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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE LUIS PEREDA,

Defendant and Appellant.

G045425

(Super. Ct. No. 05CF0671)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Dan McNerney, Judge. Appeal dismissed.

John Derrick, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Lise S. Jacobson and Steve Oetting, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found defendant Jose Luis Pereda guilty of two counts of domestic battery (Pen. Code, §§ 273.5, subd. (a), 243, subd. (e)(1); further statutory references are to this code) and child abduction (§ 278.5, subd. (a)). After the jury was unable to reach a verdict on a second child abduction count, defendant waived the jury and submitted the issue to the court. The court found him guilty of the second child abduction (§ 278.5, subd. (a)). The court suspended imposition of sentence and placed defendant on probation for five years, with a condition he serve 365 days in the county jail. Defendant filed a notice of appeal, counsel was appointed, and both sides filed briefs.

After briefing was completed, the Attorney General filed a motion to dismiss the appeal based on defendant's status as a fugitive. The motion was accompanied by a declaration stating a warrant for the arrest of defendant had issued based on his failure to comply with the conditions of probation. Defendant's counsel filed opposition. We thereupon issued an order which stated, in part, "On the court's own motion and for good cause, the court intends to dismiss the appeal unless appellant surrenders to the appropriate law enforcement authorities within 30 days from the date of this order." We ordered the Attorney General and defendant's attorney to file letters to advise us of defendant's custodial status. We received these letters.

The Attorney General stated, on information and belief, that defendant remained a fugitive. He noted that "[h]e has a bench warrant outstanding and was last reported by the State Department to have left Bahrain on January 24, 2012, en route to Saudi Arabia." Defendant's attorney responded, "I am writing to advise that I have no knowledge of appellant's custodial status."

Based on this information we are satisfied that defendant is a fugitive.

"It is well settled that [a reviewing] court has the inherent power to dismiss an appeal by any party who has refused to comply with orders of the trial court.

[Citations.]" (*TMS, Inc. v. Aihara* (1999) 71 Cal.App.4th 377, 379.) The theory, as

expressed by the California Supreme Court in *MacPherson v. MacPherson* (1939) 13 Cal.2d 271, 277, is that “[a] party to an action cannot, with right or reason, ask the aid or assistance of a court in hearing his demands while he stands in an attitude of contempt to legal orders and processes of the courts of this state. [Citations.]” *People v. Puluc-Sique* (2010) 182 Cal.App.4th 894, 897, is to the same effect: “In keeping with this principle, it has long been the rule in California that a court may dismiss the appeal of a fugitive from justice. [Citations.]”

Hence the appeal is ordered dismissed.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

MOORE, J.

FYBEL, J.