



LASSEN SUPERIOR COURT

F. DONALD SOKOL
PRESIDING SUPERIOR COURT JUDGE

MICHELE VERDEROSA
SUPERIOR COURT JUDGE

ROSEMARI REED
COURT EXECUTIVE OFFICER

Supreme Court Copy

December 9, 2010

Frederick K. Ohlrich, Clerk
Supreme Court of the State of California
350 McAllister Street, First Floor
San Francisco, CA 94102-4797

SUPREME COURT
FILED

DEC 10 2010

Frederick K. Ohlrich Clerk

RE: *Alfredo Gomez v. Superior Court of Lassen County; Tom Felker (Real Party In Interest)*
Supreme Court of the State of California, Case No. S179176

Dear Mr. Ohlrich:

By order filed on November 10, 2010, the Court has invited Respondent Superior Court of Lassen County to submit a letter brief in the above-referenced case, addressing several questions posed by this Court. The following is submitted for the Court's consideration.

- A. **As a matter of statutory interpretation, a decision to summarily deny a petition for a writ of habeas corpus or to issue an order to show cause does constitute an "ex parte" matter within the meaning of Code of Civil Procedure, section 259, subdivision (a).**

In relevant part, Code of Civil Procedure, section 259, subdivision (a), states: "[s]ubject to the supervision of the court, every court commissioner shall have power to . . . [h]ear and determine **ex parte motions for orders and alternative writs and writs of habeas corpus** in the superior court for which the court commissioner is appointed." [Emphasis added]. "The first principle of statutory interpretation requires [a court to] turn initially to the words of the statute to ascertain the Legislature's intent. '[I]f the statutory language is clear and unambiguous, there is no need for construction and courts should not indulge in it. The plain language of the statute establishes what was intended by the Legislature.'" *People v. Palacios*, 41 Cal. 4th 720, 728 (Cal. 2007). [Internal citations omitted]. The plain language of Code of Civil Procedure, section 259, subdivision (a) states that court commissioners have the power to hear and determine three specifically enumerated situations in the superior court for which the court commissioner is

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appointed: (1) ex parte motions for orders, AND (2) ex parte motions for alternative writs, AND (3) ex parte motions for writs of habeas corpus.

However, should an ambiguity exist, where several words are followed by a phrase that is as applicable to the first and other words as to the last, the phrase will be read as applicable to all. *Wholesale Tobacco Dealers Bureau of Southern California v. National Candy & Tobacco Co.* (1938) 11 Cal. 2d 634, 660. The language immediately preceding the enumerated orders and writs, “ex parte motions for,” extends to “orders and alternative writs and writs of habeas corpus.” In similar fashion, the language immediately following “orders and alternative writs and writs of habeas corpus,” restricts a commissioner’s power to hear and determine the enumerated orders and writs to “the superior court for which the commissioner is appointed.” The natural construction of the language demands that the clauses be read as applicable to all. *In re Phelps* (2001) 93 Cal. App. 4th 451, 456.

Thus, even if an ambiguity existed in the language of Code of Civil Procedure, section 259, subdivision (a), the natural language of the statute demands that the clause “ex parte motion for” be read as applicable to all phrases that follow, including orders and alternative writs and writs of habeas corpus.

B. Section 259, subdivision (a) grants commissioners the authority to summarily deny a habeas corpus petition or to issue an order to show cause, but there has been no challenge to the exercise such authority prior to the adoption of article VI, section 22 of the California Constitution in 1966.

Since its enactment, Code of Civil Procedure, section 259, subdivision (a), granted commissioners authority to summarily deny ex parte habeas corpus petitions. Prior to the instant case, however, such authority has not been challenged. Accordingly, there is no case law which mentions a commissioner’s exercise of this authority prior to the adoption of article VI, section 22 of the California Constitution. However, even if it were found that a commissioner did not exercise this authority prior to 1966, non-use of a power, specifically granted by the legislature and affirmed by the Constitution cannot form the basis for deprivation of the same.

C. It is settled, under *Rooney v. Vermont Investment Corp.* (1973) 10 Cal.3d 351, that a commissioner’s authority constitutes a subordinate judicial duty within the meaning of article VI, section 22 of the California Constitution.

Prior to the adoption of article VI, section 22, of the California Constitution, a court commissioner had the power “[t]o hear and determine ex parte motions for orders and writs,

except orders or writs of injunction in the superior court of the county, or city and county, for which he is appointed; provided that he shall have power to hear and determine such motions only in the absence or inability of the judge or judges of the superior court of the county, or city and county.” Code Amendments 1880, chapter 35, section 1. Further, “[s]ubject to the supervision of the court, every court commissioner of a county or city and county having a population of nine hundred thousand inhabitants or more shall, in addition to the powers and duties contained in Section 259 of this code, have power . . . [t]o hear and determine ex parte motions, for orders and alternative writs and writs of habeas corpus in the superior court of the county, or city and county, for which he is appointed . . .” Amended Statutes, 1949, chapter 469, section 1.

In light of *Rooney v. Vermont Investment Corp.* (1973) 10 Cal.3d 351, it should be settled that a commissioner’s authority to summarily deny habeas corpus petitions constitutes a subordinate judicial duty within the meaning of article VI, section 22 of the California Constitution. Relying on *County of San Luis Obispo v. Felts* (1894) 104 Cal. 60, 64, *Rooney* held that the “scope of the subordinate judicial duties which may be constitutionally assigned to court commissioners should be examined in the context of powers that court commissioners had and were exercising in 1966, when the present constitutional provision was adopted.” *Rooney* at p. 362.

Particularly applicable to the instant case, *County of San Luis Obispo* involved a constitutional challenge to legislation expanding a tax collector’s power to collect taxes and retain a portion thereof, though such power had gone relatively unchanged since “the very beginning of legislation in California until the [constitution of 1879].” *Id.* at 64. Respondent argued that appellant Felts, exercising the power authorized to him by the legislature, between 1891 and 1893, and after the constitution was amended in 1879, did so in violation of the constitution. *Id.* at 66. Noting the uniform course of legislation and the presumption that the framers of the constitution were familiar with it, however, the court concluded that any intent to effect a radical change in the system would be found plainly and unequivocally expressed. *Id.* at 64. In light of the fact that no change had been made to the legislation for nearly thirty years prior to the adoption of the constitution of 1879, and that such legislation had scarcely been questioned during the fifteen years since the constitution’s adoption, the court felt little hesitation in holding the law in question entirely consistent with the constitution. *Id.*, 64-65.

Such is the case here. Court commissioners have been vested with the power to hear ex parte motions for orders and writs of habeas corpus since very beginning of the enactment of Code of Civil Procedure, section 259, subdivision (a). The statute had gone relatively unchanged for nearly a century before the adoption of article VI, section 22, of the California Constitution, with the exception of specifically granting to court commissioners the power to “hear and determine ex parte motions for orders and alternative writs and writs of habeas corpus.” Statutes, 1929, chapter 874, section 2. The legislation has scarcely been questioned in the more

than forty-four years since article VI, section 22, of the California Constitution was adopted. Thus, an argument for the deprivation of a commissioner's long-held powers, granted by the legislature and affirmed to by amendment to the Constitution, is an argument without merit.

D. Both the legal consequences of, and the legal determinations involved in, a summary denial of a habeas corpus petition have remained unchanged since the adoption of article VI, section 22, of the California Constitution.

The legal determinations involved in a summary denial of a habeas corpus petition have remained unchanged since the adoption of article VI, section 22, of the California Constitution. The petition "must allege unlawful restraint, name the person by whom the petitioner is so restrained, and specify the facts on which [the petitioner] bases his [or her] claim that the restraint is unlawful." *In re Lawler* (1979) 23 Cal.3d 190, 194. When presented with a petition for a writ of habeas corpus, a court must first determine whether the petition states a prima facie case for relief—that is, whether it states facts that, if true, entitle the petitioner to relief—and also whether the stated claims are for any reason procedurally barred. *In re Clark* (1993) 5 Cal.4th 750, 769, fn. 9. If the court determines that the petition does not state a prima facie case for relief or that the claims are all procedurally barred, the court will deny the petition outright, such dispositions being commonly referred to as "summary denials." *Id.*

California Penal Code, Section 1474, unchanged since 1872, specifies the prima facie elements of a habeas corpus petition and mirrors the legal determinations involved since the adoption of article VI, section 22, of the California Constitution:

“Application for the writ is made by petition, signed either by the party for whose relief it is intended, or by some person in his behalf, and must specify:

1. That the person in whose behalf the writ is applied for is imprisoned or restrained of his liberty, the officer or person by whom he is so confined or restrained, and the place where, naming all the parties, if they are known, or describing them, if they are not known;
2. If the imprisonment is alleged to be illegal, the petition must also state in what the alleged illegality consists;
3. The petition must be verified by the oath or affirmation of the party making the application.”

If that court finds the petitioner has not alleged a prima facie case for habeas corpus relief, it may deny the petition without further proceedings. See *In re Swain*, (1949) 34 Cal.2d 300.

Procedural bars to habeas corpus claims after the adoption of article VI, section 22, of the California Constitution, have similarly remained unchanged, and include: repetitive claims

previously denied on the merits in a prior habeas corpus proceeding, *In re Miller* (1941) 17 Cal. 2d 734, 735; claims that could have been raised in an earlier habeas corpus petition, *In re Horowitz* (1949) 33 Cal. 2d 534, 546-547; claims when the petitioner fails to "fully disclose his reasons for delaying in the presentation of [facts asserted as a basis for relief], *In re Swain* (1949) 34 Cal. 2d 300, 304; claims that could have been raised on appeal, *In re Dixon* (1953) 41 Cal. 2d 756, 759; and claims that were raised and rejected on appeal, *In re Waltreus* (1965) 62 Cal. 2d 218, 225.

Lastly, the legal consequences of a denial of habeas corpus petition have not changed since the adoption of article VI, section 22, of the California Constitution. No appeal lies by a defendant from an order of the superior court denying a writ of habeas corpus. *People v. Ryan* (1953) 118 Cal. App. 2d 144, 149. The denial of a petition for a writ of habeas corpus is not appealable, however, it may be reviewed by a subsequent petition for a writ of habeas corpus to a higher court. See *In re Byrnes* (1945) 26 Cal. 2d 824, 827.

In light of the continued uniformity of legal determinations involved in the summary denial of a petition for writ of habeas corpus, as well as the legal consequences of the same, the power of a court commissioner should be found to continue as it has since the adoption of article VI, section 22, of the California Constitution – as a subordinate judicial duty.

E. Conclusion

For the foregoing reasons stated, the judgment of the Court of Appeal, Third Appellate District, should be affirmed.

Dated: 12-9-10

Respectfully Submitted,

A handwritten signature in black ink, reading "F. Donald Sokol", written over a horizontal line.

F. Donald Sokol, Presiding Judge
Lassen County Superior Court

DECLARATION OF SERVICE BY MAIL

Case Name: Alfredo Gomez v. Superior Court of Lassen County; Tom Felker (Real Party In Interest)

Case No.: S179176

I declare:

I am employed by the Superior Court of California, County of Lassen, 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 Superior Court of California, County of Lassen, 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 Superior Court of California, County of Lassen, is deposited with the United States Postal Service that same day in the ordinary course of business.

On December 9, 2010, I served the attached **LETTER BRIEF** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system of the Superior Court of California, County of Lassen, at 220 South Lassen Street, Susanville, CA 96130, addressed as follows:

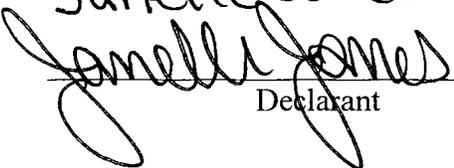
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on December 9, 2010, at Susanville, California.

Janelle Jones

Declarant


Signature