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FILED
JAN 19 2012

ALEX CALVO, CLERK
BY *MORPENA*
DEPUTY, SANTA CRUZ COUNTY

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SANTA CRUZ

10 THE PEOPLE OF THE STATE OF CALIFORNIA,

Case No. M64170

11 Plaintiffs,

DEFENDANT'S DEMURRUR TO
FIRST AMENDED COMPLAINT

12 vs.

13 GARY ALLEN JOHNSON,

Date: Feb. 3, 2012

Time: 9:00 A.M.

Dept: 2

14 Defendant. /

15
16 Defendant GARY ALLEN JOHNSON demurs to the First Amended
17 Complaint herein upon the ground that Penal Code sec. 647(e) is
18 unconstitutional on its face. Notice is hereby given that this
19 demurrer will be heard at 9:00 A.M. on February 3, 2012 in Dept. 2.

20 The points and authorities Defendant will rely on, and the
21 statement of the Defendant, are set out in and attached to the
22 within letter brief to Judge John Gallagher.

23 Dated: January 19, 2012

24
25 *Ed Frey*
26 Ed Frey, Attorney for the Defendant
27
28

January 19, 2012

Dear John,

In June of 2011 you sentenced my client, Gary Johnson, to six months in jail for merely sleeping in front of the Courthouse and City Hall. Your handling of that case and the law you relied on demonstrate beyond all doubt our judicial system lacks all legitimacy, and that its actual function is to protect the powerful forces of finance and commerce in upholding an oppressive status quo.

You heard clear evidence showing Mr. Johnson's intent was to exercise his right to protest against government treatment of the homeless. You heard clear evidence showing that his sleeping activity took place only during the hours of 8:00 P.M. and 8:00 A.M. and did not interfere in any way with anyone else.

I pointed out to you that the U.S. Supreme Court has stated that outdoor camping could be a valid form of protest activity. You admitted that the Courthouse is a public forum that by tradition is used for protests and other political expression. Despite all this you denied our contention that Mr. Johnson's activities were lawful activities protected by the First Amendment.

You also heard clear evidence that there are only about 200 shelter beds available in this county, but that there are over 2,000 homeless people living here.

You admitted that sleep deprivation attacks one's mental and physical health. You also heard proof that our peace officers are dispatched in the middle of the night to breach the peace by waking up people, threatening them with jail and ordering them to move on and take their belongings with them, thus kicking people when they are down and out.

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I reminded you that when you were installed as a judge you said to the gathering during the ceremony that the most important rule in life is to show respect to other people. Your rejection of all our constitutional defenses demonstrates that the present judicial system suffers from the same affliction most other established institutions suffer from -- ethical blockage: You are simply incapable of digesting, processing and applying basic human ethics to your work. You summarily disregarded our argument that the Universal Declaration of Human Rights requires that all people be treated with equal dignity and respect.

You rejected our Due Process arguments that the lodging statute is so vague that citizens and the police are unable to figure out what is legal and what is not legal, but you later decided that the members of the jury needed to receive your personal opinion as to what the statute means, because otherwise they would not be able to apply it to Mr. Johnson's "crime". You told them that lodging means sleeping, even though that is not what the statute says, thus forcing the jury to find Mr. Johnson guilty.

Further, I pointed out to you that the authors of the Bill Of Rights agreed it would be impractical to try to specifically list every obvious right retained by the People (the right to breathe, the right to eat, the right to blink one's eyes, and so on), so they stated in the Ninth Amendment that "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the People." I quoted one of the Congressional authors of the Ninth Amendment who specifically warned his fellow Congressmen that without this Amendment the Government might even try to control people's sleeping habits, but you disregarded this clear proof that you are on the wrong side of history.

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I also pointed out to you that the California Constitution (Art. I, sec. 1) states that every person has the inalienable right to "pursue and obtain happiness", to "pursue and obtain safety" and to "pursue and obtain privacy", but still you rejected my client's right to sleep, merely because he did not hold a private personal property right to an indoor facility for sleeping. I repeatedly pointed out that your interpretation of the statute means that there is not a single square inch in the entire state of California where a homeless person can sleep outdoors legally, but each time you casually dismissed this concern as irrelevant.

I now address you personally, because when I address you in your role as judge you retreat behind your contention that no law of any kind protects the right to sleep outside without being subjected to the totalitarian style of law-enforcement officers breaching the peace, even though such enforcement has no purpose other than to hound the homeless until they disappear. You thus aid and abet the unstated doctrine that it is a crime to be poor. The result is not only to deprive the people of their right to sleep and their right to dream (so much for the American Dream for poor people) and their right to be rested enough to seek housing and work and education -- you are upholding a slow-motion death sentence for homeless people.

I ask you to reconsider all of these foul rulings and consequences as you take on Mr. Johnson's new case; I ask you to break out of this pattern of knee-jerk obeisance to the commercial and financial powers that our courts are trapped in, to apply your personal ethic of respect for all others, and dismiss this new set of sleeping charges.

You are a human being before you are a judge, but thus far you have compromised and surrendered your obvious constitutional power to insist upon the humane treatment of the poor.

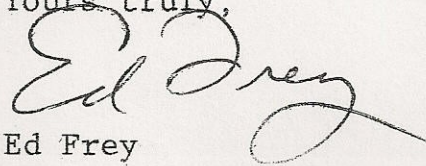
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Please keep in mind what Justice Marshall said in Marbury v. Madison (1803) 5 U.S. (1 Cranch) 137, 176 about the duty of a judge when faced with a constitutional challenge to a statute: he said that interpreting and applying the Constitution is "the very essence of judicial power." The oath of office you took is to the Constitution. You have no valid excuse to shrink from your duty to apply the Constitutional principles and provisions that Mr. Johnson asserts. As you preside over these new proceedings please consider not only Mr. Johnson's right to sleep and his right to protest about the sleeping ban, but also his right to protest the obstruction of his right to express himself and seek redress of grievances.

Since Mr. Johnson had no real opportunity to address you prior to sentencing in June, 2011, I am attaching his statement to you to this letter.

Yours truly,

A handwritten signature in cursive script that reads "Ed Frey". The signature is written in dark ink and is positioned above the typed name.

Ed Frey

Amos 5:7

SLEEP IS NOT A CRIME. SLEEP DEPRIVATION, A KNOWN TORTURE TECHNIQUE, DISRUPTS MEMORY, COGNITION, THE ABILITY TO MAKE DECISIONS, ETC. LACK OF SLEEP SHORTENS LIFE SPANS! THE NEED FOR SLEEP IS AN INDISPUTABLE FACT, YET THE RIGHT TO SLEEP DOES NOT EXIST? INSTEAD OF APOLOGIZING FOR DYING TOO SLOWLY; I STAND IN DEFIANCE, OPPOSING UNJUST LAWS, UNSOUND JUDGEMENTS, AND UNKIND GOVERNANCE. WHERE IS THE GOOD NEWS FOR THE POOR? WHY ARE THOSE WITHOUT WALLS DENIED CONVERSATION WITH GOD DURING TIMES OF REM REPOSE? WHO DESTROYED THE COMMONS? WHEN DID COMMON DECENCY BECOME UNFASHIONABLE? WHAT CAN BE DONE TO WAKE THE DELIBERATELY INDIFFERENT?

Amos 5:10

I CHOOSE NON-VIOLENT NON-COOPERATION; PRINCIPLED CIVIL DISOBEDIENCE (SLEEP BEING A MOST PASSIVE RESISTANCE). I PROTEST THE TAKING OF PUBLIC FIELDS AND THE CRIMINALIZATION OF SEEKING REDRESS, AND EXHAUSTION.

Amos 5:12

THERE IS A GROWING, UNRECOGNIZED CLASS;

FUGITIVE DREAMERS, SUBJECT TO ARREST AT ALL HOURS, LEAST ABLE TO DEFEND AGAINST PETTY TAKINGS, INTIMIDATED FROM PLACE TO PLACE VIA COLLECTIVE PUNISHMENT. THESE VICTIMS OF FLAWED POLICIES ARE ASKED TO HIDE THEIR SUFFERING FROM PRIVILEGED EYES; ESPECIALLY THOSE THAT DARE TO PROTEST! I HAVE EXPERIENCED THIS PERSONALLY, AS WELL AS THE OPPOSITE.

I'VE READ ALONG WHILE A LAW ENFORCEMENT OFFICER RECITED THE CODE VIOLATION FROM A CHEAT SHEET; A CHEAT SHEET THAT DELETED THE PORTION PROMISING CONSTITUTIONAL PROTECTIONS! AT AN UNRELATED PROTEST, I SAW LAW ENFORCEMENT OFFICERS KNOWINGLY ESCORT CORPORATE SCOFFLAWS TO THEIR CRIMES! WHEN ASKED WHY, THE OFFICER SAID IT WAS A "SYMBOLIC LAW". HOW ANY REASONABLE PERSON IS EXPECTED TO KNOW WHICH LAWS ARE TO BE ENFORCED AND WHICH ARE NOT, OTHER THAN BY THE FINANCIAL STATUS OF THE PERPETRATORS, IS BEYOND MY COMPREHENSION. I FEAR SUCH VAGUE WHIMSY PUTS OUR GOVERNMENT AT GRAVE RISK, AS ICELAND HAS RECENTLY DEMONSTRATED.

Aug 5:15

THE CONSENT OF THE GOVERNED IS A FRAGILE THING. KNOWING HISTORY, AND THE DECAY OF EMPIRE, I UNDERSTAND HOW MUCH FUTURE HAS BEEN STOLEN,

HOW LITTLE ACCOUNTABILITY ENFORCED, AND HOW
 ENDLESS THE NEEDLESS SUFFERING; A TRAGIC
 TALE LITERALLY AS OLD AS THE BIBLE. EVEN
 NOW, IN DEFENSE OF AESTHETIC TYRANNY
 AND FISCAL BIGOTRY, THIS COURT ASSERTS
 THAT I AM A "PRISONER OF MY OWN MIND".
 A COURT THAT DESIRES CONTROL OF MY MIND!
 NO. I AM A PRISONER OF CONSCIENCE, A
 PRISONER OF CONSCIOUSNESS, AND I AM
 TROUBLED AND OFFENDED BY THE HUBRIS
 OF THE COURT. IF ANY WORDS ARE PUT
 IN MY MOUTH THEY WILL BE THESE:
 LEGALIZE DREAMING, NOW!

AMOS 5:24

G

1/18/12

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