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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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THE PEOPLE,  Plaintiff and Respondent,  v.  HILTON ROYCE JACKSON, JR.,  Defendant and Appellant.	C068497  (Super. Ct. No. 06F03218)
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Defendant Hilton Royce Jackson, Jr., was found guilty by a Sacramento County jury of two counts of driving under the influence. Out of the jury's presence, defendant pled no contest to one count of driving with a suspended license. In a court trial, defendant was found to have a prior conviction for driving under the influence and to have served two prior prison terms. He was sentenced to state prison for five years.

Prior to trial, defendant moved to dismiss the case because the prosecution failed to bring him to trial within 90 days of his sending the Sacramento County District Attorney a Penal Code

section 1381<sup>1</sup> (section 1381) demand for trial. The court denied the motion because defendant incorrectly sent the demand to the address of the Sacramento County Superior Court.

On appeal, defendant contends the court erred in denying his section 1381 demand. We Affirm.

#### PROCEDURAL HISTORY

On April 5, 2006, defendant was charged in Sacramento County (the Sacramento case) with driving under the influence, driving with a blood-alcohol level of .08 percent or greater, and driving with a suspended license (count three). The complaint also charged him with a prior driving under the influence conviction and with having served two prior prison terms.

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<sup>1</sup> Section 1381 provides: "Whenever a defendant has been convicted, in any court of this state, of the commission of a felony . . . and has been sentenced to and has entered upon a term of imprisonment in a state prison or has been sentenced to and has entered upon a term of imprisonment in a county jail for a period of more than 90 days . . . , and at the time of the entry upon the term of imprisonment or commitment there is pending, in any court of this state, any other . . . criminal proceeding wherein the defendant remains to be sentenced, the district attorney of the county in which the matters are pending shall bring the defendant to trial or for sentencing within 90 days after the person shall have delivered to said district attorney written notice of the place of his or her imprisonment or commitment and his or her desire to be brought to trial or for sentencing unless a continuance beyond the 90 days is requested or consented to by the person, in open court. . . . In the event that the defendant is not brought to trial or for sentencing within the 90 days the court in which the charge or sentencing is pending shall . . . dismiss the action."

While the Sacramento case was pending, defendant was charged in El Dorado County (the El Dorado case) with driving under the influence and other offenses. On March 28, 2008, defendant was convicted in the El Dorado case of driving under the influence.

On March 30, 2008, while in the El Dorado County Jail, defendant sent section 1381 demands to the Sacramento County District Attorney and the Stanislaus County District Attorney, where he also had a case pending (Stanislaus case). Defendant addressed the demand for the Sacramento County case to the Sacramento County District Attorney at "720 9th Street, Sacramento, CA. 95814-1398," which is the address of the Sacramento County Superior Court, not the Sacramento County District Attorney. The demand listed defendant's release date as July 5, 2008. The demand in the Stanislaus case was correctly addressed to that county's district attorney and by letter dated May 22, 2008, the Stanislaus County District Attorney informed defendant the charges against him were being dropped.

When defendant, who was now imprisoned at the "California Men's Colony-West," had not received a reply from the Sacramento County District Attorney by June 5, 2008, he sent, on that date, another section 1381 demand, again wrongly addressing it to the district attorney at 720 9th Street. That demand was apparently forwarded by the superior court to the district attorney, who acknowledged its receipt on June 17, 2008.

On July 3, 2008, defendant was arraigned on the Sacramento case and the public defender was appointed to represent him. Counsel informed the court that defendant had made a section 1381 demand, though she did not specify the date of the demand. The prosecutor acknowledged receipt of the demand sent on June 5, 2008, but stated it was considered invalid because it was sent when defendant had less than 30 days remaining on his sentence. The matter was continued to July 8 for plea and further proceedings on the demand.

On July 8, 2008, the prosecutor informed the court that the only section 1381 demand received by the district attorney's office was the one sent from the California Men's Colony on June 5, 2008. Counsel for defendant stated she had documentation for the March 30, 2008 demand, but needed to do further research on the issue and the matter was continued.

On October 21, 2008, defendant filed a motion to dismiss the Sacramento case because the district attorney had failed to bring him to trial within 90 days of the March 30, 2008 demand. The motion included a declaration by defendant stating that on "March 29, 2008" he "completed and forwarded a PC Section 1381 Demand to [the] Sacramento County District Attorney['s] office" and that the sentence in the El Dorado case "is now completed."

The People filed opposition to defendant's motion, stating that the People did not receive defendant's March 30, 2008, demand until July 18, 2008, when it was provided to them by defendant's counsel in his motion to dismiss the case for failure to comply with the demand.

On December 1, 2008, the court heard and denied defendant's motion. The court concluded defendant's service on the superior court did not constitute service on the district attorney.

#### DISCUSSION

##### I

##### *Compliance With Statute*

Citing *People v. Garcia* (1985) 171 Cal.App.3d 1187, 1192, footnote 3, defendant claims "a mistake in addressing [a section 1381 demand] is irrelevant because 'Section [1381] does not specify the manner in which the request for trial is to be addressed; all that is required is that the district attorney receive the request.'"<sup>2</sup>

In full, the relevant portion of footnote 3 in *Garcia* states: "The People also contend [Garcia's] letter fails to comply with the statute because it is addressed to the prosecuting attorney at the municipal court. The argument is unavailing. The prosecutor admitted receiving the letter. Section 1381.5 does not specify the manner in which the request for trial is to be addressed; all that is required is that the district attorney receive the request." (*People v. Garcia*,

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<sup>2</sup> *Garcia* involved notice to the district attorney pursuant to section 1381.5, which is the analogue of section 1381 for prisoners in federal custody. *Garcia* notes that guidance on a section 1381.5 issue may be found in cases involving section 1381. Defendant has simply reversed the case here, i.e., we may find guidance on notice to the district attorney from cases on section 1381.5. For purposes of this appeal, we have no quarrel with defendant's position.

*supra*, 171 Cal.App.3d at p. 1192, fn. 3.) In other words, any error in sending the demand for trial to the wrong address is harmless where the district attorney actually receives it *within the time specified in the statute*.

In the instant case, the district attorney denied having received defendant's section 1381 demand sent on March 30, 2008, until June 17, 2008, at which time the demand was too late to afford defendant the relief afforded by section 1381, and defendant has not challenged this assertion. Consequently, *Garcia* is not applicable to defendant's circumstances.

## II

### *Substantial Compliance And Constructive Notice*

Next defendant asks this court to distinguish cases which rejected the defendants' section 1381 demands because they were not in literal or strict compliance with the notice requirements of section 1381 because the demands were sent to a probation officer or to a court or county clerk rather than to the district attorney, specifically, he refers to *People v. Ruster* (1974) 40 Cal.App.3d 865, *Reynolds v. Superior Court* (1980) 113 Cal.App.3d 510, and *People v. Garcia, supra*, 171 Cal.App.3d at page 1187. He also asks us to "[c]onsider the concept of constructive filing, similar to that used in connection with notices of appeal, under which the prisoner need not prove that the District Attorney actually received the notice, but only that the prisoner delivered the notice to a prison counselor or other appropriate person and chose a method of delivery

reasonably calculated to bring the notice to the attention of the District Attorney."

Even if we were inclined to disagree with or reject the above cited cases in favor of employing the doctrine of substantial compliance, which we are not, that doctrine would be of no benefit to defendant in this case.

In support of his substantial compliance and constructive notice argument, defendant cites *Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106, *People v. Slobodion* (1947) 30 Cal.2d 362, and *Houston v. Lack* (1988) 487 U.S. 266 [101 L.Ed.2d 245], which set forth the "prison-delivery rule" in criminal and civil cases. Pursuant to that rule "a self-represented prisoner's notice of appeal in a criminal case is deemed timely filed if, within the relevant period set forth in the California Rules of Court, the notice is delivered to prison authorities pursuant to the procedures established for prisoner mail." (*Silverbrand* at p. 110, fn. omitted; see *Slobodion* at p. 366; *Houston* at pp. 270-271 [101 L.Ed.2d at pp. 251-252].)

Contrary to defendant's claim that he had done all that he could have done prior to delivery of his section 1381 demand to the prison authorities, he could have done as he did in the Stanislaus case -- provide the correct address of the district attorney to whom he was sending his demand. Simply put, it is not the superior court's duty to forward misaddressed mail. Defendant's misaddressing his March 30, 2008, demand deprived the Sacramento County District Attorney of the opportunity to comply. Thus even under the doctrine of substantial compliance,

defendant would not be entitled to a finding that he had served the section 1381 demand on the Sacramento County District Attorney.

DISPOSITION

The judgment is affirmed.

\_\_\_\_\_ ROBIE \_\_\_\_\_, Acting P. J.

We concur:

\_\_\_\_\_ BUTZ \_\_\_\_\_, J.

\_\_\_\_\_ MURRAY \_\_\_\_\_, J.