

CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Appellant,

v.

CAROLYN KONOW et al.,

Defendants and Respondents.

D037680

(Super. Ct. No. SCD152825)

ORDER MODIFYING OPINION

[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on October 9, 2002, be modified as follows:

1. On page 4, the second sentence of the first full paragraph, the number "13" is changed to "31" so the sentence reads:

On October 31, Judge Howard Shore granted the motion, deciding — as a matter of law — Defendants failed to establish any of the following affirmative defenses: implied defense under Health and Safety code section 11362.5, mistake of law, reliance on advice of counsel, due process violation, and equal protection violation.

2. On page 5, line 2, the following sentence is added to the end of the paragraph:

The People then filed an information charging Defendants.

3. On page 5, the first sentence of the first full paragraph, the word "complaint" is changed to "information" so that the sentence reads:

Defendants then moved to set aside the information under section 995.

4. On page 5, the fourth sentence of the first full paragraph, the word "the" is to be omitted, the word "limited" is to be changed to "to limit", and the word "complaint" is changed to "information", so that the sentence reads:

Judge Wellington also found Judge Shore had not intended to eliminate Judge Mudd's section 1385 authority but merely to limit him from dismissing the information on the constitutional grounds raised at the first preliminary hearing.

5. On page 5, the sixth sentence of the first full paragraph, the word "complaint" is to be changed to "information", so that the sentence reads:

Judge Wellington ruled Defendants were denied a substantial right of having the remand conducted by a magistrate able to exercise section 1385 authority; and he granted the section 995 motion and dismissed the information because he found the record showed Judge Mudd would have dismissed under section 1385 had he believed he had the authority to do so.

6. On page 12, the second sentence of the last full paragraph, the words "As Judge Shore carefully explained, Defendants" are to be omitted; a semicolon and the word "they" are to be inserted after the word "remedy"; and the citation "(Cal.Const., art. VI, § 11.)" is to be omitted, so that the sentence reads:

Defendants were not without a remedy; they could have sought relief by moving for a writ of prohibition under section 999a before the Appellate Court.

7. On page 13, the first sentence of the first full paragraph, the words "the magistrate's order holding Defendants to answer is reinstated" is omitted, and the words "the court is ordered to reinstate the information" is inserted after the word "and" so that

the sentence reads:

The court's order granting Defendants' Penal Code section 995 motion is reversed and the court is ordered to reinstate the information.

There is no change in the judgment.

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HUFFMAN, Acting P. J.