

S 176983

SUPREME COURT COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Appellant,

v.

S _____

TERRION MARCUS ENGRAM,
Defendant and Respondent.

Fourth Appellate District, Division Two, No. E047015
Riverside County Superior Court No. RIF125429
The Honorable Helios J. Hernandez, Judge

SUPREME COURT
FILED

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Frederick K. Ontrich Clerk

PETITION FOR REVIEW

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Appellant,

v.

S _____

TERRION MARCUS ENGRAM,
Defendant and Respondent.

TO THE HONORABLE RONALD M. GEORGE, CHIEF JUSTICE, AND TO
THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA
SUPREME COURT:

The People of the State of California, plaintiff and appellant in the above-captioned action, respectfully petitions this Honorable Court pursuant to California Rules of Court, rules 8.500 and 8.512(d)(2), to grant review of the opinion of the Court of Appeal of the State of California, Fourth Appellate District, Division Two, filed on August 31, 2009, and defer briefing pending the outcome of *People v. Wagner* ((2009) 175 Cal.App.4th 1377, review granted Sept. 30, 2009, S175794). A copy of the unpublished opinion is attached as an appendix to this Petition.

ISSUE PRESENTED

Whether, despite the Legislative directive giving precedence to criminal cases over any civil matters or proceedings, a calendar court judge can be allowed to maintain that there are no available courtrooms to handle a criminal trial – resulting in the dismissal of felony criminal charges – when there are, in fact, civil courtrooms and qualified judges available to timely try the case and dispense justice?

NECESSITY FOR REVIEW

A grant of review is necessary in this case, pursuant to California Rules of Court, rule 8.500(b), in order to settle important questions of law, and the issue presented in this case is identical to the issue which has been accepted for review by this Court in *People v. Wagner* (S175794). Petitioner therefore respectfully requests that this Court grant review and defer briefing pending the outcome of the *Wagner* case pursuant to California Rules of Court, rule 8.512(d)(2).

PROCEDURAL HISTORY

On March 1, 2006, following a jury trial in Riverside County Superior Court, respondent was found guilty of residential burglary and acquitted of attempted murder.¹ (E040549 CT 160-162.) As a result, on May 5, 2006, respondent was sentenced to state prison for four years. (E040549 CT 178.) Following an appeal to Division Two of the Fourth District Court of Appeal, the judgment was reversed and the matter was returned to the trial court for a retrial. (See *People v. Engram* (July 23, 2007, E040549) (nonpub. opn.).)

On May 27, 2008, following a retrial on the burglary charge, the trial court granted a mistrial due to the jury's inability to reach a unanimous verdict. Respondent remained free from custody on his own recognizance. (CT 29.) Following various continuances, the last statutory day for timely retrial under Penal Code section 1382 became September 29, 2008. (CT 53.) On that date, the calendar judge stated there were no available courtrooms to handle this last-day trial. (CT 54.) On September 30, 2008, the calendar judge granted respondent's motion, and dismissed the case pursuant to Penal Code section 1382. (CT 55.)

¹ In an order filed February 9, 2009, the Court of Appeal granted appellant's request to take judicial notice of the record in case number E040549. That record includes one volume of clerk's transcript and two volumes of reporter's transcripts. Appellant will cite to those transcripts by including the case number within the citation.

Appellant appealed the dismissal to Division Two of the Fourth District Court of Appeal in case number E047015, under the authority of Penal Code section 1238, subdivision (a)(8). (CT 56.) On August 31, 2009, the Court of Appeal filed an unpublished opinion affirming the judgment of dismissal. (See Appendix.)

STATEMENT OF FACTS

Because this case was dismissed before trial, a full statement of facts is respectfully omitted. Based on the Court of Appeal's original unpublished opinion in case number E040549, in August of 2005, in Riverside County, respondent got into an altercation with a former girlfriend, and after she retreated injured into her home, respondent attempted to enter the home by pulling off a window screen and attempting to unlock a window. (See *People v. Engram* (July 23, 2007, E040549) (nonpub. opn.).)

ARGUMENT

THIS COURT SHOULD GRANT REVIEW IN THIS CASE BASED ON THIS COURT'S GRANT OF REVIEW IN *PEOPLE v. WAGNER* (S175794)

The lower court dismissed this criminal action after finding there were no available courtrooms to timely try this case within the statutory period set forth in Penal Code section 1382, subdivision (a)(2). Penal Code section 1050, subdivision (a), requires that criminal cases be given precedence over “any civil matters or proceedings” Yet, rather than exercise its independent discretion, the calendar judge applied an inflexible policy and declined to consider the use of many civil or non-criminal courtrooms and judges in order to prevent the dismissal of this last-day criminal case. (RT 14-15.) In doing so, the calendar judge erred as a matter of law, necessarily abused his discretion, and deprived the People of the State of California of its right to prosecute criminal charges properly supported by probable cause.

The Court of Appeal opinion affirming the calendar judge’s actions as appropriate exercises of discretion is inconsistent with: (1) this Court’s decision in *People v. Osslo* (1958) 50 Cal.2d 75; (2) the statutory directive requiring precedence to be given to criminal cases over all other civil matters or proceedings (Pen. Code § 1050, subd. (a)); (3) court rules requiring criminal trial matters to be assigned to available courtrooms for trial before their last statutory day (Rules of Court, rules 4.115, 10.951); and (4) case law prohibiting a court from applying an inflexible policy that gives precedence to civil over criminal matters (see *Perez v. Superior Court* (1980) 111 Cal.App.3d 994). In addition, the opinion expressly relies on the no-longer-citeable *Wagner* opinion as primary support for its holding. (See Appendix at pp. 2, 7-8, 10, 13, 16.)

This Court recently granted review in *People v. Wagner* (S175794), involving identical issues and essentially identical facts. Indeed, the issue presented there was: “Whether, despite the Legislative directive giving

precedence to criminal cases over any civil matters or proceedings, a calendar court judge can be allowed to maintain that there are no available courtrooms to handle a criminal trial – resulting in the dismissal of felony criminal charges involving violence – when there are, in fact, civil courtrooms and qualified judges available to timely try the case and dispense justice?” Pursuant to California Rules of Court, rule 8.500(b)(1), this Court should grant review in the instant case because it presents an issue which will necessarily be addressed by this Court’s opinion in *Wagner*.

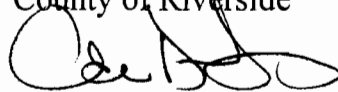
CONCLUSION

Accordingly, for the reasons stated, appellant respectfully requests that this Court grant this Petition for Review in order to settle important questions of law and defer briefing pending the outcome of *People v. Wagner* (S175794).

Dated: October 8, 2009

Respectfully submitted,

ROD PACHECO
District Attorney
County of Riverside



ALAN D. TATE
Senior Deputy District Attorney

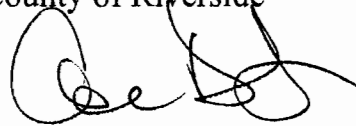
CERTIFICATE OF WORD COUNT
Case Nos. E047015/RIF125429

The text of the *PETITION FOR REVIEW* consists of 1,074 words as counted by the Microsoft Word Program used to generate the said *PETITION FOR REVIEW*.

Executed on October 8, 2009.

Respectfully submitted,

ROD PACHECO
District Attorney
County of Riverside

A handwritten signature in black ink, appearing to read 'Alan D. Tate', written over the printed name of the Senior Deputy District Attorney.

ALAN D. TATE
Senior Deputy District Attorney

PROOF OF SERVICE BY MAIL

Case Nos. E047015/RIF125429

I, the undersigned, say: I am a resident of or employed in the County of Riverside, over the age of 18 years and not a party to the within action or proceeding; that my residence or business address is 4075 Main Street, Riverside, California.

That on October 8, 2009, I served a copy of the paper to which this proof of service by mail is attached, *PETITION FOR REVIEW*, by depositing said copy enclosed in a sealed envelope with postage thereon fully prepaid, in a United States Postal Service mailbox, in the City of Riverside, State of California, addressed as follows:

**FOURTH DISTRICT
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I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Executed on October 8, 2009, at Riverside, California.


DECLARANT

APPENDIX

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Appellant,

v.

TERRION MARCUS ENGRAM,

Defendant and Respondent.

E047015

(Super.Ct.No. RIF125429)

OPINION

APPEAL from the Superior Court of Riverside County. Helios (Joe) Hernandez, Judge. Affirmed.

Rod Pacheco, District Attorney, Alan D. Tate, Senior District Attorney, and Kelli Catlett, Deputy District Attorney, for Plaintiff and Appellant.

Susan S. Bauguess, under appointment by the Court of Appeal, for Defendant and Appellant.

The People appeal from judgment entered following the trial court dismissing the

case in the interests of justice pursuant to Penal Code section 1385.¹ On the last day the case could be tried, the trial court determined there were no courtrooms available for trial. The following day the court granted defendant Terrion Engram's motion to dismiss under section 1382.

The People argue the trial court erred in failing to consider the availability of civil courtrooms, including special civil proceeding courtrooms, for trial of the instant case, as required under section 1050, subdivision (a).² The People further contend that the trial court abused its discretion by failing to find there was good cause to continue defendant's case beyond the section 1382 limitation period.

We conclude, consistent with this court's recent decision in *People v. Wagner* (2009) 96 Cal.Rptr.3d 850, 852 (*Wagner*), that the trial court did not abuse its discretion or commit legal error in dismissing the case pursuant to section 1385 due to the unavailability of a courtroom and expiration of the limitation period to try the case. We further conclude the trial court did not abuse its discretion in denying the People's request to continue the trial. The judgment is affirmed.

1. Factual and Procedural Background

Defendant was charged with attempted premeditated murder (§§ 187, subd. (a) and 664) and first degree burglary (§ 459). During the first trial in this case, the jury rejected the murder charge but found defendant guilty of burglary. The defendant

¹ Unless otherwise noted, all statutory references are to the Penal Code.

² We refer to section 1050, subdivision (a) in this opinion as section 1050(a).

appealed the judgment based on instructional error, and this court reversed the judgment. In July 2007, the case was remanded back to the trial court (case No. E040549). The burglary charge was retried. In May 2008, the trial court granted a mistrial due to the jury's inability to reach a unanimous verdict. Defendant remained free from custody.

Retrial was continued numerous times, with the parties stipulating the last day for trial was September 29, 2008. When the case was called for trial on September 29, 2008, defendant's attorney objected to any further delay in trying the case. The court declared, "I have no more courtrooms. We've been checking and we just don't have any courtrooms and this does appear to be the last day." Defendant's attorney moved for dismissal of defendant's case under section 1382. Defense attorneys for 17 other defendants in unrelated last-day trial cases (two felony and 16 misdemeanor cases) likewise moved for dismissal of their last-day cases under section 1382. The court set defendant's dismissal motion, along with the 17 other defendants' dismissal motions, for hearing on the following day.

The prosecutor argued that if the court did not have sufficient resources to try the cases and had done everything it could to locate courtrooms for trying the cases, then there was good cause to continue each of the cases for at least one day. The prosecutor further requested the trial court to consider assigning the cases to juvenile, probate or family law courtrooms for trial. The prosecutor also requested the court consider consolidating the "VCDs" (vertical calendar departments) or "shrink somewhat the number of VCDs to open up the total number of courts available." In addition, the

prosecutor suggested having pro tem judges sit on the VCD calendars and have the VCD judges try the criminal cases in the empty courtrooms.

Citing *People v. Cole* (2008) 165 Cal.App.4th Supp. 1 (*Cole*), the court stated that the lack of available courtrooms for trials of last-day cases did not constitute good cause for extending the deadline to try the cases. The court concluded there was not good cause to continue the 18 cases. The court declined to have the criminal cases tried in juvenile, probate, family law, or guardianship departments because cases handled in those departments were generally important matters.

With respect to assigning criminal cases for trial in juvenile courtrooms, the trial court noted that section 1050 authorizes and directs the court “to weigh out how to allocate it’s [*sic*] business in light of the social values that we must consider in administering a court.” The court concluded that displacing juvenile cases in order to try criminal cases in the juvenile court “would be an injustice to those children, to their parents and to society” The court noted that, furthermore, the juvenile courtrooms did not have jury boxes.

The trial court refused to assign the criminal trials to probate and family law courtrooms because those departments dealt with extremely important social issues which could not be neglected, and probate and some family law matters were handled by commissioners who could not try cases. Also, family law cases concerned important issues concerning children and support issues of enormous significance.

With regard to consolidating “VCDs,” the trial court noted that the court had previously reduced the number of VCD judges, allowing for an additional courtroom.

The trial court concluded that reducing the number of the VCD judges further would not benefit the system because the VCDs contributed immensely to reducing the number of criminal cases by settling the cases. Within one or two weeks the VCD judges settled about 900 cases. The court believed that without the VCD judges there would likely be more cases dismissed for failure to bring them to trial timely.

The trial court overruled the prosecutor's objection to setting the last-day cases for hearings on the defendants' motions to dismiss due to a lack of courtrooms. The motions were set for a hearing the following day, September 30, 2008. The next day, the trial court heard defendant's and the other defendants' motions to dismiss and incorporated the parties' arguments made the day before. The court ordered each of the 18 cases, including the instant case, dismissed under section 1382 due to the unavailability of trial courtrooms. The prosecutor informed the court the People did not intend to refile defendant's case. As a consequence, defendant was released.

2. Criminal Case Precedence

The People argue that under section 1050, subdivision (a), the trial court erred in dismissing defendant's last-day criminal case without considering the availability of all civil courtrooms, including courtrooms in probate, family law, juvenile, and calendaring departments (special civil proceedings).

Section 1050(a) states that criminal cases be given precedence over civil matters. Section 1050(a) provides: "The welfare of the people of the State of California requires that all proceedings in criminal cases shall be set for trial and heard and determined at the earliest possible time. To this end, the Legislature finds that the criminal courts are

becoming increasingly congested with resulting adverse consequences to the welfare of the people and the defendant. Excessive continuances contribute substantially to this congestion and cause substantial hardship to victims and other witnesses. Continuances also lead to longer periods of presentence confinement for those defendants in custody and the concomitant overcrowding and increased expenses of local jails. It is therefore recognized that the people, the defendant, and the victims and other witnesses have the right to an expeditious disposition, and to that end it shall be the duty of all courts and judicial officers and of all counsel, both for the prosecution and the defense, to expedite these proceedings to the greatest degree that is consistent with the ends of justice. In accordance with this policy, *criminal cases shall be given precedence over, and set for trial and heard without regard to the pendency of, any civil matters or proceedings. . . .*” (§ 1050(a); italics added.) Subdivision (l) of section 1050 further provides that section 1050 is “directory only.” (§ 1050(a); see also *People v. Flores* (2009) 173 Cal.App.4th Supp. 9, 20 (*Flores*)).

The People urge this court to clarify the meaning of the language in section 1050(a) referring to “any civil matters or proceedings.” The People assert the trial court construed section 1050(a) too narrowly, concluding the provision provided precedence to criminal cases over civil actions only, whereas the People assert the language, “any civil matters or proceedings” requires the trial court to give criminal cases precedence over not only civil actions, but also special civil proceedings, such as probate, family law, juvenile, and calendaring proceedings.

The court in *Cole* declined to decide this issue by concluding it did not matter whether the narrower or broader definition of the section 1050(a) language applied. We agree, but conclude, as explained in *Flores, supra*, 173 Cal.App.4th at page Supp. 20, that the language should be broadly construed as encompassing any proceedings considered civil in nature, including special civil proceedings.

Furthermore, regardless of whether we adopt the narrow or broad definition of the phrase, “any civil matters or proceedings,” the record reflects that the trial court considered assigning the case not only to any available civil court, but also to any special civil proceeding courtroom, and reasonably concluded that either no courtrooms were available or it was not in the interests of justice to use the special proceeding courtrooms.

The instant case is similar to *Cole, supra*, 165 Cal.App.4th Supp. 1 and *Flores, supra*, 173 Cal.App.4th Supp. 9,³ and *Wagner, supra*, 96 Cal.Rptr.3d 852, which both held that the Riverside County trial court did not abuse its discretion in denying the People’s request for a continuance and properly dismissed the criminal cases on the last day to try the cases due to court congestion. (*Cole, supra*, 165 Cal.App.4th at pp. Supp. 8-9; *Flores, supra*, 173 Cal.App.4th at pp. Supp. 24-25; *Wagner, supra*, 96 Cal.Rptr.3d 852.) Essentially the same circumstances and arguments raised in those cases were raised

³ Both these cases involved misdemeanor charges and were litigated in the Riverside County Superior Court. The Orange County Superior Court appellate division decided the *Cole* appeal, whereas the Riverside County Superior Court appellate division decided the *Flores* appeal.

by the People in the instant case,⁴ and were rejected. The only significant differences between the instant case and *Cole* and *Flores* are that the trial court dismissed only two misdemeanor cases in *Cole* and one misdemeanor case in *Flores*, whereas in the instant case the court dismissed 16 misdemeanor cases and two felony cases, including the instant case. Also, the instant appeal is brought only as to dismissal of the complaint against defendant, and has not been consolidated with any appeals of the dismissals of the other 17 cases.⁵

Despite these differences, we agree with the rationale and outcome in *Cole, supra*, 165 Cal.App.4th Supp. 1 and *Flores, supra*, 173 Cal.App.4th Supp. 9, as we did in our recent decision, *Wagner, supra*, 96 Cal.Rptr. 3d at pp. 859-863. In *Cole*, the trial court dismissed two misdemeanor cases because the cases were not brought to trial within the statutory time limits of section 1382. On the last day to try the cases, the court dismissed

⁴ The People in *Wagner* raised the additional argument, which was not raised in the instant case, that the judges conducting exclusively civil cases at a make-shift, temporary courtroom facility housed in Hawthorne Elementary School, must stop trying civil cases at the Hawthorne facility and try criminal cases in the courthouse on the ground criminal trials take precedence over civil trials. (*Wagner, supra*, 96 Cal.Rptr.3d at pp. 853-854.) The trial court in *Wagner* refused to require the Hawthorne judges to try criminal cases because they were trying civil cases in a temporary use facility, in which there was insufficient security for criminal trials and the State administrative office of the courts had assigned the visiting judges to the Hawthorne facility for the specific purpose of trying civil cases. (*Ibid.*)

⁵ As to the propriety of dismissing the other 17 cases, that issue is not before this court because this appeal has not been consolidated with any other cases, including the other felony case. Because 16 of the dismissed cases are misdemeanor cases, they normally must be appealed in the superior court appellate division, rather than in this court. We have not been provided any information as to whether the People have filed appeals in the other 17 cases.

the cases because there were no courtrooms available for trial and no good cause to continue the matters beyond the statutory time limits. (*Cole, supra*, 165 Cal.App.4th at p. Supp. 4.) On appeal, the People raised the same arguments asserted in the instant case. The People complained that the trial court dismissed the criminal cases without properly considering the availability of civil courtrooms, including special civil proceeding courtrooms. (*Cole, supra*, at pp. Supp. 5, 7-9.)

The *Cole* court rejected this contention, noting that the trial court had concluded “that the work done by the family, probate, traffic and juvenile judges was of great importance to the community and its citizens. Because of the criminal backlog and the fact that all traditional civil courtrooms were now being devoted to criminal cases, if the court were to construe ‘civil’ to include family law, probate, juvenile and traffic matters, the departments doing this important work would be completely eliminated. The trial court found that this approach would be detrimental to the citizens of the community. The court stressed that the lack of sufficient courtrooms was not a temporary emergency, but a constant problem which had been growing for years.” (*Cole, supra*, 165 Cal.App.4th at p. Supp. 8.)

In *Cole, supra*, 165 Cal.App.4th Supp. 1, as in the instant case, the People argued that by refusing to consider assigning the criminal cases to special civil proceedings courtrooms, “the trial court not only committed an error of law by interpreting the term ‘civil’ in an incorrect manner, but also violated the foregoing unambiguous and plain language of section 1050, subdivision (a).” (*Id.* at p. Supp. 13.) We disagree.

Not only is section 1050(a) discretionary in the general sense, but furthermore, under subdivision (l) of section 1050, it is merely directory. As stated in *Cole, supra*, 165 Cal.App.4th Supp. 1, “No case construing this subdivision has found it to be binding or mandatory; all cases have found it directory. While most cases construing this subdivision have addressed its requirement of good cause for continuances (and found it directory only), the few which have addressed the precedence of criminal cases have found it directory, as well.” (*Id.* at p. 14.) Citing *People v. McFarland* (1962) 209 Cal.App.2d 772, 777, the *Cole* court noted that “‘*The provisions relied upon merely establish a policy [citation]; are not absolute [citation]; and do not require that criminal proceedings be given precedence over civil proceedings regardless of the circumstances. [Citation.]*’” (*Cole, supra*, 165 Cal.App.4th at p. Supp. 15; italics in original; see also *People v. Osslo* (1958) 50 Cal.2d 75, 106 and *Wagner, supra*, 96 Cal.Rptr.3d at p. 857.) Whether a particular criminal case is given precedence over a civil matter and is assigned to a civil courtroom is within the court’s discretion, “taking into consideration ‘the circumstances and the ends of justice. . . .’” (*Flores, supra*, 173 Cal.App.4th at p. Supp. 21; *Cole, supra*, 165 Cal.App.4th at p. Supp. 15; see also *People v. Osslo, supra*, at p. 106 and *Wagner, supra*, at p. 857.)

In the instant case, as in *Cole, Flores*, and *Wagner*, the trial court provided valid reasons for not assigning defendant’s criminal case to a civil or special civil proceeding courtroom. (*Cole, supra*, 165 Cal.App.4th at pp. Supp. 5-8; *Flores, supra*, 173 Cal.App.4th at pp. Supp. 13-15; *Wagner, supra*, 96 Cal.Rptr. 3d at pp. 853-854.) The court considered assigning defendant’s case and the 17 other last-day cases to special

civil proceeding courtrooms and concluded it was not in the interests of justice to utilize the special civil proceeding courtrooms for criminal trials.

We conclude, as the court did in *Cole*, “that the trial court was entitled to exercise, and did exercise, its discretion in a manner consistent with the policy and objectives of section 1050, subdivision (a). It considered all relevant circumstances, including the welfare of the citizens of the State of California. It indicated that separate from its legal interpretation of the term ‘civil,’ its decision was based on its finding that . . . the work done by the family, probate, traffic, small claims and juvenile courts was of great importance to the community, and that depriving the community of these remaining judicial services would be highly detrimental to its citizens. [Fn. omitted.] Because the policy of criminal case precedence expressed in section 1050, subdivision (a), is based on the welfare of the citizens of the State of California, this is a valid and relevant consideration in determining whether a particular criminal case should receive precedence.” (*Cole, supra*, 165 Cal.App.4th at p. Supp. 16; see also *Flores, supra*, 173 Cal.App.4th at p. Supp. 22.)

It is well known that the Riverside County superior courts remain overburdened and under resourced. In *Flores*, approximately four months before the instant case was dismissed, the trial court dismissed the *Flores* criminal matter for reasons similar to those in the instant case. In doing so, the *Flores* court noted that “The record shows the Riverside Superior Court has already given extraordinary precedence to criminal trials over traditional civil matters, and still does not have the available [fn. omitted] resources to try all criminal cases in a timely fashion. [Citation.] The question then becomes

whether giving *additional* precedence over both traditional and nontraditional civil matters would cause injustice.” (*Flores, supra*, 173 Cal.App.4th at p. Supp. 23.)

The *Flores* court concluded that the overall situation in the Riverside County superior courts “remains essentially the same as it did in *Cole*-criminal trials are still given priority over traditional civil lawsuits, and almost all traditional civil courtrooms and judges are only conducting criminal trials. [¶] We therefore disagree with the District Attorney’s position that even further precedence must be granted to criminal matters.” (*Flores, supra*, 173 Cal.App.4th at p. Supp. 24.) Ultimately the Riverside County Superior Court’s “problem of insufficient resources to try criminal cases must be solved by the Legislature: ‘. . . Section 1382 is a creature of the Legislature. *It is therefore incumbent upon the Legislature to provide the financial support necessary to meet the requirements it sets.*’” (*Id.* at p. Supp. 21.)

We reject the People’s assertion that the trial court misunderstood the extent of its discretion. The record reflects that it considered every possible option, including assigning the case to special proceeding courtrooms, and concluded that in the interests of justice dismissal of the case was appropriate. Under such circumstances, “and considering the balancing of societal interests inherent in section 1050, subdivision (a), we conclude the trial court did not abuse its discretion by refusing to use remaining noncriminal resources for [defendant’s] trial.” (*Flores, supra*, 173 Cal.App.4th at p. Supp. 24.)

3. Continuance of the Trial

The People in this case, as in *Cole*, *Flores*, and *Wagner*, alternatively argue that the trial court should have granted the People's request to continue the trial beyond the section 1382 statutory limit based on good cause. (*Cole, supra*, 165 Cal.App.4th at pp. Supp. 16-17; *Flores, supra*, 173 Cal.App.4th at pp. Supp. 24-25; *Wagner, supra*, 96 Cal.Rptr. 3d at pp. 862-863.) Citing *People v. Yniquez* (1974) 42 Cal.App.3d Supp. 13, 19-20 (*Yniquez*), the People assert there was good cause to continue the trial based on the trial court's representations that it had complied with section 1050 in attempting to assign the case to an open courtroom for trial and there were no courtrooms available.

The prosecution has the burden of establishing good cause for not dismissing a case that has not been tried within the section 1382 limitation period. (*Cole, supra*, 165 Cal.App.4th at p. Supp. 16.) "What constitutes good cause is a matter within the court's discretion, and its determination will be reversed only if that discretion is abused." (*Ibid.*)

The People's reliance on *Yniquez, supra*, 42 Cal.App.3d Supp. 13 is misplaced. As noted in *Cole, supra*, 165 Cal.App.4th Supp. 1, *Yniquez* is not controlling because "*Yniquez* and other similar cases have been questioned insofar as they assume that court congestion or heavy public defender caseloads constitutes good cause." (*Cole, supra*, 165 Cal.App.4th at p. Supp. 17, fn. 13; see also *People v. Johnson* (1980) 26 Cal.3d 557, 571.)

In *Cole, supra*, 165 Cal.App.4th Supp. 1, the court rejected the People's contention that the trial court abused its discretion by not continuing the two criminal

trials due to court congestion, explaining: “[C]hronic court congestion and overcrowding do not constitute good cause for a continuance under section 1382. [Citations.] [Fn. omitted.] If it did, criminal defendants could be consistently denied the right to a speedy trial whenever the state failed to provide adequate court funding to allow criminal defendants to be brought to trial in a timely manner. [Citation.] Because the state has the obligation to provide sufficient resources to dispose of the usual court business promptly, court congestion will not constitute good cause unless the circumstances are exceptional. [Citation.]” (*Cole, supra*, 165 Cal.App.4th at p. Supp. 17.)

The People acknowledge this but assert that this is an inflexible rule, which when applied under the circumstances in the instant case, is unjust because there were courtrooms available which could have been utilized. The People further argue the trial court’s legal error of concluding it was not required to consider assigning the case to special civil proceeding courtrooms constituted an “exceptional circumstance.” The People claim this special circumstance, along with court congestion, constituted good cause for a continuance.

We disagree. We have already concluded the trial court did not abuse its discretion by not utilizing available noncriminal resources to try defendant’s case, and the record shows that the trial court took into consideration assigning the dismissed cases to special civil proceeding courtrooms and concluded doing so was not in the interests of justice. There was no error in this regard, and no special circumstance, as defined in *Cole*.

The court in *Cole, supra*, 165 Cal.App.4th Supp. 1 explained that “Exceptional circumstances are defined as unique, nonrecurring events which have produced an inordinate number of cases for court disposition. [Citation.] [¶] The record shows that the lack of available courtrooms was the result of chronic court congestion, a fact undisputed by the People. Nothing in the record suggests exceptional circumstances. While the *effect* of the congestion (i.e., the two misdemeanor dismissals) may have been unique, this was merely the inevitable and foreseeable result of the chronic and increasing court congestion. Therefore, no good cause for a continuance was established.” (*Id.* at p. Supp. 17.)

As in *Cole, supra*, 165 Cal.App.4th Supp. 1, in the instant case the record shows that the lack of available courtrooms was the result of chronic court congestion. (*Id.* at p. Supp. 17.) *Cole, supra*, and *Flores, supra*, 173 Cal.App.4th at pages Supp. 1-2 concern the same county courts as the instant case. The only difference is that the instant case was dismissed about a year and a half after *Cole* was dismissed and only three months after the dismissal in *Flores*. As noted in *Flores, supra*, at page Supp. 24, the Riverside County superior courts continued to suffer from continuing court congestion. (*Cole, supra*, 165 Cal.App.4th at p. Supp. 7; *Flores, supra*, at p. Supp. 24.)

The People claim *Cole* is distinguishable because that case was dismissed solely because of court congestion whereas the instant case was dismissed, not only because of court congestion, but also because of the special circumstance of the trial court perceiving court congestion when in fact this was not the case. The People argue that in fact noncriminal courtrooms were available to handle the trial in the instant case. But the trial

court adequately explained why assigning the case to special proceeding courtrooms was not in the interests of justice. Nothing in the record suggests exceptional circumstances in the instant case. The court thus did not abuse its discretion in denying the People's request to continue the trial beyond the section 1382 time limit to try the case.

It is regrettable and troubling that due to a lack of resources the Riverside Superior Court is dismissing criminal cases, particularly felony cases. Nevertheless, the trial court is in a better position than this court is to balance the interests of justice under such circumstances in determining whether dismissing last-day criminal cases, rather than assigning them to special civil proceeding courtrooms, is in the interests of justice. (See *Wagner, supra*, 96 Cal.Rptr.3d at p. 862.) In the instant case the record sufficiently establishes that there was no abuse of discretion dismissing defendant's case and denying the People's request for a continuance beyond the statutory time limit to try the case under section 1382. (*Flores, supra*, 173 Cal.App.4th at p. Supp. 25.)

4. Disposition

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

s/Gaut
J.

We concur:

s/Hollenhorst
Acting P. J.

s/Miller
J.