail that in his or her judgment, in accordance with Section 1275, is reasonable and sufficient for the appearance of the defendant and shall endorse upon the notice a statement signed by him or her in the form set forth in Section 815a. The defendant may, prior to the date upon which he or she promised to appear in court, deposit with the magistrate the amount of bail set by the magistrate. At the time the case is called for arraignment before the magistrate, if the defendant does not appear, either in person or by counsel, the magistrate may declare the bail forfeited, and may, in his or her discretion, order that no further proceedings shall be had in the case.”

¹¹ “Infractions” are crimes and public offenses. (Pen. Code, § 16.) The provisions of the Penal Code applying to misdemeanors generally apply to infractions “including, but not limited to, powers of peace officers, jurisdiction of courts, periods for commencing action and for bringing a case to trial and burden of proof.” (*Id.*, § 19.7.) Unless a lesser fine is specified by code, an infraction is punishable by a fine not exceeding \$250. (*Id.*, § 19.8.)

§ 853.7.) Indeed, the notice to appear form places a person on notice of the possible penalties for failure to appear as promised, county jail and/or a fine. Notably, contempt of court is not an identified sanction. Nor, as we have explained, could it be since the citation and promise to appear are not the process of any court.

Petitioner also contends the superior court had no authority to hold him in custody for three weeks to await a hearing on the contempt charges. The superior court has conceded no authority exists for such restraint, and states it has abandoned the practice.

III. CONCLUSION AND DISPOSITION

Violation of a promise to appear made pursuant to Penal Code section 853.6 cannot be the basis for a judgment of contempt of court within the meaning of Code of Civil Procedure section 1209, subdivision (a)(5) and (9). The judgment of contempt rendered against petitioner is therefore void and is hereby annulled.

We have previously notified the parties we might issue a peremptory writ in the first instance. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 177–180.) No useful purpose would be served by further briefing and oral argument.

Let a peremptory writ of prohibition issue commanding respondent San Francisco Superior Court, in its case No. 12024871, to take no further action to enforce its judgment of contempt against Warren Morris entered September 28, 2012, and to take no further action on the OSC filed September 28, 2012.

This opinion is final as to this court immediately.