

**SUPERIOR COURT
IN _____ COUNTY
AT _____ CITY, CALIFORNIA
Zip**

By: XXXXXX XXXXXXXX XXXXXXXX (not represented)

In the Case of

PEOPLE OF THE STATE OF CALIFORNIA

V

CASE DOCKET# _____

XXXXXXX X. XXXXXXXX

Appearing specially
Motion to Dismiss due to lack of Jurisdiction

NOTICE

1) The court upon receipt of this document, will be deemed noticed of XXXXXX XXXXXX's motion to dismiss due to lack of jurisdiction.

ARGUMENT

It is hereby argued by the accused that the immediate court and the prosecuting party lack both subject matter jurisdiction and in personam jurisdiction.

The immediate court lacks subject matter jurisdiction. The code of civil procedure explicitly states that there are but two types of remedies, special proceedings and actions [Fn-1.] These two types of actions are civil and criminal [Fn-3.] This ought to mean that if an action is "non-criminal" then it is civil. The right to prosecute one type of action is not merged with the other a when person's conduct violates both civil and criminal elements of the law [Fn-6.] The code of civil procedure states that the penal code proscribes the procedure for prosecuting criminal actions [Fn-5.] [Fn-2] [Fn-4] The accused has been subject to criminal procedure for a civil action [Fn-7.] Accused has been kept in court-to-court arrest and enjoys liberty only upon signing a bail or recognizance. This is a display of criminal jurisdiction in a civil matter.

The accused had a plea entered by the court of not guilty. The court then held accused on a recognizance. The accused was never shown a formal complaint, which is required to be filed, so as to retaining jurisdiction. Holding of the accused by way of recognizance is within jurisdictional limitations for crimes with a formal complaint on record. Without such a complaint jurisdiction does not exist to hold. A court without jurisdiction has no power to hold, continue or otherwise proceed [Fn-13] [Fn-14] [Fn-15.]

Further, this court exceeded and continues to exceed its proscribed statutory jurisdiction by conducting affairs outside of the limitations allowed by statute by refusing to supply a court reporter upon demand by the accused [Fn-9] [Fn-10.]

Accused also contends that in personam jurisdiction was lost when the accused was placed under civil arrest by officer Wagner. Civil arrest, which is highly criticized and historically used only in post judgement, to secure the payment of such judgment, was

improperly used. As a result accused was pulled into this court action involuntarily. By exceeding his jurisdiction in arresting the accused, Officer Wagner forfeited in personam jurisdiction in this case. It is further alleged by the accused that Officer Wagner did not have probable cause to make an arrest for a public offense [Fn-8.]

Footnotes

*Fn-1

Code of Civil Procedure sec. 21. “These remedies are divided into two classes:

1. Actions; and,
2. Special proceedings.”

*Fn-2

Code of Civil Procedure sec. 22. “An action is an ordinary proceeding in a court of justice by which one party prosecutes another for the declaration, enforcement, or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense.”

*Fn-3

Code of Civil Procedure sec. 24. “Actions are of two kinds:

1. Civil; and,
2. Criminal.”

*Fn-4

Code of Civil Procedure sec. 25. “A civil action arises out of:

1. An obligation;
2. An injury.”

*Fn-5

Code of Civil Procedure sec. 31. THE PENAL CODE defines and provides for the prosecution of a criminal action.

*Fn-6

Code of Civil Procedure sec. 32. When the violation of a right admits of both a civil and criminal remedy, the right to prosecute the one is not merged in the other.

*Fn-7

People vs. Battle 50 Cal app. 3rd supp.1 AND People v. Sava 190 Cal App. 3rd 935 state that infractions are non-criminal

*Fn-8

Freedom Riders (F.I.G.H.T.) v. Hannigan (commissioner of CHP) (exact cite unknown at this time) This 9th circuit federal appellate court ruling states that in California traffic stops are arrests for which probable cause is needed.

*Fn-9

Auto Equity Sales, Inc. v. Superior Court , 57 Cal.2d 450 [S. F. No. 20843. In Bank. Mar. 22, 1962.] Reads in part (Emphasis added in bold):

“[1] Under these facts, whether or not the Kroiss case was decided correctly, the appellate department of the superior court exceeded its "jurisdiction," as that term is used in connection with the writ of certiorari, in refusing to follow a rule established by a court of superior jurisdiction.

[2] Certiorari, like prohibition, is, of course, a "jurisdictional" writ. While it cannot be used to attack an error of a lower tribunal committed in the exercise of its jurisdiction, it is available when that tribunal has acted in excess of its "jurisdiction." (Simmons v. Superior Court, 52 Cal.2d 373 [341 P.2d 13]; Portnoy v. Superior Court, 20 Cal.2d 375 [125 P.2d 487].) [3] The meaning of "jurisdiction" for [57 Cal.2d 455] the purposes of certiorari and prohibition is different and broader than the meaning of the same term when used in connection with "jurisdiction" over the person and subject matter.

(Abelleira v. District Court of Appeal, 17 Cal.2d 280 , 288 [109 P.2d 942, 132 A.L.R. 715]; Goldberg, The Extraordinary Writs and The Review of Inferior Court Judgments (1948) 36 Cal.L.Rev. 558, 576.) [4] In commenting on the meaning of "jurisdiction" in a prohibition case, it was said in Abelleira that, "Speaking generally, any acts which exceed the defined power of a court in any instance, whether that power be defined by constitutional provision, express statutory declaration, or rules developed by the courts and followed under the doctrine of stare decisis, are in excess of jurisdiction, in so far as that term is used to indicate that those acts may be restrained by prohibition or annulled on certiorari." (17 Cal.2d at p. 291.)”

*Fn-10

Mitchell v. Superior Court, 28 Cal.App.3d 759, 104 Cal Rptr 921.

“... it seems well settled (and there appears to be no case holding to the contrary) that when a statute authorizes prescribed procedure, and the court acts contrary to the authority thus conferred, it has exceeded its jurisdiction, and certiorari will lie to correct such excess.” (Also see: Rodman v. Superior Court (1939) 13 Cal.2d 262 , 269-271 [89 P.2d 109]; Code Civ. Proc., §§ 1068, 1222.)”

*Fn-12

Ralph v Police Court of El Cerrito (1948) 84 Cal App.2d 257, 190 P2d 632.

“Where defendant charged in a police court with violation of § 505(b) pleaded not guilty and did not waive the filing of a complaint, such filing was mandatory.”

*Fn-13

People v Agnew (1952, App Dep't Super Ct) 110 Cal App 2d Supp 837, 242 P2d 4 10.

“Jurisdiction of the Municipal Court of Los Angeles to try a defendant for a traffic violation and enter judgment depends upon the existence of a formal complaint.”

*Fn-14

Rupley v Johnson (1953) 120 Cal App 2d 548, 261 P2d 318.

“On a plea other than guilty to traffic violations and in the absence of a waiver, a complaint must be filed before the court has jurisdiction.”

*Fn-15

Gavin v Municipal Court of San Diego Judicial Dist. (1960, 4th Dist) 184 Cal App 2d 712, 7 Cal Rptr 732.

“Defendant cited for and charged with violating section of Vehicle Code who pleads not guilty and does not waive filing of misdemeanor complaint, is not brought within jurisdiction of municipal, or other inferior, court, until verified complaint charging him with offense in question has been filed.”

I SWEAR THAT THE FORGOING INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

By: _____
XXXXXXXX XXXXXXXX DATE _____