

Case No. H029406

Santa Cruz County Superior Court Cases Nos.
4SM21812, 4SM028271, 4SM044470,
4WM023363, 4WM034801

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

CALIFORNIA HIGHWAY PATROL,

Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF SANTA CRUZ,

Respondent

RICHARD J. QUIGLEY,

Real Party in Interest.

SUPERIOR COURT OF SANTA CRUZ COUNTY
HON. MICHAEL BARTON, JUDGE

**REAL PARTY IN INTEREST'S RESPONSE TO
NOTICE OF IMPENDING WRIT PETITION AND REQUEST FOR
CONSOLIDATION AND DEFERRAL OF RULING**

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**REAL PARTY IN INTEREST'S RESPONSE TO
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The Highway Patrol asks this Court to defer its ruling on the pending writ petition so that it can file a writ petition in another case and move to consolidate the two petitions. Real party in interest Richard Quigley objects because: (1) his life expectancy is limited so decision of this writ should be expedited; (2) the Highway Patrol threatens to continue refusing to sign off helmet citations until this petition is resolved [¶15]; (3) the Highway Patrol

is trying to use consolidation as a back door to seeking review of a decision the prosecution chose not to appeal.

I.

THIS PETITION SHOULD BE DECIDED PROMPTLY.

Real party Quigley is ill with Stage 4 lymphoma, and there is a reasonable medical probability that he will not survive for six months [Return, ¶16]. “The interests of justice dictate that a litigant who may not survive the delay of an appellate court backlog be afforded calendar preference” (*Warren v. Schecter* (1997) 57 Cal.App.4th 1189, 1199).

II.

THE STATE DID NOT APPEAL THE CONSTITUTIONALITY DETERMINATION, AND THE EVIDENCE SHOWING UNCONSTITUTIONALITY IS NOT BEFORE THE COURT.

After the trial court issued the contempt order that is the subject of this writ petition (which arises from a criminal prosecution), that court ordered the criminal proceeding dismissed because the testimony it had heard persuaded it that, as applied by the Highway Patrol and other law enforcement agencies, the Motorcycle Helmet Law is unconstitutional as applied. The order dismissing the case was appealable under Penal Code section 1238, but the district attorney did not appeal. It is not necessary to determine constitutionality to resolve the issue now before this Court: Are motorcycle helmet tickets correctable under Vehicle Code sections 40303.5 and 40610?

It is doubtful that the Highway Patrol has standing to appeal the dismissal of the underlying charges. However, if this Court were inclined to review the trial court's dismissal of the criminal action, in order to evaluate real party's constitutional challenge, the Court it would need to review all the evidence. The trial court heard testimony from eleven witnesses: CHP Sgt. Dane Lobb, CHP Officer Grant Bowles, CHP Officer Jason Smith, CHP Officer Grier, CHP Officer Pietch, CHP Officer Russell Zilge, State Parks Ranger Francis Brennan, Watsonville Police Officer Ridgeway, Watsonville Police Officer Katich, Santa Cruz Police Lt. Rick Martinez. Steve Bianco. In addition, the court received 59 exhibits and took judicial notice of several matters. That record is not before the Court, and procuring it would cause further delay in resolution of this writ proceeding.

III.

THE PARTIES AND ISSUES IN THE INJUNCTION CASE ARE DIFFERENT THAN THOSE IN THIS WRIT PETITION ARISING FROM THE CRIMINAL.

The Highway Patrol proposes filing a petition for writ of mandate to challenge an order overruling its demurrer in a civil action to enjoin enforcement of the Motorcycle Helmet Law. The Highway Patrol then wants to consolidate the writ in the civil case with this proceeding.

The civil action was filed on behalf of five plaintiffs. Of those five, only real party Quigley is a party to the pending petition.

The Highway Patrol asserts that “plaintiff’s action [i.e., the civil action] is simply another attack on the constitutionality of the Helmet Law” [Notice of Impending Writ Petition, 2:3-4]. The assertion glosses over the important fact that the civil action is a challenge to the law as applied by the Highway Patrol and related law enforcement agencies. At the demurrer stage, real party has not offered evidence, and the four other plaintiffs did not have a chance to offer evidence in Mr. Quigley’s criminal case. Therefore, any ruling by this Court that the trial court erred in dismissing the charges against real party Quigley would not bind the other plaintiffs (*Rodgers v. Sargent Controls & Aerospace* (2006) 136 Cal.App.4th 82, 93).

IV.

THERE IS NO BASIS FOR WRIT REVIEW OF THE CIVIL ACTION.

In the civil action, real party and the other plaintiffs will be able to prove that even experienced law enforcement officers are unable to tell which helmets comply with the so-called standards enacted by the Highway Patrol, and which do not. In that action, the Highway Patrol argued that so long as a motorcycle helmet has a “DOT label,” it “complies with the helmet law” [Demurrer 4:11-13]. However, the complaint alleged that Highway Patrol officers had cited real party Quigley five times for violating the helmet law while he was “wearing some form of headgear bearing evidence of a certification of compliance with Federal regulations, the letters ‘DOT’” [Complaint, Ex. 2, 1:17-23,] and that each of the other

plaintiffs had had citations dismissed on the ground that the arresting officers could not demonstrate noncompliance with the Motorcycle Helmet Law [Complaint, ¶¶ 22, 23].

A trial is necessary to establish that the Highway Patrol's own officers are not enforcing the law in the manner the Highway Patrol says it should be applied. Thus, although the Highway Patrol has asserted that the civil action presented a facial challenge to the Helmet Law, the trial court correctly ruled that it was required to accept the allegations of the complaint as true, and that on that basis the court was required to overrule the demurrer. (*Scott v. City of Indian Wells* (1972) 6 Cal.3d 541, 549).

Moreover, the Highway Patrol cannot show that it lacks an adequate legal remedy. If it loses in the civil trial, or if the trial court issues a preliminary injunction against enforcement of the Helmet Law, the Highway Patrol will be able to appeal.

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CONCLUSION

This Court should deny a stay, and should deny the request to consolidate this case with a not-yet-filed writ petition. The as-applied challenge to the Motorcycle Helmet law that real party and others are presenting in the Santa Cruz Superior Court cannot be resolved until the parties have had the chance to present evidence.

Dated: February 19, 2007

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, Rule 8.204 (c)(1))

The text of this reply consists of 990 words as counted by the Corel WordPerfect version X3 word processing program used to generate this brief.

Dated: _____

Appellate Counsel