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Greetings from Law Research Group,

Traffic Ticket Case Dismissed

On Wednesday, August 18, 2004 I had a traffic court case to deal with at Los Angeles Superior Court. Approximately two months ago the LRG webmaster, another friend and myself embarked on a journey to an Indian reservation about 3 hours outside of Los Angeles for the purposes of attending a musical event located on the reservation. Unfortunate for us, we had not made up our collective minds to attend this event until later in the evening and as a result we were under time constraints, thus, the need for SPEED.

We had just hit the outskirts of Los Angeles County traveling at about 90 mph when my co-pilot noticed that we had passed a highway patrol car. My attempts at reducing my speed and projecting my speed as simply a passing maneuver were futile. It was rather simple for John Law to notice my auto with reduced traffic during our hour of travel hence I was pulled over and was given a "Notice to Appear".

The citation had a court appearance date of August 18, 2004 and I marked my calendar for the showdown accordingly.

Court Appearance

On Wednesday, August 18, 2004 at 7:00 I was glad to say that I had woken up early enough for the court appearance. The problem when "fighting" a traffic ticket is you stand a 90 percent chance of having your case pushed to the back of the line because the court does not want you to inspire any of their paying customers. In any event, I stood in line for about 40 minutes behind a line of about 70 people just so that I could file a simple memorandum of law, and a bond regarding my case. While in line I made friendly conversation with two females that were behind me, a little bonding i.e. "were all in this together". Through my conversation with these women I discovered that one of them was a paralegal who was in line to obtain an extension to pay her traffic fine. After hearing about her situation I nonchalantly stated eh, I never pay any traffic fines, or at least I haven't had to yet. This raised the paralegals eyebrows rather quickly and she inquired as to how that could be possible and I then showed her my court documents. After reading

the documents she asked if I could give her one of my extra copies so that she could possibly use it if she was to get an extension on her arraignment. Since I had four extra copies a gave her one and shortly after that it was my turn to visit the clerk/bank teller to file my documents.

The Arraignment

As I suspected the traffic court had a Judge Pro Tem and I quick raised my hand in objection to the request for my stipulation to having my case heard by the Judge Pro Tem. I refused to sign the stipulation form/contract and stated to the Judge Pro Tem that I wanted an Article 6 Judge and as a result I was forwarded to a different court room.

The new room that I had entered had only ten to fifteen people and the cases consisted of domestic violence and drunk driving cases. I promptly handed my citation to the bailiff and was told that my name would be added to the list and my case would be called shortly. After about 45 minutes my case was called and it went sort of like this: (Note: I have requested the transcripts and shall make them available on the LRG website as soon as received.)

JUDGE: Now we are hearing the WHITNEY matter...

JW: I stood up and walked up to the podium.

JUDGE: MR. WHITNEY you have been cited for violation of code xyz "Speeding" how do you plea?

JW: Your Honor, there are a few items I would like to address before we move forward.
1, I am here today under special appearance to challenge jurisdiction of this court.

2. I would like to note for the record that the name of the Defendant is incorrect, I do not spell my name in all capital letters, my name is spelled upper and lower case. I do however have, a fictitious business entity that I engage in commerce, a DBA that is spelled in all CAPS as JASON WHITNEY.

3. I have a memorandum of law in support of my appearance here today and I would like the bailiff to give you a copy.

(The bailiff comes and takes my memorandum and serves the Judge)

4. Your Honor, I am not here to enter a plea today. I am here to request that a verified complaint be filed pursuant to Penal Code ~~¥¥~~ 740, 853.9(b), and Vehicle Code ¥ 40513(b).

JUDGE: Looking over my memorandum... Well all right Mr. Whitney, you have that right.

(Important Note: This is the first time ever that I have had a Judge not state: "Mr. Whitney, the citation is on a form approved by the Judicial Council of the state of California and is your complaint." And was a little shocked. Looking over to my left I had noticed that there was not city attorney or prosecutor regarding my case...)

JW: Your Honor, is the plaintiff, attorney for plaintiff or the prosecution here today in respect of this matter?

JUDGE: No there are no appearances on the record

JW: Your honor with that being said, I motion to dismiss this case for lack failure of plaintiff to prosecute this matter.

JUDGE: (With a bit of a snide grin and waiting a minute looking back at my memorandum) Mr. Whitney, I am going to grant your motion, this case is dismissed.

JW: Thank you your Honor, have a great day.

THE END.

HERE IS THE TEXT FOR THE MEMORANDUM:

RESPONDENT'S MEMORANDUM OF LAW IN SUPPORT OF SPECIAL APPEARANCE TO CHALLENGE JURISDICTION AND REQUEST FOR VERIFIED COMPLAINT

TO THE ATTORNEYS FOR PLAINTIFF

1. Respondent Jason Allan Whitney, hereinafter "the Undersigned", Sui Juris, by special visitation [special appearance], who is unschooled in law and asks that the court take Judicial Notice of the enunciation of principles as stated in *Haines v. Kerner*, 404 U.S. 519, wherein the court has directed that those who are unschooled in law making pleadings and/or complaints shall have the court look to the substance of the pleadings rather than the form, and also hereby makes the attached memorandum, including the related documents attached herewith, in the above-referenced case.
2. The Undersigned hereby files with this Honorable court a Memorandum in support of the Undersigned's rights, and it not to be construed as making a general appearance.
3. Pursuant to well-established law that a party summoned can not appear specially to challenge the Court's jurisdiction.

"A 'special appearance' is made when the defendant appears in court for sole purpose of objecting to lack of jurisdiction over his person without submitting to such jurisdiction." *Titus v. Superior Court*, 100 Cal.Rptr. 477, 23 C.A.3d 792.

4. The Undersigned has not submitted to the Court's jurisdiction, asked for relief of any kind, or plead to any charge whatsoever.

5. The filing of this Memorandum is established in good faith, for the prosecution, and as notice to this honorable court that that the Undersigned is requesting that the prosecution file a verified complaint as required under the California Penal Code §§ 740, 853.9(b), 949, and Vehicle Code § 40513(b).

Penal Code §740. Except as otherwise provided by law, all misdemeanors and infractions must be prosecuted by written complaint under oath subscribed by the complainant. Such complaint may be verified on information and belief. [Emphasis added]

Penal Code §853.9(b) Notwithstanding the provisions of subdivision (a) of this section, whenever the written notice to appear has been prepared on a form approved by the Judicial Council, an exact and legible duplicate copy of the notice when filed with the magistrate shall constitute a complaint to which the defendant may enter a plea and, if the notice to appear is verified, upon which a warrant may be issued. If the notice to appear is not verified, the defendant may, at the time of arraignment, request that a verified complaint be filed. [Emphasis added]

Penal Code §949. The first pleading on the part of the people in the superior court in a felony case is the indictment, information, or the complaint in any case certified to the superior court under Section 859a. The first pleading on the part of the people in a misdemeanor or infraction case is the complaint except as otherwise provided by law. [Emphasis added]

6. If the prosecution is devoid of a verified complaint, the Honorable Court is without a valid charging instrument that the defendant may enter a plea to.

7. The Undersigned notices this honorable court that the Undersigned respectfully declines any offer to be heard by a Judge Pro Tem, which should not be construed as a general appearance.

8. The Undersigned notices this honorable court that the Undersigned respectfully declines any offer to be heard by a Commissioner, which should not be construed as a general appearance.

9. The Undersigned notices this honorable court that the Undersigned is respectfully asserting the Undersigned's rights pursuant to California Constitution Article 6, Section 21, which state:

"On stipulation of the party's litigant the court may order a cause to be tried by a temporary judge who is a member of the State Bar, sworn and empowered to act until final determination of the cause."

10. The Undersigned submits the case of In Re Courtney H. (App. 1 Dist. 1995) 45

Cal.Rptr. 2d 560, 38 Cal.App.4th 1221 the Court stated in part:

"If commissioner is given authority to act as temporary judge, commissioner must also obtain proper stipulation of parties litigant in order to preside over specific proceeding."
[Emphasis added]

Dated: August 18, 2004

Respectfully submitted and signed without prejudice by,

Jason Allan Whitney

Please note that I would consider this a rather unusual outcome, most traffic cases that I have dealt with have lasted several weeks and in some cases months.

Note:

The above memorandum does not constitute legal advice, if the reader requires legal advise it is suggested that the reader seek the opinion of a qualified legal professional.

Until next week,

Law Research Group