

CALIFORNIA COURT OF APPEAL, THIRD APPELLATE DISTRICT

People v. Holliday

Holliday · No. C102760 · Decided December 2, 2025

SUMMARY

The California Court of Appeal, Third Appellate District, considers the People's appeal from an order granting Malcolm D. Holliday misdemeanor military pretrial diversion under Penal Code section 1001.80. The court holds that the appeal was timely because the diversion order became final when the trial court established its terms and duration. It further holds that counsel's unsworn factual assertions were insufficient evidence to establish eligibility and reverses with directions for a new hearing.

CASE DETAILS

COURT	California Court of Appeal, Third Appellate District
WRITING FOR THE COURT	Hull, Acting Presiding Justice; Krause, Justice; Wiseman, Justice
JURISDICTION	California Court of Appeal, Third Appellate District
DECIDED	December 2, 2025
DOCKET	C102760
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The People appealed a misdemeanor military pretrial diversion order to the appellate division of the Yolo County Superior Court. After that court affirmed and certified its opinion for publication, the California Court of Appeal ordered the case transferred for review.
STANDARD OF REVIEW	The court reviewed statutory interpretation de novo and the trial court's determination that defendant qualified for diversion for substantial evidence.
PRECEDENTIAL VALUE	Published and certified for publication except part I of the Discussion; precedential as to the published portions under California law.
PARTIES	The People v. Malcolm D. Holliday

TOPICS

- criminal procedure
- appellate procedure
- evidence
- statutory interpretation
- military law

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the People's appeal from the misdemeanor military diversion order was authorized under Penal Code section 1466, subdivision (a)(2).
2. Whether the People's notice of appeal was timely, including when the diversion order became final and appealable.
3. What burden of proof a defendant must satisfy to establish eligibility for military pretrial diversion under Penal Code section 1001.80, subdivision (b)(2).
4. What types of information may be used to establish misdemeanor military diversion eligibility under section 1001.80, subdivision (b), and whether unsworn statements or arguments of counsel constitute sufficient evidence.
5. Whether the existing record supported defendant's eligibility for military diversion and what remedy was appropriate.

HOLDINGS

1. Because the case was a misdemeanor case, the People's appeal was authorized under Penal Code section 1466, subdivision (a)(2), which permits an appeal to the superior court's appellate division from an order dismissing or otherwise terminating all or part of the action before jeopardy or after waiver of jeopardy.
2. The People's notice of appeal was timely because the diversion order did not become final and appealable until June 14, 2024, when the trial court set the diversion's duration and compliance conditions.
3. A defendant seeking military pretrial diversion must show a reasonable possibility that the defendant is suffering from a qualifying condition as a result of military service; this is a relatively low burden of proof, below the common California burdens listed in Evidence Code section 115.
4. A defendant may not satisfy the evidentiary burden under Penal Code section 1001.80, subdivision (b), solely through unsworn factual assertions, offers of proof, reliable hearsay, or argument of counsel when those matters are not otherwise evidence under applicable law.
5. The trial court's diversion order could not stand because the record at the eligibility hearing contained insufficient evidentiary support for the required connection between defendant's alleged substance abuse and military service. The matter must be remanded for a new evidentiary hearing.

KEY QUOTATIONS

“Based on the plain language used in the statute . . . the word ‘may’ in section 1001.80 means that a defendant has the burden to show a reasonable possibility that he or she is suffering from a qualifying condition as a result of their military service, or a fairly low burden of proof.” (at 11)

“Statements of counsel are not evidence.” (at 13)

“It is unfortunate that the Legislature did not provide any clarity as to the information upon which a court may rely in determining misdemeanor military diversion cases, but absent absurd results, we are required to follow the statute as written.” (at 15)

FACTUAL BACKGROUND

Defendant, an active-duty United States Air Force member, was charged with misdemeanor DUI offenses after an officer observed traffic violations and obtained a blood-alcohol result of 0.33 percent. He sought military pretrial diversion under Penal Code section 1001.80, asserting through counsel that his alcohol use began or increased during overseas military deployments because of deployment stress, military culture, and marital problems. At the initial diversion hearing, the only factual support presented was counsel's unsworn argument, defendant's military identification, and defendant's answers concerning an Air Force treatment program; later Air Force records stated that he did not meet the criteria for a substance use disorder.

PROCEDURAL HISTORY

Defendant was charged with misdemeanor driving under the influence and driving with a blood-alcohol concentration above 0.08 percent. The trial court granted military pretrial diversion in December 2023, later setting diversion terms and a one-year duration on June 14, 2024. The appellate division affirmed, holding the evidence supported eligibility and the appeal was timely. The Court of Appeal rejected the appellate division's evidentiary analysis, concluded the record lacked sufficient evidence of eligibility, and remanded for the trial court to vacate the diversion order and conduct a new evidentiary hearing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must vacate or reverse the order granting diversion and conduct a new evidentiary hearing applying the standards articulated in this opinion and Segura, including the reasonable-possibility burden and the requirement that eligibility be supported by evidence.

CASES CITED

- People v. Nickerson, 128 Cal. App. 4th 33, 36 (2005)
- People v. Rivera, 233 Cal. App. 4th 1085, 1093 (2015)
- People v. Wright, 47 Cal. App. 3d 490, 492-493 (1975)
- People v. Bagby, 74 Cal. App. 3d 986, 987 (1977)
- People v. Wright, 99 Cal. App. 4th 201, 204 (2002)
- People v. Mazurette, 24 Cal. 4th 789, 797 (2001)
- Kurwa v. Kislinger, 4 Cal. 5th 109, 114 (2017)
- Cuevas v. Truline Corp., 118 Cal. App. 4th 56, 60 (2004)
- People v. Gray, 109 Cal. App. 5th 680, 683 (2025)

- People v. Qualkinbush, 79 Cal. App. 5th 879, 887 (2022)
- Segura v. Superior Court, 113 Cal. App. 5th 1242, 1251, 1255-1260 (2025)
- INS v. Cardoza-Fonseca, 480 U.S. 421, 440 (1987)
- Mills v. Vista Pools, Inc., 184 Cal. App. 2d 668, 672 (1960)
- Lee v. Kotyluk, 59 Cal. App. 5th 719, 730, 732 (2021)
- In re Ethan C., 54 Cal. 4th 610, 638 (2012)
- People v. Arriaga, 58 Cal. 4th 950, 960 (2014)

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