

Expand Appointment to File Cert. Petition

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE THIRD APPELLATE DISTRICT

THE PEOPLE OF THE STATE)
OF CALIFORNIA,)
)
Plaintiff and Respondent,) 3 Crim. C00000
)
vs.) [COUNTY] County
) No. ###
[APPELLANT’S NAME],)
)
Defendant and Appellant.)
_____)

**EX-PARTE REQUEST TO EXPAND APPOINTMENT TO FILE A WRIT OF
CERTIORARI IN THE UNITED STATES SUPREME COURT**

TO THE HONORABLE ARTHUR G. SCOTLAND, PRESIDING JUSTICE, AND TO
THE HONORABLE ASSOCIATE JUSTICES OF THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA, THIRD APPELLATE DISTRICT:

[STATE BRIEFLY CASE BANKGROUND, GROUNDS FOR PETITION, AND
APPLICABLE DATES e.g. On February 16, 1999, this court affirmed the [County]
County Superior Court’s ruling regarding appellant’s search and seizure claims that a
person is illegally detained and does not voluntarily consent to have his bag searched
when law enforcement agents have entered a Greyhound bus to question the occupants
and continue to pursue the matter after a person has declined to have his bag searched and
declined to respond to questions. However, in coming to this decision, the Honorable
Justice Sims stated “the procedures employed by the police in this case are repugnant and
smack of police state tactics. However, I am unable to distinguish the circumstances here
from those approved by a majority of the United States Supreme Court in *Florida v.
Bostick* (1991) 501 U.S. 429 [115 L.Ed.2d 389]. We are, of course, duty-bound to follow

Bostick.” (See Exhibit A attached, slip concurring op. p. 1.)

On March 23, 1999, appellant filed a petition for review arguing that the United States Supreme Court decision in *Florida v. Bostick, supra*, 501 U.S. 429, was misapplied. After extending the time to decide whether the case should be granted review, on May 26, 1999, the California Supreme Court denied appellant’s petition for review. However, Justices Werdegar and Mosk were of the opinion the petition should be granted. (See Exhibit B.)

The remittitur in this case was ordered June 3, 1999. The deadline to file a writ of certiorari in the United States Supreme Court is August 24, 1999.

The determination of whether this Court has properly applied the holding in *Florida v. Bostick, supra*, can only be resolved by the United States Supreme Court. (*Stone v. Powell* (1976) 428 U.S. 465, 494 [49 L.Ed.2d 1067; 96 S.Ct. 3037].) The evidence that two justices of the California’s Supreme Court found sufficient merit in appellant’s contentions to believe review should be granted and that at least one justice of this court had grave concerns about the procedures used by the agents of the California Department of Justice’s Bureau of Narcotic Enforcement is strong indication that the case has sufficient merit that a writ of certiorari is warranted.

The test defined by the majority in *Florida v. Bostick, supra*, 501 U.S. 429 [115 L.Ed.2d 389] requires a determination whether a reasonable person, under the totality of the circumstances, would feel free to decline the officer’s requests or otherwise terminate the encounter. (*Id.* at 434-436 [115 L.Ed.2d at 398-400].) In *Florida v. Bostick, supra*, after the officers had advised him that he had a right to refuse such consent, the defendant, without any prior objection or refusal, immediately manifested his consent to have his luggage searched upon the officer’s request. Here, unlike the case in *Florida v. Bostick, supra*, appellant declined the request to search and thereafter tried to ignore the officer’s question, before turning over the bag upon the officer’s further request. This case will present to the United States Supreme Court an opportunity to issue a bright line

rule as to when an officer must stop further attempts to persuade a passenger in a bus to allow them to search their luggage after the passenger has once refused and clarify the type of advisements the officers must provide the passengers prior to conducting these type of drug sweeps.

Appellant would be seriously handicapped if he were required to raise the issues by filing the writ of certiorari on his own behalf. Appellant is on probation facing a jail term which was stayed pending the appeal. If he is ordered to begin serving his jail term he will have limited access to a law library and photocopying equipment. The preparation of the writ requires meeting and understanding the United States Supreme Court's particularized Rules of Court which will be more difficult for a lay person than legal counsel. Appellant has had no training in legal research and the issues in this case are particularly complex and deal with legal issues which appellant has no educational or lay background in which would allow him to prepare an adequate writ. (Compare *Dillon v. United States* (9th Cir. 1962) 307 F.2d 445); *Hawkins v. Bennett* (8th Cir. 1970) 423 F.2d 948.) The expansion of Central California's Appellate Program's current appointment to prepare the writ of certiorari in this case would permit counsel to narrow the issues and present to the court a reasoned analysis of the controlling law. (Compare *Knaubert v. Goldsmith* (9th Cir. 1986) 791 F.2d 722, 728-730.) Absent representation by counsel, appellant, as a non-lawyer, would have difficulty in dealing with the procedural and legal issues presented. (Compare *In re Romero* (1994) 8 Cal.4th 728, 737; cf. also *Hughes v. Joliet Correctional Center* (7th Cir. 1991) 931 F.2d 425, 429 ["In deciding whether to grant a motion for appointment of counsel, a judge must be alert to the pitfalls that confront laymen in dealing with non-intuitive procedural requirements applied in a setting of complex legal doctrine."]; *Battle v. Armontrout* (8th Cir. 1990) 902 F.2d 701, 702 [where factual and legal issues are sufficiently complex and numerous, appointment of counsel benefits both the petitioner and the court by allowing counsel to develop arguments and focus the court's analysis].)

Therefore, the undersigned requests expansion of the appointment to file a writ of certiorari in forma pauperis in the United States Supreme Court on behalf of appellant which includes an authorization of up to [20 hours] to prepare and file the writ, as well as for expenses that counsel may incur in connection with obtaining copies of court documents that may be necessary, and for routine copying, brief binding and related costs, postage and telephone charges that counsel may incur.

Dated:

Respectfully submitted,

[YOUR NAME]
Address / telephone #
Attorney for Appellant

IT IS SO ORDERED:

Presiding Justice

[NOTE FOR PROOF OF SERVICE: serve your client and CCAP; service on AG not required.]