

CALIFORNIA COURT OF APPEAL, SECOND DISTRICT, DIVISION ONE

Vlick v. Superior Court

128 Cal. App. 3d 992 (Cal. Ct. App. 1982) · No. 63172 · Decided February 22, 1982

SUMMARY

The California Court of Appeal considers whether Penal Code section 871.5 authorizes the superior court to review a magistrate's dismissal of a felony complaint based on a magistrate's legal ruling granting a motion to suppress under Penal Code section 1538.5. The majority holds that such a dismissal is reviewable under section 871.5, while the dissent argues that section 1538.5 provides the exclusive pretrial remedy for testing search-and-seizure issues. The petition for writ of prohibition was denied.

CASE DETAILS

COURT	California Court of Appeal, Second District, Division One
WRITING FOR THE COURT	Lillie, J.; Hanson (Thaxton), J.; Spencer, P.J.
JURISDICTION	California
DECIDED	February 22, 1982
DOCKET	63172
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Petition for writ of prohibition challenging the superior court's jurisdiction under Penal Code section 871.5 to review a magistrate's dismissal of a felony complaint that followed the magistrate's grant of a Penal Code section 1538.5 suppression motion. The petitioners had first moved under Penal Code section 995 to dismiss the information, but that motion was denied.
STANDARD OF REVIEW	Extraordinary-writ review of the superior court's jurisdiction to review and reinstate a complaint under Penal Code section 871.5; the court did not review the merits of the suppression ruling itself.
PRECEDENTIAL VALUE	published opinion
PARTIES	William John Vlick, McKee v. The Superior Court of Los Angeles County

TOPICS

criminal procedure

suppression of evidence

search and seizure

statutory interpretation

appellate procedure

PRACTICE AREAS

criminal procedure

appellate procedure

search and seizure

statutory interpretation

QUESTIONS PRESENTED

1. Whether Penal Code section 871.5 authorizes the superior court to review a magistrate's dismissal of a felony complaint when the dismissal resulted from the magistrate's legal ruling granting a Penal Code section 1538.5 suppression motion.
2. Whether applying Penal Code section 871.5 to petitioners constituted an unconstitutional ex post facto application.
3. Whether the petitioners were entitled to writ relief based on the superior court's alleged lack of jurisdiction.

HOLDINGS

1. A dismissal of a felony complaint by a magistrate based on a ruling on legal grounds on any motion properly before and decided by the magistrate is subject to review by the superior court under Penal Code section 871.5, including when the dismissal follows a section 1538.5 ruling granting suppression as a matter of law.
2. Applying section 871.5 to petitioners did not violate the ex post facto prohibition because the statute effected a procedural change and did not deprive petitioners of a vested and substantial right or operate to their disadvantage.

KEY QUOTATIONS

"We conclude that dismissal of a complaint by a magistrate based upon a ruling on legal grounds on any motion properly before and decided by the magistrate is subject to review by the superior court on motion by the People on the ground that, "as a matter of law, the magistrate erroneously dismissed the action," and that this procedure is consistent with and in furtherance of the stated purpose of AB 2383 and the intent of the Legislature in enacting it." (at 999)

"The alternative writ of prohibition is discharged and petition for writ of prohibition is denied." (at 1001)

FACTUAL BACKGROUND

Petitioners moved to quash two search warrants before their preliminary hearing, arguing that the warrant affidavits were insufficient on their face to establish probable cause. The magistrate granted the motion as a matter of law without taking testimony. Because the prosecutor stated that he could not proceed without the seized evidence, another magistrate dismissed the felony complaint, after which the superior court reviewed the dismissal under section 871.5 and reinstated the complaint.

PROCEDURAL HISTORY

Petitioners were charged in municipal court with receiving stolen property and possession of heroin for sale. A magistrate granted their section 1538.5 motion to quash two search warrants on the ground that the affidavits did not establish probable cause; when the prosecutor stated that he could not proceed with the preliminary hearing, another magistrate dismissed the complaint under section 871. The superior court, acting on the People's section 871.5 motion, reversed the dismissal and suppression ruling, reinstated the complaint, and ordered a preliminary hearing. After a later suppression motion was denied and petitioners were held to answer, the superior court denied their section 995 motion, prompting this writ petition.

DISPOSITION

writ_denied

CASES CITED

- Landrum v. Superior Court, 30 Cal. 3d 1, 12, 14, 177 Cal. Rptr. 325, 634 P.2d 352 (1981)
- Rockwell v. Superior Court, 18 Cal. 3d 420, 442, 134 Cal. Rptr. 650, 556 P.2d 1101 (1976)
- People v. Peters, 21 Cal. 3d 749, 147 Cal. Rptr. 646, 581 P.2d 651 (1978)
- Pitney-Bowes, Inc. v. State of California, 108 Cal. App. 3d 307, 313-314, 166 Cal. Rptr. 489 (1980)
- People v. Sobiek, 30 Cal. App. 3d 458, 472-473, 106 Cal. Rptr. 519 (1973)
- State Compensation Ins. Fund v. Workers' Comp. Appeals Bd., 88 Cal. App. 3d 43, 53, 152 Cal. Rptr. 153 (1979)
- Tidewater Oil Co. v. Workers' Comp. Appeals Bd., 67 Cal. App. 3d 950, 956, 137 Cal. Rptr. 590 (1977)
- Cash v. Superior Court, 35 Cal. App. 3d 226, 230-232, 110 Cal. Rptr. 612 (1973)
- People v. Belknap, 41 Cal. App. 3d 1019, 1025, 116 Cal. Rptr. 664 (1974)
- People v. Randall, 35 Cal. App. 3d 972, 977, 111 Cal. Rptr. 590 (1973)
- Estate of McDill, 14 Cal. 3d 831, 839, 122 Cal. Rptr. 754, 537 P.2d 874 (1975)
- People v. Talbot, 64 Cal. 2d 691, 705, 51 Cal. Rptr. 417, 414 P.2d 633 (1966)
- Coleman v. Superior Court, 116 Cal. App. 3d 431, 172 Cal. Rptr. 135 (1981)
- Simmons v. Municipal Court, 109 Cal. App. 3d 15, 167 Cal. Rptr. 608 (1980)

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