Filed 2/19/10 P. v. Herring CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Appellant, v. KEVIN LEE HERRING, Defendant and Respondent.	E048775 (Super.Ct.No. RIF145497) OPINION

APPEAL from the Superior Court of Riverside County. Edward D. Webster, Judge. Affirmed.

Rod Pacheco, District Attorney, and Alan D. Tate, Deputy District Attorney, for Plaintiff and Appellant.

Eleanor M. Kraft, under appointment by the Court of Appeal, for Defendant and Appellant.

This is an appeal by the People from the dismissal of a felony domestic violence case against defendant Kevin Lee Herring pursuant to Penal Code section 1382,[1] because the trial court found there were no courtrooms available to hear the last-day case in a timely manner, and there was no good cause to continue the case.

The People contend on appeal that the trial court, pursuant to section 1050, subdivision (a), should have given precedence to the instant case over civil cases; in particular, it should have used the "Hawthorne" civil courtrooms.[2] Moreover, the People maintain the trial court should have conducted an individual determination as to whether the family, probate, and other designated noncriminal courtrooms could hear the instant matter. Finally, the People contend that the refusal to make such an inquiry, the denial of the request to continue the case, and resultant dismissal constituted errors of law by the trial court, and that the charges against defendant should be reinstated.[3] We hold that the trial court did not abuse its discretion by dismissing defendant's case based on the unavailability of any courtrooms to try the case or by denying a continuance. We affirm the dismissal of the case.

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

[2] Three courtrooms have been set up on a temporary basis at the Hawthorne Elementary School to hear civil cases. (*People v. Flores* (2009) 173 Cal.App.4th Supp. 9, 13 (*Flores*).)

[3] This court decided *People v. Wagner* (2009) 175 Cal.App.4th 1377 [Fourth Dist., Div. Two], which addressed the same issues raised here. The Supreme Court granted review on September 30, 2009 (S175794). On October 5, 2009, the People filed a request to stay the instant case until a decision is reached in *Wagner*. We denied that request on October 13, 2009.

FACTUAL BACKGROUND[4]

On November 3, 2007, defendant and his wife, the victim, went out for beers. After returning home, the victim fell asleep. One of their "boarders" woke the victim to inform her that defendant was "a little out of control." Defendant wanted to let his small son ride the victim's horse. The victim refused to permit defendant's son to ride her horse because she believed it would be unsafe. Defendant and the victim then got into an argument. Defendant picked up the victim and threw her into a wall unit. She incurred severe bruising and sores on her side as a result of the assault.

PROCEDURAL BACKGROUND

On September 5, 2008, defendant was charged in a felony complaint with one count of corporal injury upon a cohabitant. (Pen. Code, § 273.5, subd. (a).) A preliminary hearing was conducted on September 18, 2008, and defendant was held to answer. An information was filed with the same charges as the complaint on October 1, 2008.

On October 2, 2008, defendant was arraigned on the information. The matter was continued numerous times from an initial trial date of November 17, 2008, to a final trial date of May 4, 2009. One of the continuances was granted with the explicit non-opposition of the People; the People stipulated to one other continuance. On the last day for trial, the court concluded there were no available courtrooms, and the case was set for

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[4] Since the case was dismissed prior to trial, we draw a brief statement of facts from the preliminary hearing transcript.

a motion to dismiss under section 1382 on the following day. That motion was granted, and the case was dismissed. On appeal, the People contend that the trial court committed an error of law when it dismissed defendant's last-day case, finding there were no courtrooms available in Riverside County to try the case, and by refusing to grant a continuance. They request that the charges be reinstated.

A. *Additional Factual Background*

On May 4, 2009, defendant's case was called, on the last day, in department 62 of the Riverside County Superior Court. The trial court noted that there were no courtrooms available. The trial court stated, "We did have to work hard to get out the cases we did get out." The court then noted that it would "adopt the dismissal prepared by Judge Hernandez on October 10th, 2008, and incorporate that into the record of each of the cases." The aforementioned "dismissal script" incorporated into the record read as follows:

"It is now 4:00 p.m. and we have criminal case(s) that have answered ready for trial and are on their last day. We have checked civil and criminal courts countywide and we have no available courtrooms to send a criminal jury trial. There are some types of courts where we will not send a criminal jury trial; Family Law Court, Juvenile Court, Guardianship Court, Probate Court.

"The Judges in Family Law have full calendars. The public focuses on their job of handling dissolutions, but one of their most import jobs is to protect young children. The children of divorcing families are frequently in need of protection from some of the emotional things that parents who are in divorce situations are doing to each other. If a

Family Law Judge is required to handle a criminal jury trial, there is no one to replace that Judge in Family Law. Taking away the Judge that protects these children would be very unfortunate for the children and for society. We will not reallocate a Family Law Judge to do a criminal jury trial.

"The Judges in Juvenile Court have full calendars. They have two very important jobs. One is under 602 Welfare and Institutions Code and the other is under 300 of the Welfare and Institutions Code. Under 602, the Judge handles youths who have committed crimes. The time deadlines are strict. If a Judge is not available to conduct the hearings the youth is released. Some youth commit very serious crimes such as carjackings, robberies, etc. If these youth are released this would be a public safety issue. We would be exposing the public to unnecessary danger. Under 300, a Judge handles children from homes where they are abused or neglected. If the Judge were not available to oversee these children, they would be in great danger. If a Juvenile Court Judge is required to handle a criminal jury trial, there is no one to replace that Judge in Juvenile Court. Taking away the Judge that protects these children and society would be very unfortunate for the children and for society. We will not reallocate a Juvenile Court Judge to do a criminal jury trial.

"The Judicial Officer who handles Guardianships is not available. Guardianships are for children or the severely disabled who have no one to care for them, for example, the parents have passed away and there are no available relatives. We are not going to abandon those least able to care for themselves. If the Guardianship Judicial Officer is

required to do a criminal jury trial, there is no one to replace that person. We will not reallocate the Guardianship Judicial Officer to do a criminal jury trial.

"The Judicial Officer who handles Probate is not available. Probate Court handles cases where the assets of those who have passed away or are disabled are protected. We are not going to abandon those unable to tend to their own assets or those who have passed on but have relied on the Courts to handle their assets appropriately. If the Probate Judicial Officer is required to do a criminal jury trial, there is no one to replace that person. We will not reallocate the Probate Judicial Officer to do a criminal jury trial.

"Civil Courtrooms are frequently available for criminal jury trials. We use most civil courtrooms for both civil and criminal matters. We will not interrupt an ongoing civil jury trial except in the rarest and most exigent of circumstances. The civil departments that volunteer for criminal jury trials still handle a full load of civil matters. Thus, their scheduling needs must be taken into account.

"There are four visiting Judges assigned to do civil jury trials in temporary facilities. One of those facilities is the Hawthorne Elementary School. Another such facility is in the desert area. These facilities have insufficient security. It would be unsafe for jurors, for the DA, for the defense counsel and for the witnesses, if criminals and criminal trials were assigned to these facilities. Theoretically, one of these Judges could be moved to a secure courtroom in the Hall of Justice. But, the Chief Justice and the Administrative Office of the Courts assigned these Judges to Riverside County for the specific purpose of doing civil trials. We will not change the assignment parameters unless the Chief/AOC or the Court of Appeals orders us to do so. We will not assign a

criminal trial to these temporary facilities or take a Judge from these facilities to move elsewhere to do a criminal trial.

"We have one Civil Judge who is available to do criminal trials. If he is not in a civil jury trial, criminal cases are assigned to him. The District Attorney files a 170.6 CCP against him every time that a criminal case is assigned to him. This is not unexpected since the DA's Office has announced publicly that they will 'paper' that particular Judge at every opportunity. Therefore, if a case is assigned to him, and if he is 'papered', an additional 'last day' is not created.

"We have Calendar Courts, each of which handle hundreds of cases, each day. If the Judicial Officer were not there, then cases would be dismissed. We have no spare Calendar Judges. If they are not present, no one will be available to do the Calendar. We will not reallocate a Calendar Judge to do a criminal jury trial.

"We have informed the Chair of the Judicial Counsel, pursuant to section 1050 of the Penal Code, that we are in danger of dismissing cases.

"Therefore, we have done everything possible to find a place for the last remaining case(s). No courtroom is available. The defense motion to dismiss will be heard on the next business day at 8:30 a.m. Each defendant is ordered back to this courtroom at 8:30 tomorrow morning. Each defendant and defense counsel and prosecutor is ordered to stay in this courtroom until 4:30 p.m. today, just in case a courtroom becomes available for jury trial."

The court then permitted the People to present a statement in response. The People stated that they believed that pursuant to section 1050, criminal cases take

precedence over all civil matters, effectively requiring that the court look individually to those courts in family law, probate, guardianship, and other non-criminal departments for potential assignment of last-day criminal cases. The People further took issue with the court's refusal to consider assigning criminal cases to the judges assigned solely to civil cases: "Therefore, we believe that those Hawthorne and Palm Springs court judges that are designated for civil courts should be used to hear one of these cases. They can use one of our courtrooms if necessary for security."[5] Those judges could use courtrooms in the downtown Riverside courthouse if there was a concern for security. Finally, the People maintained that, to the extent no courtrooms were available, such constituted good cause to continue the matter one day beyond the statutory last day for trial.

The trial court then explained that defendant's case would be dismissed the following day upon oral motion by defendant's counsel. It noted that defense counsel had "been through this process before." Defendant's case was dismissed the following day.[6]

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[5] We assume the department in Palm Springs to which the People referred is the one designated as "[a]nother such facility . . . in the desert area" in the dismissal script incorporated into the record by the trial court.

[6] The People refer at several points in their opening brief to the implicit importance of the fact that this was the second dismissal of this felony case, effectively barring refiling of the matter. (See §§ 1387, 1387.1.) Likewise, defendant notes that the current appeal "follows a second dismissal by the trial court pursuant to Penal Code section 1382 . . . ." Defendant notes that he filed a brief in the appeal from the first dismissal and attempts to incorporate by reference all arguments set forth in that earlier brief. However, nothing in this record reflects that this was the second dismissal of this felony case. No party has requested that we augment the record or take judicial notice of

[footnote continued on next page]

B. *Analysis*

1. *Standard of review*

"The right to a speedy trial is a fundamental right. [Citation.] It is guaranteed by the state and federal Constitutions. [Citations.] The Legislature has also provided for '"a speedy and public" trial as one of the fundamental rights preserved to a defendant in a criminal action. [Citation.]' [Citation.] To implement an accused's constitutional right to a speedy trial, the Legislature enacted section 1382. [Citation.]" (*Rhinehart v. Municipal Court* (1984) 35 Cal.3d 772, 776.)

Here, defendant's case was dismissed because it had reached the last day, there were no available courtrooms, and the trial court refused to grant a continuance under section 1050, subdivision (a). Pursuant to section 1050, subdivision (a), criminal cases shall take precedence over civil cases as long as such precedence is consistent with the stated policy that hearing a criminal case before a civil case furthers the "ends of justice."

In *People v. Osslo* (1958) 50 Cal.2d 75 (*Osslo*), the Supreme Court concluded that the decision of whether a criminal case takes precedence over a civil case must not be arbitrary. The language of section 1050 vests discretion in the trial court to make these decisions, which evokes the abuse of discretion standard on appeal. Accordingly, we uphold the trial court's decision "except on a showing that the court exercised its

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[footnote continued from previous page]
the record in the previous appeal. Furthermore, there is no indication on this record that the trial judge was aware that this would be the second dismissal of this felony case.

discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice." (*People v. Jordan* (1986) 42 Cal.3d 308, 316, italics omitted.)

The People contend that review is de novo because the trial court committed errors of law. They rely on the recent case of *People v. Hajjaj* (2009) 175 Cal.App.4th 415, but review was granted in that case on September 30, 2009, subsequent to the filing of the People's brief. We hold that the trial court committed no error of law in this case. Its finding, consistent with the interests of justice and a consideration of the welfare of the people of the State of California, that there were no available courtrooms and its denial of the People's request for a continuance due to court congestion were within its discretion.

2. *Section 1050, subdivision (a)*

Section 1050, subdivision (a), provides in pertinent part, "The welfare of the people of the State of California requires that all proceedings in criminal cases shall be set for trial and heard and determined at the earliest possible time. To this end, the Legislature finds that the criminal courts are becoming increasingly congested with resulting adverse consequences to the welfare of the people and the defendant. . . . It is therefore recognized that the people, the defendant, and the victims and other witnesses have the right to an expeditious disposition, and to that end it shall be the duty of all courts and judicial officers and of all counsel, both for the prosecution and the defense, to expedite these proceedings to the greatest degree that is consistent with the ends of justice. In accordance with this policy, criminal cases shall be given precedence over, and set for trial and heard without regard to the pendency of, any civil matters or proceedings."

In *Osslo*, *supra*, 50 Cal.2d 75, the defendant claimed that his case was erroneously continued after the date set for trial because civil cases were being given precedence over his criminal case under section 681a. (*Osslo*, at p. 106.) The trial court indicated that there were several judges out on assignment, the juvenile courts were congested, and another department was handling the case of a person who was confined as mentally ill. (*Id.* at pp. 105-106.) It also rejected the defendant's objection to the continuance on the ground that there were civil trials occurring in other departments over which his criminal trial took precedence. (*Id.* at p. 104.)

At the time of *Osslo*, section 681a provided, "'The welfare of the people of the state of California requires that all proceedings in criminal cases shall be heard and determined at the earliest possible time. It shall be the duty of all courts and judicial officers and of all district attorneys to expedite the hearing and determination of all such cases and proceedings to the greatest degree that is consistent with the ends of justice.'" (*Osslo, supra*, 50 Cal.2d at p. 106.) The Supreme Court also cited to the then section 1050, which provided, "'Criminal cases shall be given precedence over all civil matters and proceedings.'" (*Osslo*, at p. 106.)[7]

Without defining "civil matters and proceedings" the Supreme Court held, "It does not appear that the policy of sections 681a and 1050 was disregarded. [The trial court]'s explanation of the condition of the calendar shows that defendants were not being deprived of precedence over civil cases for any arbitrary reason . . . . Rather, it appears

[7] In 1959, the Legislature amended section 1050 to include the language in section 681a and repealed section 681a. (Stats. 1959, ch. 1693, §§ 1, 2, pp. 4092-4093.)

that the orderly administration of a crowded calendar required the continuances to enable trial of the case in a proper department. *The precedence to which criminal cases are entitled is not of such an absolute and overriding character that the system of having separate departments for civil and criminal matters must be abandoned.*" (*Osslo, supra,* 50 Cal.2d at p. 106, italics added.)

Osslo clearly provides that the provisions of section 1050 are not absolute and that a trial court is afforded the discretion to determine if a particular criminal case should be heard before a civil case. Further, it approves of the practice of providing separate departments for civil and criminal trials. Finally, at no time did the *Osslo* court state that the trial court was required to consider the particular cases that were being heard in the various departments, including traditional civil courtrooms or juvenile courts.

Based solely on the findings in *Osslo* (which we are bound to follow) (see *Auto Equity Sales Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455-456)), where the Supreme Court determined that separate departments for civil and criminal cases are permissible and that the decision to hear a criminal case over a civil case must not be arbitrary, we conclude the trial court did not abuse its discretion in this case by finding that there were no available courtrooms. Under *Osslo*, the presiding judge and court administrators can designate separate civil departments that need not be considered to try criminal matters. As such, the trial court exercises its discretion by prioritizing cases in the available courtrooms. Section 1050 and *Osslo* require nothing more.

Here, based on the record, the trial court's decision not to interrupt any *ongoing* traditional civil courtroom proceedings to hear the instant criminal case did not violate

section 1050. The record reflects that most civil courtrooms were already being used for criminal jury trials. There is nothing in this record to indicate that any open civil courtrooms were available to hear this matter or that any civil cases were assigned on the day in question, despite the fact that this criminal case was on its last statutory day for trial.

Further, as stated in *People v. Flores* (2009) 173 Cal.App.4th Supp. 9 (*Flores*), which we will discuss in more detail *post*, up until the time that the Hawthorne judges were appointed, very few civil cases were being heard in Riverside County. (*Id*. at p. Supp. 22.) We cannot find that the special appointment of three judges to hear civil cases and the trial court's refusal to divert those judges to criminal cases was an arbitrary decision.

Moreover, the Hawthorne courts were conducting civil trials at a school. (*Flores*, *supra*, 173 Cal.App.4th at pp. Supp. 13-15) The People argue that such space could be used for criminal trials, but they have not addressed the concerns of the trial court regarding provisions for adequate security. Moreover, there is nothing in this record to indicate that there were any available courtrooms in downtown Riverside where one of the Hawthorne judges could conduct a criminal trial. The dismissal script indicated that only "*Theoretically*, one of these judges could be moved to a secure courtroom in the Hall of Justice." (Italics added.)

Further, the trial court here did not need to inquire about all matters occurring in all other courtrooms, i.e., family, probate, etc. We believe that the trial court clearly may exercise its discretion in implementing section 1050 by considering the various

departments and the types of cases heard in those departments. Asking the calendar judge to review each case individually in every department would be an insurmountable task and is not mandated by either section 1050 or the Supreme Court. Section 1050 only requires that the trial court's decision regarding the precedence of a criminal matter over any type of civil case not be arbitrary.

We note that there were apparently a number of criminal cases on their last statutory day for trial before the court on this particular day. The court indicated that it was successful in assigning at least some of these cases out for trial. The court was unable to assign three criminal matters, including the instant case, which were on their statutory last day for trial. There is no indication on this record that at any time the People prioritized these cases based on the seriousness of each case. Even had a courtroom been available, the record is devoid of any evidence as to which case the trial court should have sent out for trial.

Further support for the above conclusion that the court did not abuse its discretion in dismissing the instant case is found in the published superior appellate court cases of *People v. Cole* (2008) 165 Cal.App.4th Supp. 1 (*Cole*), and *Flores, supra,* 173 Cal.App.4th Supp. 9, which, although not binding on us, are nevertheless persuasive in their reasoning.

In *Cole*, the trial court found that there were no available courtrooms to try two misdemeanor cases. It noted that type of situation was not an emergency, but a "continuing problem of constantly rising caseloads." (*Cole, supra,* 165 Cal.App.4th at p.

Supp. 6, fn. omitted.) All of the civil courtrooms were hearing criminal trials.[8] The trial court interpreted section 1050, subdivision (a), to exclude family law, probate, juvenile, traffic or small claims matters, and in any event, the important work done by these departments "would be completely eliminated" if criminal trials took precedence over those matters. Such elimination would be "detrimental to the citizens of the community." (*Cole*, at p. Supp. 8.) The case was dismissed pursuant to section 1382 because there were no available courtrooms. (*Cole*, at p. Supp. 9.)

The *Cole* court concluded a precise definition of "civil matters and proceedings," as used in section 1050, subdivision (a), was "unnecessary based on the discretionary nature of section 1050, subdivision (a), which gives the trial court discretion to allocate its resources in a manner consistent with the ends of justice." (*Cole*, *supra*, 165 Cal.App.4th at p. Supp. 14.) Thus, the court found that "civil matters or proceedings" had not been defined in section 1050 and did not believe such definition was necessary. (*Cole*, at pp. Supp. 13-14.) It then held that section 1050 was merely directory and not mandatory. (*Cole*, at p. Supp. 14.) It concluded that "whether a particular criminal case takes precedence over civil matters is within the court's discretion." (*Id.* at p. Supp. 15.)

The *Cole* court found that the trial court had not abused its discretion in dismissing the cases: "We conclude that the trial court was entitled to exercise, and did exercise, its discretion in a manner consistent with the policy and objectives of section 1050, subdivision (a). It considered all relevant circumstances, including the welfare of the

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[8] It appears at the time there were no judges hearing cases at the Hawthorne school or in Palm Springs.

citizens of the State of California. It indicated that separate from its legal interpretation of the term 'civil,' its decision was based on its finding that traditional civil courtrooms were already exclusively devoted to criminal trials, that the work done by the family, probate, traffic, small claims and juvenile courts was of great importance to the community, and that depriving the community of these remaining judicial services would be highly detrimental to its citizens. Because the policy of criminal case precedence expressed in section 1050, subdivision (a), is based on the welfare of the citizens of the State of California, this is a valid and relevant consideration in determining whether a particular criminal case should receive precedence." (*Cole*, *supra*, 165 Cal.App.4th at p. Supp. 16.)[9]

After the decision in *Cole*, in *Flores*, the trial court called the case and stated that all courtrooms in the entire county were unavailable and that most of the civil courtrooms were engaged in criminal trials.[10] (*Flores*, *supra*, 173 Cal.App.4th at p. Supp. 13.) The court then referred to the Hawthorne civil judges that had been appointed to conduct civil cases only. It also stated that security was inadequate at the facility to ensure the safety of the jurors and court staff. (*Ibid*.) It refused to transfer the judges to a secure courtroom because it would be interrupting civil trials. (*Id*. at p. Supp. 16.) It also

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[9] This court declined to exercise its discretion to transfer *Cole* for further consideration, leaving the opinion certified for publication. Further, the California Supreme Court denied their writ of review and request for depublication.

[10] The trial court judge in *Flores* is the same judge who wrote the dismissal script incorporated into the record in this case.

declined to assign any cases to family law or juvenile courts, as they had huge caseloads and were protecting children and spouses. (*Id*. at pp. Supp. 13-14.) The case was dismissed. (*Id*. at p. Supp. 16.)

On appeal to the appellate department of the superior court, the court first expanded on *Cole* and concluded that "'civil matters and proceedings' in section 1050, subdivision (a), is broad indeed, and means any civil action or special proceeding of a civil nature which is not clearly a criminal action," but that a "'precise definition'" was not necessary. (*Flores, supra*, 173 Cal.App.4th at p. Supp. 20, fn. omitted.) The *Flores* court then reiterated that section 1050, subdivision (a), was not absolute and only required granting precedence in a criminal case if to do so was just. (*Flores*, at p. Supp. 22.) It agreed with *Cole* that family, probate, and juvenile departments should not make way for criminal matters. (*Flores*, at p. Supp. 22.)

The *Flores* court then recognized that after *Cole*, the Hawthorne school judges were hearing civil cases and that the district attorney was arguing those courtrooms should be used to conduct criminal trials. It concluded that the denial of access to courts implicated due process and that civil litigants were entitled to meaningful access to the court system. (*Flores, supra*, 173 Cal.App.4th at pp. Supp. 23-24.) The court recognized that all traditional civil courtrooms in Riverside County were already being used for criminal trials. It then held, "We therefore disagree with the District Attorney's position that even further precedence must be granted to criminal matters. Conducting criminal trials at Hawthorne, temporarily assigning the judges currently assigned to Hawthorne to secure courtrooms at other facilities, or forcing family and probate departments to

conduct criminal trials, would simply not be 'consistent with the ends of justice,' and is therefore not mandated by section 1050, subdivision (a)." (*Id*. at p. Supp. 24, fn. omitted.)[11]

The reasoning in *Flores* and *Cole* is sound. The People in the instant appeal have provided nothing new to this court that would change such reasoning. The policy to expedite criminal cases in conformance with the ends of justice makes it a reasonable determination on the part of the trial court to refuse to disturb those courts hearing civil matters to hear a criminal case. Making an absolute rule that criminal cases should take precedence over these types of cases would not serve the "ends of justice.'" (*Flores*, *supra*, 173 Cal.App.4th at p. Supp. 24.) We conclude that the trial court here did not abuse its discretion by finding that there were no available courtrooms to try this last-day case.

3. *Refusal to grant continuance due to court congestion*

The People contend that the trial court abused its discretion by its implicit denial of their request for a continuance. We disagree.

In *Cole*, the appellate court rejected the People's argument that the trial court abused its discretion by refusing to continue the trial beyond the statutory limit of section 1382. The *Cole* court found "chronic court congestion and overcrowding do not constitute good cause for a continuance under section 1382." (*Cole*, *supra*, 165

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[11] On April 13, 2009, we denied the People's request to transfer *Flores* to this court, leaving the case certified for publication. The People's writ of mandate/prohibition, filed in the California Supreme Court, has been denied.

Cal.App.4th at p. Supp. 17; see also *Rhinehart v. Municipal Court, supra*, 35 Cal.3d at p. 782 ["absent exceptional circumstances, a trial court's congested calendar does not constitute good cause to avoid a dismissal under section 1382"].)

In *Flores*, the court rejected the People's argument that the trial court's mismanagement by placing the Hawthorne courts off limits was grounds for "good cause" for the continuance. It found, "The situation in the Riverside Superior Court of insufficient courtrooms and judges to try all criminal matters before the statutory deadlines is in no way novel or limited to this case—it has been the norm for some time now. [Citation.] Because we have already concluded the trial court did not abuse its discretion by not utilizing available noncriminal resources to try Flores's case, we find no court mismanagement whatsoever." (*Flores, supra*, 173 Cal.App.4th at pp. Supp. 24-25.)

The *Flores* court concluded, "Lack of resources, not court mismanagement or congestion caused by an exceptional or emergency situation, lay behind the delay in Flores's trial. Under this state of affairs, granting a continuance would have been an abuse of discretion." (*Flores, supra*, 173 Cal.App.4th at p. Supp. 25.)

The findings in *Flores* and *Cole* are persuasive; we see no reason to hold otherwise. The People below argued, to the extent the court found no available courtrooms, that finding, in and of itself, was sufficient good cause to grant a continuance. The trial court did not discuss whether there was a good cause for a continuance. However, the existence of the dismissal script written nearly seven months earlier and a perusal of *Flores* and *Cole* make it readily apparent that dismissal of criminal cases under statutory speedy trial rules is anything but exceptional in Riverside

County. Moreover, the trial court expressly noted that defense counsel had "been through this process before." Further, we have already found that the trial court did not abuse its discretion by refusing to use civil courtrooms for the instant case. As such, we hold that the trial court did not abuse its discretion in denying the request for a continuance.

DISPOSITION

The dismissal is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

/s/ MILLER
J.

We concur:

/s/ HOLLENHORST
Acting P. J.

/s/ KING
J.