

Without One Plea

by

Lonnie G. Schmidt
RFB - Proverbs 21:31
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There is no plea to a felony complaint. To compel a plea to a complaint for which no plea exists, strains the confines of credulity.

"It should be pointed out that as a practical matter almost all felony prosecutions in the state are initiated through the filing of a complaint signed by a deputy district attorney. According to petitioner's argument, virtually every felony conviction and every pending felony prosecution in the state is invalid." J. Penny, Judge

The Attorney General², chief law officer for the state and direct supervisor of district attorneys and all other law enforcement officers³, has publicly declared "the government may not even be involved in the preparation, investigation and filing of a felony complaint."⁴

What's wrong with this picture? Without a plea authorized for a felony complaint⁵, the courts accepting for filing felony complaints and law enforcement disavowing authority to file a felony complaint? There appears to be a conflict between the Executive and Judicial branches as to proper understanding and application of the law in criminal actions. What sayeth the law?

Article I, § 14 of the California Constitution mandates "Felonies shall be prosecuted by indictment or, after examination and commitment by a magistrate, by information." The California Penal Code (PC) requires that all felonies be prosecuted by either indictment or information. PC §§ 682, 737, 739, 917, 949.

Despite constitutional jurisdictional mandatory subject matter prerequisite and their Supervisor's prohibition, District Attorneys in every county in California have been prosecuting cases via felony complaint. This unlawful activity violates their oath of office and the due process rights of the accused. And, as a matter of law, regardless of the charged crime, violent or not, or length of sentence or when imposed, any conviction obtained is void ab initio and the prisoner is entitled to immediate and unconditional release.⁶

In the interest of justice and giving opportunity to cure their aberrant and abhorrent behavior, early in 2018 I sent by U.S.P.S. Certified Mail letters informing of error and demanding the cessation of prosecution via felony complaint, to the following District Attorneys:

Anne Marie Schubert, Sacramento County, Jeff Rosen, Santa Clara County, Krishna Abrams, Solano County, and Allison Haley, Napa County.

Each letter directed the District Attorney's attention to the Constitution and Penal Code, exposing their lack of authority. None have responded ... and they continue the unlawful activity. Solomon was right when he said "A servant will not be corrected by mere words; for though he understands, he will not respond." Proverbs 29:19 (NKJV).

The District Attorney is a public servant holding office at the will of the electorate and sworn to uphold the law. The People have mandated the proper mode for prosecuting felonies to be by indictment or information ... not by complaint.

What will it take to make our public servants respond to legitimate demands to perform their duties in accordance with the law? Perhaps, since this is an election year, and the incumbent or newly positioned elected are settling into office, We the People should demand production of authority to prosecute felonies via complaint. If they ignore us and continue their unlawful conduct, demand they turn in their badge. And, explain to the People how and why releasing more than 117,000 prisoners is in the best interests of the community.

The District Attorneys and those acting in concert to unlawfully prosecute and imprison California citizens is a violation of their oath of office and actionable as criminal conduct under state⁷ and federal⁸ law for which no immunity exists.⁹

"Therefore, to him who knows to do good, and does not do it, to him it is sin." James 4:17 (NKJV).

Now that YOU know the truth¹⁰ ... how will you respond?

Lonnie G. Schmidt
One of the People,
Captain USAR,
Victim aggrieved, as thrice charged via Felony Complaint.

NOTES

1 Jeffrey S. Penny, Judge of the Superior Court, Placer County, California. In re Brooks, (May 18, 2018) Case WHC-1611 Order Denying Petition for Writ of Habeas Corpus, page 3, lines 6-10.

2 Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gerald A. Engler, Senior Assistant Attorney General, Gregg E. Zwicke, Deputy Attorney General, and Mark S. Howell, Deputy Attorney General.

3 Article V, § 13 Calif. Const.; People v. Municipal Court for Ventura Judicial District, (1972) 27 Cal. App. 3d 193, 208.

4 Attorney General Bill Lockyer and executive staff (fn. 2, supra) as Respondent, People v. Viray, (2005) 134 Cal. App. 4th 1186, 1201.

5 The Penal Code states that a defendant has one pleading available to him (§ 1002), either a demurrer (§ 1004) or plea (§ 1016). There are six kinds of pleas to an indictment, or to an information, or to a complaint charging a misdemeanor or infraction: Guilty, Not Guilty, etc. PC 1016. But not one plea for a defendant named in a complaint charging a felony.

6 "A court can acquire no jurisdiction nor punish a person for a crime without a formal and sufficient accusation in the form and mode required by law. Such is the undisputed law in all jurisdictions." Albrecht v. United States, (1927) 273 U.S. 1, 8. People v. Alanis, (2008) 158 Cal. App. 4th 1467, 1473 "A judgment is void ... if the trial court lacked subject matter jurisdiction."

7 Penal Code §§ 661 (removal from office), 115(a) (filing false instruments), 182(a)(1-5) (conspiracy to falsely imprison).

8 Title 18, United States Code, §§ 241, 242 (conspiracy to deprive a person of their civil rights, false imprisonment, kidnaping, hold for ransom, etc.).

9 Government Code § 820.4 (immunity for acts or omission of public employees exercising due care, excluding false arrest or false imprisonment). "...false arrest and imprisonment causes of action are viable actions against public employees pursuant to Government Code section 820.4." Allison v. County of Ventura, (Cal. App. 2d Dist. Mar 30, 1977), 68 Cal. App. 3d 689, 697 1977 Cal. App. LEXIS 1356.

This article first published in 2018, was reviewed for accuracy on February 14, 2023 and a Memorandum of Points & Authorities distilled from research on the subject matter, illegal felony prosecutions and false imprisonment, was added in support of a pleading in the nature of a motion to dismiss a case prosecuted by the state via felony complaint and is appended on page 4 for legal counsel review. Such a motion raising a question of jurisdiction, may be filed in the trial court at any time; before or after trial.

10 February 21, 2018, the day Dr. Billy Graham "Pastor to America" died, I wrote a legal research paper titled "The Truth, The Whole Truth...And Nothing But" and documented with points and authorities the disclosures found herein, and, as with this article, and more, is available at **withoutoneplea.com**.

As did Dr. Graham his many Crusades, I close this article with hymn of invitation to experience real freedom -- the Truth (John 3:16, 14:6; Romans 10:9-13): "Just as I am without one plea, but that Thy blood was shed for me. And that Thou bidst me come to Thee O Lamb of God, I come, I come".

MEMORANDUM OF POINTS & AUTHORITIES

ABSENCE OF FELONY COMPLAINT JURISDICTION VIOLATES CALIF. CONST.,
Art. I § 14; U.S. CONST., 5th & 14th AMENDMENTS.

In the case at bar, a preliminary examination in Superior Court was held pursuant to a "felony complaint" brought by a prosecutor on behalf of The State; i.e., no grand jury.

This Court is asked to determine whether there is state constitutional or statutory authority (standing) for The State to initiate a felony prosecution by felony complaint, rather than by a private person (or non-government informant) as required by law, as there appears to be no plea available to a defendant to answer a felony complaint brought by The State. See Penal Code §§ 806, 948, 949, 1002, and 1016.

Our Courts hold: People v. Talle (1952) 111 Cal. App. 2d 650, 678-679 ["If a conviction is secured by means not sanctioned by law, the conviction cannot stand"]; Rupley v. Johnson (1953) 120 Cal. App. 2d 548, 552, citing C.J.S. Criminal Law § 303, pp. 456, 457; People v. Viray (2005) 134 Cal. App. 4th 1186, 1201, 1205 ["the government may not even be involved in the preparation, investigation and filing of a felony complaint...a commitment from which only a court can grant relief"]; Serna v. Superior Court (1985) 40 Cal. 3d 239, 257, "felony complaint...does not confer trial jurisdiction"; 22 C.J.S. Criminal Law, § 324, p. 390.

Apparently, an information was not available to the State for felony prosecution. Guillory v. Superior Court (2003) 31 Cal. 4th 168, 173-174; Carter v. McCarthy (9th Cir. 1986) 806 F.2d 1373, 1376, fn. 2.; People v. Vasilyan (2009) 174 Cal. App. 4th 443, 450.

Therefore, dismissal is requested on this ground.