

APR 24 2012

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CRUZ

)NO. M55730

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

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BACKGROUND

So we have a set of facts that are undisputed, relating to the fact that Petitioner was arrested

1 for lodging, and facts that are disputed, relating to whether she was sleeping at the courthouse or
2 sitting on the steps. There is little dispute that the reason she was there was to protest the City's
3 camping ordinance. The protest was a matter of common knowledge in Santa Cruz, was
4 extensively covered in the local press, and could hardly be avoided by those who work at the
5 courthouse.

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7 Petitioner argues that simply denying the allegations of the petition does not put those facts
8 at issue; they are only put in issue if the return includes evidence that disputes those allegations.
9 That argument is based on *People v. Duvall* (1995) 9 Cal. 4th 464. In that case, the court first
10 held that the return must justify the petitioner's confinement, and then held that a general denial of
11 the allegations of the petition is insufficient to do so. The court then held that general denials are
12 inadequate to controvert the allegations of the petition:

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14 By failing to allege facts demonstrating the lawfulness of the
15 challenged detention, a return containing only general denials is
16 deficient in two important ways. First, such a return fails to fulfill its
17 function of narrowing the facts and issues to those that are truly in
18 dispute. This is important because an appellate court will order an
19 evidentiary hearing and appoint a referee only if it finds material
20 facts are in dispute.

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22 Second, failure to allege facts in the return prevents a habeas corpus
23 petitioner from controverting those facts in his or her traverse. The
24 traverse becomes a useless pleading, unable to assist the court in
25 sharpening the issues that must be decided in a reference hearing.
26 *Id.* at 480.

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28 So the return must do more than simply deny the allegations of the petition. The court
then considered what "general denial" means in this context. It does not mean, as it does in the
civil context, that the pleading simply states that all allegations of the petition are denied. That
would be a general denial, but the concept in the context of a habeas petition is broader. With
respect to the key allegations of the petition, the return is required to indicate the factual basis for

1 the position taken by the responding party. A paragraph which simply states that certain
2 allegations are denied is a general denial for purposes of habeas corpus pleading, and is inadequate
3 to create a factual dispute. *Id.* at 481-482.

4 The only fact that is actually disputed is the assertion that Petitioner was awake and sitting
5 on the steps when the police came and cited her. The police report indicates that she was lying
6 down and apparently sleeping. But the only fact alleged in support of the Respondent's s
7 assertion that Petitioner was not there to attend the protest is the assertion that she does not allege
8 in the petition that she was there for that reason. *See* Petition, paragraph VIII. There is no real
9 dispute that Petitioner was at the courthouse, attending the protest, and was cited for lodging, PC
10 §647(e). The issue here is whether that statute can lawfully be applied to those present at a
11 politically motivated "protest encampment."

12 ANALYSIS

13 Lack of Verification

14 Petitioner argues that the return is inadequate because it is not verified. A return is to be
15 verified by the person filing it "except when such person is a sworn public officer, and makes such
16 return in his official capacity." PC §1480(5). Here, the return was made by the District
17 Attorney, Bob Lee, through Deputy District Attorney Sara Dabkowski. A deputy district attorney
18 is a sworn public officer, and thus, the return need not be verified.

19 The Merits

20 Penal Code section 647 defines disorderly conduct, and subsection (e) states that disorderly
21 conduct includes anyone "Who lodges in any ... place, whether public or private, without the
22 permission of the owner or person entitled to the possession or in control of it." The subsection
23 used to relate to loitering, and was found unconstitutionally vague. There are no specific cases

1 interpreting "lodging," but in this Court's view, it means more than just falling asleep, but less than
2 moving in permanently. Creating a place to prepare food is not necessary, nor is putting up
3 decorations or doing other things relating to setting up a home. The Court does not agree with
4 Petitioner's argument that it applies only to people who sleep indoors, because even if one is
5 sleeping in the open in someone else's yard without permission, then a violation of the section
6 occurs. There is probably little dispute that the protesters here were setting up a place to sleep
7 every night during the protest.
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9 The key case in this area is *Clark v. Community for Creative Non-Violence* (1984) 468 U.S.
10 288. That case involved a camping ordinance, similar to the lodging statute at issue here, which
11 prohibits camping in national parks outside of campgrounds. "Camping" was defined to include
12 using the area for living accommodations, which is pretty much the definition of lodging in this
13 Court's view. The Community for Creative Non-Violence planned a protest to call attention to
14 the plight of the homeless, and the protest involved setting up symbolic tent cities in two
15 Washington, D.C. parks, the National Mall and Lafayette Park. CCNV then brought suit to enjoin
16 the application of the restriction on camping to their planned protest. The demonstrators were
17 allowed to set up symbolic tents, but prohibited from sleeping in them as part of the protest. The
18 Supreme Court considered whether the prohibition on sleeping violated the free speech rights of
19 the protesters.
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22 The court declined to decide whether sleeping in connection with a demonstration was
23 expressive conduct protected by the First Amendment, but for purposes of argument, assumed that
24 it was protected. The court then noted that "[e]xpression, whether oral or written or symbolized
25 by conduct, is subject to reasonable time, place, or manner restrictions. We have often noted that
26 restrictions of this kind are valid provided that they are justified without reference to the content of
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1 the regulated speech, that they are narrowly tailored to serve a significant governmental interest,
2 and that they leave open ample alternative channels for communication of the information.” *Id.* at
3 293.

4 The court noted that prohibition on camping did not ban sleeping generally, or ban it
5 everywhere within the National Park system, and held that the restriction was a “time, place or
6 manner” restriction, and that it was reasonable:

8 The requirement that the regulation be content-neutral is clearly
9 satisfied. ... [T]he prohibition on camping, and on sleeping
10 specifically, is content-neutral and is not being applied because of
11 disagreement with the message presented. Neither was the
12 regulation faulted, nor could it be, on the ground that without
13 overnight sleeping the plight of the homeless could not be
14 communicated in other ways. The regulation otherwise left the
15 demonstration intact, with its symbolic city, signs, and the presence
of those who were willing to take their turns is a day-and-night vigil.
Respondents do not suggest that there was, or is, any barrier to
delivering to the media, or to the public by other means, the
intended message concerning the plight of the homeless. *Id.* at
295.

16 Here, the situation is very similar. There is a general, content-neutral statute that prohibits
17 lodging without the consent of the property owner. The enforcement of that statute against the
18 demonstrators, including Petitioner, is a “time, place and manner” restriction, and under *Clark*, a
19 law which prohibits sleeping at a protest is a reasonable restriction as long as there are other ways
20 to call attention to the plight of the homeless and, specifically, to the effect of the City camping
21 ordinance on the homeless.

23 The demonstrators were participating in civil disobedience, a form of protest that
24 has a long and distinguished history in this country. The willingness of the protesters to face
25 criminal charges for their beliefs makes their message that much more potent. It is not, though, a
26 defense to criminal charges except unless either the restriction is unreasonable, or it is being
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1 enforced against the demonstrators because of the content of their message. Neither of those
2 things appear to be the case here.

3 The petition for a writ of habeas corpus is denied. The stay of proceedings in this case is
4 dissolved and the case is remanded for trial.

5 Dated: April 24, 2012

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HON. PAUL M. MARIGONDA
Judge of the Superior Court

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