

COPY

SUPREME COURT COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,
v.

FELIX CORRAL RUIZ II,

Defendant and Appellant.

S235556

SUPREME COURT
FILED

FEB 26 2018

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Deputy

Court of Appeal, Fifth Appellate District, No .F068737
Tulare County Superior Court No. VCF241607J

Hon. Joseph Kalashian, Judge

APPELLANT'S SUPPLEMENTAL AUTHORITIES

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Tulare County
Superior Court
No. VCF241607J

APPELLANT'S SUPPLEMENTAL AUTHORITIES

TO THE HONORABLE TANI CANTIL-SAKAUYE, PRESIDING JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Pursuant to Rule 8.520(d) of the California Rules of Court, appellant Felix Corral Ruiz submits the following supplemental authorities for this court's consideration.

Since the conclusion of briefing on May 3, 2017, a number of Court of Appeal opinions have issued addressing issues related to the issue before this court. Specifically, a number of lower courts have addressed the issue of whether penalty assessments may attach to the fees imposed under Health and Safety Code sections 11372.5 and 11372.7. (*People v. Martinez* (2017) 15 Cal.App.5th 659; *People v. Webb* (2017) 13 Cal.App.5th 486; *People v. Alford* (2017) 12 Cal.App.5th 964 (rev. gr. 9/13/17 [S243340]); *People v.*

Moore (2017) 12 Cal.App.5th 558 (rev. gr. 9/13/17 [S243387]).) As previously discussed in the briefing, this question, like the question presented in the instant case, turns on whether those fees constitute “punishment.” (See *People v. Watts* (2016) 2 Cal.App.5th 223, 234; *People v. Vega* (2005) 130 Cal.App.4th 183, 194.)

These newly published decisions have split on the issue, with the Third District in *Moore* and Division One of the Fourth Appellate District in *Alford* finding that penalty assessments are properly added to a lab fee. (*People v. Moore, supra*, 12 Cal.App.5th at p. 571; *People v. Alford, supra*, 12 Cal.App.5th at p. 596.) By contrast, Division Two of the First Appellate District in *Webb* and Division Three of the Fourth Appellate District in *Martinez* separately held that penalty assessments are not properly added to either the criminal laboratory analysis fee or the drug program fee. (*People v. Martinez, supra*, 15 Cal.App.5th at pp. 668-669; *People v. Webb, supra*, 13 Cal.App.5th at p. 498.)

In *People v. Moore*, the Third District on its own motion transferred the matter previously addressed by the appellate division in *People v. Moore* (2015) 236 Cal.App.4th Supp. 10. (*People v. Moore, supra*, 12 Cal.App.5th at p. 562.) The Court of Appeal asserted at the outset that “the labels used by section 11372.5, by themselves, do not clearly answer whether the levy is a fee or a fine or penalty.” (*People v. Moore, supra*, 12 Cal.App.5th at p. 564.) The court thus turned to the purpose of the levy, noting that as the court in *People v. Vega* (2005) 130 Cal.App.4th 183

had observed, “In most cases the determination can be made on the basis of the purpose of the charge imposed. Fines are imposed for retribution and deterrence; fees are imposed to defray administrative costs.” (*People v. Vega, supra*, 236 Cal.App.4th at p. 195, cited in *People v. Moore, supra*, 12 Cal.App.5th at p. 564.)

The court further observed that Health and Safety Code section 11372.5 “appears to have the dual purposes of a fee and a fine.” (*People v. Moore, supra*, 12 Cal.App.5th at p. 565.) The court reasoned that while subdivision (b) requires that funds from the levy be deposited by the county treasurer in a criminal laboratories fund, thus serving the purpose of a fee, subdivision (c) requires the county treasurer to “annually distribute those surplus funds” from the criminal laboratories fund “in accordance with the allocation scheme for distribution of fines and forfeitures set forth in [Health and Safety Code section] 11502.” (*People v. Moore, supra*, 12 Cal.App.5th at p. 565, citing Health & Saf. Code, § 11372.5, subd. (c).) “In other words, a portion of the levy under subdivision (b) appears to serve the purpose of a fee and subdivision (c) treats the remainder as a fine. Neither purpose predominates over the other.” (*People v. Moore, supra*, 12 Cal.App.5th at p. 565.) In spite of this apparent contradiction, the court concluded:

Nevertheless, based on the language of the statute as a whole, the aim to avoid rendering any part of the section mere surplusage, the weight of the case authority including consistent California Supreme Court authority, and the fact the Legislature has not amended the statute to diverge from the holdings in

those cases, we conclude the levy constitutes a fine or penalty.

(*Ibid.*)

The Third District rejected the reasoning in *People v. Vega* (2005) 130 Cal.App.4th 183 on the ground that it ignored the language in the statute referring to the levy as a “fine.” (*People v. Moore, supra*, 2 Cal.App.5th at p. 568.) The court likewise rejected the reasoning of the court in *People v. Watts* (2016) 2 Cal.App.5th 223, finding that the *Watts* opinion rested on an unsupported assumption that the Legislature at some point altered the nature of the levy under Health and Safety Code section 11372.5 from a fine to a fee. (*People v. Moore, supra*, 12 Cal.App.5th at p. 570.)

The *Moore* court did expressly agree with the following statement by the court in *Watts*: “[W]e fail to perceive how the fact that the crime-lab fee increases the ‘total fine’ necessarily means the fee is itself a ‘fine’ subject to penalty assessments.” (*People v. Watts, supra*, 2 Cal.App.5th p. 234, cited by *People v. Moore, supra*, 12 Cal.App.5th at pp. 570-571.) Emphasizing the need to avoid rendering any part of the statute surplusage, however, the court concluded that “all of subdivision (a) [is] in harmony with a purpose to impose a fine or penalty.” (*People v. Moore, supra*, 12 Cal.App.5th at p. 570.)

The *Alford* court, while reaching the same ultimate conclusion as the court Third District in *Moore*, employed a different analysis. There, Division One of the Fourth Appellate District held that the holdings of *People v. Terrell* (1999) 69 Cal.App.4th 1246, *People v. Martinez* (1998) 65 Cal.App.4th 1511,

and *People v. Sierra* (1995) 37 Cal.App.4th 1690, insofar as they were ratified by this court's dicta in *People v. Talibdeen* (2002) 27 Cal.4th 1151, are binding on California courts. "If the high court had intended to disavow the *Sierra*, *Martinez*, and *Terrell* holdings on this issue or suggest it was not reaching the propriety of these rulings, it could have said so. It did not." (*People v. Alford, supra*, 12 Cal.App.5th at p. 975.) Further, the court in *Alford* found that the assessments were primarily punitive because "assessments (regardless of their identification as a fee or fine) 'arising from [criminal] convictions are generally considered punishment.'" (*People v. Alford, supra*, 12 Cal.App.5th at pp. 975-976, citing *People v. Alford* (2007) 42 Cal.4th 749, 757.) The court acknowledged that there are "budgetary reasons" behind the enactment of the statutes at issue, but nonetheless concluded that the levies were punitive and thus subject to penalty assessments. (*People v. Alford, supra*, 12 Cal.App.5th at p. 977.)

A better analysis of both the criminal laboratory fee and the drug program fee was recently offered by Division Three of the First Appellate District in *People v. Webb, supra*, 13 Cal.App.5th 486, which considered and rejected the Third District's interpretation from *Moore*. The *Webb* court agreed with the appellate division in the original *Moore* decision that any attempt to discern the plain meaning from the statutory language was a "fool's errand." (*People v. Moore, supra*, 236 Cal.App.4th Supp. at p. 16, cited by *People v. Webb, supra*, 13 Cal.App.5th at p. 497.) Instead, the *Webb* court concluded, "whether a charge is a fee or a

fine is normally determined by the purpose for which the charge is imposed. In our view, this criterion is dispositive in the absence of clear statutory language to the contrary.” (*People v. Webb, supra*, 13 Cal.App.5th at p. 497.)

The court in *Webb*, like the courts in *Vega* and *Watts*, concluded that the purpose of the criminal laboratory analysis fee was primarily administrative, as demonstrated by the fact that money deposited into that fund are to be used exclusively to fund costs incurred by crime laboratories providing analyses in connection with criminal investigations, including costs associated with the purchase and maintenance of equipment used by these labs and for training the scientists they employ. (*People v. Webb, supra*, 13 Cal.App.5th at p. 498.) The court squarely rejected the *Moore* court’s conclusion that the statute served a “dual purpose” simply because “it also provides for deposit of any residual funds in the state General Fund—as is typically required of excess moneys in other public funds.” (*Ibid.*)

Most recently, Division Three of the Fourth Appellate District adopted the reasoning of the courts in *Watts* and *Webb* and held that not only are the fees under Health and Safety Code section 11372.5 and 11372.7 not subject to penalty assessments, they are also not subject to a stay under Penal Code section 654. (*People v. Martinez, supra*, 15 Cal.App.5th at p. 669.) Relying heavily on the opinion in *Watts*, the *Martinez* court held that in spite of the internally inconsistent language of the statute, the purpose of the fees was administrative rather than punitive.

The *Martinez* court agreed with the court in *Webb* regarding the problematic language of the statutes: “We agree the Legislature's imprecise and inconsistent use of the terms “fee,” “fine,” and “penalty” is highly problematic.” (*People v. Martinez, supra*, 15 Cal.App.5th at p. 667.) Like the court in *Webb*, the *Martinez* court thus looked to the purpose of the statute, and found that the crime-lab and drug program fees serve a administrative purpose. (*People v. Martinez, supra*, 15 Cal.App.5th at p. 668.) Neither fee is substantial enough to have a deterrent effect, and both are in fixed amounts, so are not based on the seriousness of a defendant's conduct. (*Id.* at pp. 668-669.) The fees are thus non-punitive in effect. (*Id.* at p. 669.)

The *Webb* and *Martinez* opinions employ the better reasoning. While the court in *Moore* elevated above all other concerns the desire to avoid rendering any part of the statute a nullity, the courts in both *Martinez* and *Webb* undertook a careful and thorough analysis firmly grounded in the most basic principal of statutory construct: ascertaining the Legislature's intent by looking to the statute's purpose. (*People v. Martinez, supra*, 15 Cal.App.5th at pp. 667-669; *People v. Webb, supra*, 13 Cal.App.5th at p. 497.) Under this analysis, it is clear that the purpose of the drug program and criminal laboratory fees is to fund drug programs and criminal laboratories, not to exact punishment.

CONCLUSION

Appellant respectfully requests that this court strike the fees and assessments imposed under Health and Safety Code sections 11372.5 and 11372.7.

Dated: February 23, 2018

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

As required by California Rules of Court, Rule 8.520(c), I certify that this brief contains 2,159 words, as determined by the word processing program used to create it.

Elizabeth Campbell
Attorney at Law

DECLARATION OF SERVICE

I, the undersigned, declare as follows:

I am a member of the State Bar of California and a citizen of the United States. I am over the age of 18 years and not a party to the within-entitled cause; my business address is PMB 334, 3104 O Street, Sacramento, California, 95816.

On February 23, 2018, I served the attached

APPELLANT'S SUPPLEMENTAL AUTHORITIES

(by mail) - by placing a true copy thereof in an envelope addressed to the person(s) named below at the address(es) shown, and by sealing and depositing said envelope in the United States Mail at Sacramento, California, with postage thereon fully prepaid. There is delivery service by United States Mail at each of the places so addressed, or there is regular communication by mail between the place of mailing and each of the places so addressed.

Felix Corral Ruiz Appellant California Substance Abuse Treat AR5116 P. O. Box 5246 Corcoran, CA 93212-8309	Tulare County Superior Court 221 S. Mooney Blvd. Courthouse, Room 303 Visalia, CA 93291 Tulare County District Attorney County Civic Center 221 S. Mooney Avenue Courthouse, Room 224 Visalia, CA 93291
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(by electronic transmission) - I am personally and readily familiar with the preparation of and process of documents in portable document format (PDF) for e-mailing, and I caused said document(s) to be prepared in PDF and then served by electronic mail to the party listed below, by close of business on the date listed above:

Central California Appellate Program 2150 River Plaza Dr., Ste. 300 Sacramento, CA 95833 eservice@capcentral.org	Office of the Attorney General P.O. Box 944255 Sacramento, CA 94244-2550 SacAWTTrueFiling@doj.ca.gov California Court of Appeal Fifth Appellate District 2424 Ventura Street Fresno, CA 93721 served via Truefiling.com
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I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 23, 2018, in Sacramento, California.

DECLARANT

