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CLIENT ALERT MEMORANDUM

To: All Sheriffs & Chiefs of Police

From: James R. Touchstone, Esq.

PLAINTIFF'S EXCESSIVE FORCE AND FALSE ARREST CLAIMS WERE NOT BARRED BY THE HECK DOCTRINE BECAUSE HIS NO CONTEST PLEA WAS NOT ENTERED AS AN ACTUAL CONVICTION

In *Duarte v. City of Stockton*,[1] the Ninth Circuit Court of Appeals concluded that that *Heck v. Humphrey* bar did not apply when criminal charges were dismissed after entry of a plea that was held in abeyance pending the defendant's compliance with certain conditions.

Background

In May 2015, Francisco Duarte was in a public area in downtown Stockton. Duarte ended up standing within a few feet of a group of Stockton Police Department officers who were detaining someone else. Officers Michael Gandy and Kevin Jaye Hachler were among this group of police officers. The Appellees here claimed that Officer Gandy twice ordered Duarte to back up. Duarte maintained that if he was ordered to back up, he did not hear it. It was undisputed, however, that when Duarte did not back up, Officer Gandy forcefully took Duarte to the ground. Either Officer Hachler, Officer Gandy, or both ordered Duarte to put his hands behind his back. Duarte claimed he was unable to do so because his hands were pinned under him by the weight of Gandy pressing down on his back. Appellees claimed that rather than attempt to comply, Duarte tried to pull his arm away. Officer Hachler then struck Duarte in the leg with a baton, breaking a bone. Duarte claimed that Officer Hachler struck him at least six times on the same spot on his leg. Duarte was then taken into custody.

Duarte was charged with willfully resisting, obstructing, and delaying a peace officer in violation of Penal Code section 148(a)(1). He pleaded "no contest" or "nolo contendere" to violating Section 148(a)(1). Although Duarte entered the equivalent of a

[1] Duarte v. City of Stockton, 2023 U.S. App. LEXIS 3693 (9th Cir. Feb. 16, 2023).

guilty plea, the state court never entered an order finding him guilty of the charge to which he pleaded. Instead, the state court ordered that its acceptance of Duarte's plea would be "held in abeyance," pending his completion of ten hours of community service and obedience of all laws. After the six months of abeyance elapsed, the charges against Duarte were "dismissed" in the "interest of justice" on the prosecutor's motion.

In December 2018, Duarte filed a 42 U.S.C. section 1983 action in District Court, asserting claims for excessive force and false arrest against Officer Gandy, Officer Hachler, Stockton Chief of Police Eric Jones, and several other officers. Duarte also brought associated municipal liability claims against the City of Stockton and the Stockton Police Department.

The District Court dismissed the false arrest claim against the individual defendants as barred under *Heck v. Humphrey*, 512 U.S. 477 (1994). *Heck v. Humphrey* held that Section 1983 claims must be dismissed if they would "necessarily require the plaintiff to prove the unlawfulness of his conviction." *Id.* at 486. After discovery, the District Court granted summary judgment to the police officers on Duarte's claim for excessive force, finding it was also *Heck*-barred. The District Court also dismissed Duarte's claims against the City of Stockton and Stockton Police Department, finding that neither municipal entity was a "person" subject to suit under Section 1983. Duarte appealed.

Discussion

The Ninth Circuit Court of Appeals initially noted that it had never considered whether the *Heck* bar applies when criminal charges were dismissed after entry of a plea that was held in abeyance pending the defendant's compliance with certain conditions. The Court explained that *Heck* held that "in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a Section 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus . . . . A claim for damages bearing that relationship to a conviction or sentence that has *not* been so invalidated is not cognizable under [Section] 1983." (*Id.* at 486-87 (footnote omitted)). "[T]he *Heck* rule . . . is called into play only when there exists 'a conviction or sentence that has *not* been . . . invalidated,' that is to say, an 'outstanding criminal judgment.'" *Wallace v. Kato*, 549 U.S. 384, 393 (2007) (quoting *Heck*, 512 U.S. at 486-87).

On appeal, Duarte contended that *Heck* did not apply because the criminal charges against him were dismissed without entry of a conviction. The Appellees insisted that *Heck* should nevertheless apply because by pleading no contest and completing the conditions of his agreement with the prosecution, Duarte was functionally convicted and sentenced.

The Ninth Circuit disagreed with the Appellees, explaining that the *Heck* bar requires an actual judgment of conviction, not its functional equivalent. *Wallace*, 549 U.S. at 393; *Roberts v. City of Fairbanks*, 947 F.3d 1191, 1198 (9th Cir. 2020) ("The absence of a criminal judgment [] renders the *Heck* bar inapplicable; the plain language of the decision requires the existence of a conviction in order for a [Section] 1983 suit to be barred." (citing *Heck*, 512 U.S. at 487)); *Martin v. City of Boise*, 920 F.3d 584, 613 (9th Cir. 2019) ("Where there is no 'conviction or sentence' that may be undermined by a grant of relief to the plaintiffs, the *Heck* doctrine has no application.").

The Court of Appeals noted that according to *Black's Law Dictionary*, the primary definition of "conviction" is, "The act or process of judicially finding someone guilty of a crime; the state of having been proved guilty." *Conviction, Black's Law Dictionary* (11th ed. 2019). The Court stated that Duarte was not convicted because he was never found or proved guilty.

The Court acknowledged that Duarte pleaded "no contest" or "nolo contendere" to the resisting arrest charge, and that under California law, a court ordinarily "shall find the defendant guilty" upon entry of such a plea, which is "considered the same as a plea of guilty."[2] The Court explained that these facts served to underscore that a plea itself is not a conviction. The Court stated that a plea is entered by the criminal defendant, but a conviction does not follow without a subsequent order from the court. To illustrate the point, the Court observed that California law provides for several pretrial diversion programs, with terms similar to those in the agreement entered by Duarte, in which this distinction was highlighted.[3]

The Court noted that although Duarte entered the equivalent of a guilty plea, the state court never entered an order finding him guilty of the charge to which he pleaded. Instead, the state court ordered that its acceptance of Duarte's plea would be "held in abeyance," pending his completion of ten hours of community service and obedience of all laws. The Ninth Circuit observed that suspension of the plea is not a finding of guilt or a conviction.

After the six months of abeyance elapsed, the charges against Duarte were "dismissed" in the "interest of justice" on the prosecutor's motion. The Court explained that a "dismissal" is the "[t]ermination of an action, claim, or charge without further hearing, esp. before trial; esp. a judge's decision to stop a court case through the entry of an order or judgment that imposes no civil or criminal liability on the defendant with respect to that case."[4] The Court stated that dismissal, which imposes no criminal liability, is thus the opposite of a conviction, which imposes such liability. *See Vasquez Arroyo v. Starks*, 589 F.3d 1091, 1095 (10th Cir. 2009); *see also People v. Hernandez*, 994 P.2d 354, 359, 361 (Cal. 2000) (noting that "furtherance of justice" dismissals "cut[] off an action or a part of an action

[2] Penal Code section 1016(3).

[3] The Court noted, for example, Section 1000.10(a) ("A defendant's plea of guilty shall not constitute a conviction for any purpose unless a judgment of guilty is entered . . . .").

[4] *Dismissal, Black's Law Dictionary* (11th ed. 2019).

against the defendant"). The Ninth Circuit explained that because the charges against Duarte were dismissed, he was never convicted. The Court concluded that because there was no conviction that Duarte's Section 1983 claims would impugn, *Heck* was inapplicable. Because Duarte was never convicted of a crime, his claims should not have been dismissed under *Heck*.

The Ninth Circuit further held that the District Court erred in dismissing Duarte's municipal liability claims against the City of Stockton and Stockton Police Department. The Court explained that the Supreme Court first held that municipal entities, like cities, were "persons" amenable to suit under Section 1983 in its seminal decision, *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978). The Court observed that *Monell*'s core holding—that claims for municipal liability are cognizable under the Civil Rights Act—had been affirmed many times over by the Ninth Circuit and the Supreme Court.[5] The Ninth Circuit added that it had previously held that municipal police departments in California "can be sued in federal court for alleged civil rights violations." *Karim-Panahi v. L.A. Police Dep't*, 839 F.2d 621, 624 n.2 (9th Cir. 1988) (citations omitted). This holding was reaffirmed and extended to California's county sheriffs' departments. *Streit v. County of Los Angeles*, 236 F.3d 552, 565-66 (9th Cir. 2001). The Court of Appeals thus reversed the District Judge's determination that the City of Stockton and Stockton Police Department were not persons within the meaning of Section 1983.

Accordingly, the Ninth Circuit Court of Appeals reversed the District Court's dismissal of Duarte's false arrest and municipal liability claims. The Court also reversed the District Court's adverse summary judgment on Duarte's excessive force claim and remanded for further proceedings.

HOW THIS AFFECTS YOUR AGENCY

Agencies will note that in the context here , the crux of the issue was that the California state court never entered an order finding the defendant guilty of the charge to which he pleaded. Without a conviction, *Heck* did not apply. Agencies should be aware of this distinction, as should prosecutors when resolving these cases.

As always, if you want to discuss any of this in greater detail, do not hesitate to contact James Touchstone at jrt@jones-mayer.com or by telephone at (714) 446-1400.

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[5] See, e.g., *City of St. Louis v. Praprotnik*, 485 U.S. 112, 121 (1988); *Hervey v. Estes*, 65 F.3d 784, 791 (9th Cir. 1995)