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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Appellant,

v.

JOSE DANIEL MINJAREZ,

Defendant and Respondent.

E048115

(Super.Ct.No. SWF023937)

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.

Richard Power, under appointment by the Court of Appeal, for Defendant and
Respondent.

In yet another in a collection of cases dismissed by the trial court due to unavailability of a courtroom for trial and appealed to this court,¹ the People here appeal the dismissal of the criminal case against defendant, Jose Minjarez. As with those other cases, we reject the People's arguments and affirm the dismissal.

PROCEEDINGS BELOW

In December 2008, defendant was charged by Information with battery on a correctional officer (Pen. Code, § 243.1).² Defendant remained in custody throughout the pendency of this case.³ On January 30, 2009, defendant was granted a continuance and waived time for trial to that day⁴ and the parties stipulated to a motion to trail trial to February 5, 2009, with the last day for trial being the 9th of February. On February 5, both parties announced they were ready for trial. On the court's own motion, trial was trailed until February 9. On February 9, both parties again announced that they were ready. The court reassigned trial from Murietta, where the parties then were, to

¹ Review was recently granted by the California Supreme Court in another such case, *People v. Wagner*, review granted Oct. 1, 2009, S1275794.

² All further statutory references are to the Penal Code unless otherwise indicated.

³ At least at the beginning of this case, defendant was in custody on another matter, probably the prison sentence he was serving when this crime was allegedly committed. After the case was dismissed, defendant was ordered transported to prison reception, thereby suggesting that he was returned to prison to continue serving the term he was serving when these proceedings began. Also, beginning on December 18, 2007, most of the court minutes throughout these proceedings note that an immigration hold existed.

⁴ This had to have been incorrect.

Riverside. Once in Riverside, defendant again announced that he was ready and objected to any further continuance. The trial court said it was “incorporating the dismissal script prepared by Judge Hernandez on October 10, 2008.” That script was not read into the record, nor was a copy of it designated by the People as part of the record before this court.⁵ However, we have supplemented the record with a copy of it. The court below added, “There are no courtrooms available. We literally have had people come open at the last moment that we sent cases to. We had one judge that called us when he was in the middle of a short delay in picking juries on a multi-jury case. There is nothing available. So I’ll adopt that script.” In response, the People read from their own “script” asserting, 1) that section 1050 provides for the preference of criminal trials over civil proceedings, and the Judicial Council cannot order the trial court to deviate from this preference, therefore the Hawthorne and Palm Springs⁶ court judges should be used, employing a criminal courtroom if necessary for security, 2) the People’s belief that the court “should look to” family law, probate, guardianship and other specifically designated non-criminal departments and objecting to the trial court’s policy of not checking them to determine if any is available to hear defendant’s case, and 3) if the trial court has unsuccessfully done all possible to locate a courtroom, it should conclude that good cause for a one-day delay has been established, and a dismissal should not be

⁵ Why the People, who brought this appeal, and whose job it is to designate the record, would conclude it was not necessary for us to see this document is beyond us.

⁶ Defendant states that Hawthorne is an elementary school in Riverside and Palm Springs is a court for traffic citations and minor offenses.

granted the following day. The trial court said it would calendar a formal motion by defendant to dismiss pursuant to section 1382 for the following day.⁷ The People announced that they would not refile against defendant. The trial court then granted its own motion to dismiss. The trial court again granted the motion the following day.

ISSUES AND DISCUSSION

1. *Standard of Review*

The People acknowledge that the trial court's determination of good cause under section 1382 to continue trial beyond the statutory trial period is reviewed for abuse of discretion. (*People v. Memro* (1995) 11 Cal.4th 786, 852-53; *Baustert v. Superior Court* (2005) 129 Cal.App.4th 1269, 1275.) However, they assert that the trial court here made errors of law, which require de novo review. In support, they cite *People v. Hajjaj* for which review has been granted by the California Supreme Court. (*People v. Hajjaj*, review granted Oct. 1, 2009, S175307.) They also cite *People v. Matelijan* (2005) 129 Cal.App.4th 367, 373, which has nothing to do with section 1382, but with "a motion to suppress evidence on Fourth Amendment grounds." Of course, "[a] ruling resting on a demonstrable error of law constitutes an abuse of discretion." (*People v. Cooper* (2007) 148 Cal.App.4th 731, 742.) However, that does not change the fact that the applicable standard is abuse of discretion. (*People v. Johnson* (1980) 26 Cal.3d 557, 570.)

⁷ That section provides, in pertinent part, "The court, unless good cause to the contrary is shown, shall order the action to be dismissed . . . [¶] . . . when a defendant is not brought to trial within 60 days of the defendant's arraignment on an . . . information"

2. *Abuse of Discretion*

Section 1050, subdivision (a) provides that all proceedings in criminal cases shall be set for trial and heard and determined at the earliest possible time and “given precedence over, and set for trial and hearing without regard to the pendency of, any civil matters or proceedings.” The People assert that in violation of this provision, “the [trial court] appears to have rejected [the People’s] request to consider determining the availability of many available non-criminal courtrooms [and] applied an inflexible policy to refuse to consider utilizing [them] [¶] The “script” used by the trial court stated, “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 [j]udges in Family Law have full calendars. The public focuses on their job handling dissolutions, but one of their most important 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 [j]udge in Family Law. Taking away the [j]udge 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 [j]udges 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 [j]udge handles youths who have committed crimes. The time deadlines are

strict. If a [j]udge 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 [j]udge handles children from homes where they are abused or neglected. If the [j]udge were not able 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 [j]udge in Juvenile Court. Taking away the [j]udge 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 trial. [¶] The [j]udicial [o]fficer who handles [g]uardianships 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 Probate Judicial Officer to do a criminal jury trial. [¶] The [j]udicial [o]fficer 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 Guardianship Judicial Officer to do a criminal jury trial. [¶] We have 11 regular sitting judges, countywide, handling civil law and motion work. After they finish that morning

calendar, they conduct jury trials. Under case law the Presiding Judge has the duty to weigh the ends of justice and the best interests of the people, in deciding whether some of those judges should be reserved for civil trials. The Presiding Judge has taken into account all factors under law, and has designated three courtrooms for civil trials, in addition to Department 7. ¶ With regard to Department 7, we have a judge there who would be available to handle criminal trials, but the [d]istrict [a]ttorney files a 170.6 CCP against him every time 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 he is papered, an additional "last day" is not created. ¶ Thus, of the 11 civil judges, seven handle criminal trials, and four handle civil trials. ¶ In addition, there are four visiting judges assigned to handle civil jury trials in temporary facilities: the Hawthorne Elementary School in Riverside, and the Autry Court in Palm Springs. Those facilities have insufficient security to handle criminal trials. Theoretically one of those judges could be moved to a secure courtroom in another courthouse, if we happened to have an empty courtroom. Usually we don't have any empty courtrooms, because, at any given moment, we have about 12 other assigned judges handling criminal trials. Even if we did have an empty courtroom, we would not move a Hawthorne or Autry judge, because the Chief Justice and the Judicial Council assigned these judges to Riverside for the specific purpose of handling civil trials. Presumably the Chief weighed the ends of justice and the best interests of the people in making that choice, and we will not change those assignment parameters unless the Chief or the Judicial Council orders us to do so.

Therefore we will not have a Hawthorne judge or Autry judge handle a criminal jury trial. [¶] Substantial human issues are involved in many types of civil litigation, as well as in criminal. In addition, we have a constitutional obligation to provide a forum for the adjudication of civil disputes. I don't want to delay or dismiss any case, but I know that all our judges are trying cases back to back, and at some point we just run out of courtrooms. [¶] We have criminal calendar courts, each of which handle many cases each day. If the judge were not there, then deadlines would be missed and cases would get dismissed. We have no spare calendar judges, and will not reassign a calendar judge to handle a criminal jury trial. [¶] We have informed the Chair of the Judicial Council, pursuant to section 1050 of the Penal Code, that we are in danger of dismissing cases. We have done everything reasonably possible to find a place for the last remaining case(s). No courtroom is available.”

We further note that *People v. Flores* (2009) 173 Cal.App.4th Supp. 9, states, “The record shows that Riverside Superior Court has already given extraordinary precedence to criminal trials over traditional civil matters, and still does not have the available resources to try all criminal cases in a timely fashion. . . . [¶] . . . [¶] . . . [O]nly recently, with the opening of three courtrooms at the Hawthorne School, have traditional civil trials taken place in any significant numbers. . . . [A]lmost all traditional civil courtrooms and judges are only conducting criminal trials.” (*Id.* at pp. 23-24.) Further, the Administrative Office of the Courts has appointed judges to sit in Riverside

County to conduct criminal trials and help alleviate court congestion.⁸ (See Judicial Council of California, Administrative Office of the Courts, Press Release Number 42 (July 26, 2007) (available at <http://www.courtinfo.ca.gov/presscenter/newsreleases/NR42-07.PDF> as of July 16, 2009.)

The People's assertion that the trial court appeared to have rejected their request to consider determining the availability of or applied an inflexible policy to refuse to consider the availability of family law, probate or non-designated civil courtrooms is belied by the record. The People concede that section 1050's preference for criminal cases over civil is not absolute. (*People v. Osslo* (1958) 50 Cal. 2d. 75, 104, 105 (*Osslo*).

In *Osslo, supra*, 50 Cal.2d 75, 104, 105, the defendants complained that their trial was continued while there were other courtrooms available and civil trials were begun in them. The trial court responded that preference was given to defendants who were in custody (these defendants were not), one courtroom was being used to try a person confined as mentally ill and the juvenile calendar was very congested. (*Id.* at pp. 105-106.) The California Supreme Court held, "It does not appear that the policy of section . . . 1050 was disregarded. . . . [D]efendants were not being deprived of precedence over civil cases for any arbitrary reason. . . . [T]he 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

⁸ On our own motion, we hereby take judicial notice of this. (§§ 452, 459.)

absolute and overriding character that the system of having separate departments for civil and criminal matters must be abandoned. (*Id.* at p. 106.)

“The provisions [of Penal Code section 1050] merely establish a policy [citation]; are not absolute [citation]; and do not require that criminal proceedings be given precedence over civil proceedings regardless of the circumstances.” (*People v. McFarland* (1962) 209 Cal.App.2d 772, 777.)

Section 1050 begins, “[T]he [P]eople, 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 . . . to expedite these proceedings *to the greatest degree that is consistent with the ends of justice.*” (§ 1050, italics added.)

The People, themselves, concede that “a certain amount of discretion in addressing the Legislature’s mandate is necessary to avoid absurd results.” However, the People fault the trial court for not “comparing the seriousness of actual matters pending in [civil] court[rooms] with the seriousness of the charges pending in this case[.]” Such an undertaking, however, would have been astronomical and would have taken the parties beyond the statutory period. The trial court did not abuse its discretion in determining that there were sound reasons for not using civil courtrooms for defendant’s trial.

The People correctly state that congested calendars are not good cause for continuances beyond the statutory limit, except under exceptional circumstances. (*Rhinehart v. Municipal Court* (1984) 35 Cal.3d 772, 782 (*Rhinehart*)). As stated before, below, the People argued that if the trial court had successfully done all possible to locate

a courtroom, that constituted good cause for a one day delay, rendering the dismissal of this case the following day an abuse of discretion.

Citing only *People v. Yniquez* (1974) 42 Cal.App.3d Supp. 13 (*Yniquez*)), the People here assert that, despite *Rhinehart*'s clear language to the contrary, court congestion is a good cause for continuing a case beyond the statutory period. However, *Yniquez*'s conclusion was based on *In re Lopez* (1952) 39 Cal.2d 118, 120. (*Yniquez, supra*, 42 Cal.App.3d Supp. at p. 19.) *Rhinehart* said the following of both decisions, "The court in *Johnson* specifically questioned 'those decisions which assume that court congestion . . . necessarily [constitutes] good cause to deny dismissal.' [Citation.]" (*Rhinehart, supra*, 35 Cal. 3d. at p. 782, fn. 16.)⁹

DISPOSITION

The order of dismissal is affirmed.

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RAMIREZ

P.J.

We concur:

McKINSTER

J.

KING

J.

⁹ The People contend that the facts in *People v. Cole* (2008) 165 Cal.App.4th Supp. 1 are distinguishable from those here, therefore we will not address *Cole*.