PEOPLE VS. PARIS HILTON

What not to do when defending a well known client.

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Legal Analysis of Errors Made and How to Remedy them:

Mistake #1: On September 7, 2006, Paris Hilton was arrested for driving under the influence and had her license taken away pursuant to the California Stop and Snatch statute. Instead of retaining a firm that has handled over 2500 D.U.I.'s, she relied on others to assure her safety who failed her miserably.

Mistake #2: No thought was given as to which Superior Court judge had been assigned and how that may affect the outcome of the case. This is the most critical decision an attorney makes when he takes a case. Judge Michael T. Sauer was handling the arraignment calendar. Judge Sauer used to handle felony preliminary hearings. He is the oldest judge on the Superior Court and was assigned to traffic with the expectation he would retire soon. The courthouse on Hill St. is normally for newly appointed judges or judges that have for one reason or another, worn out their welcome or had other issues. There is a plethora of newly appointed judges who would have been an excellent alternative and who's influence would have distinctly improved the outcome of this case. Judge Sauer is widely known as a pro prosecution judge who cannot identify with, nor have sympathy for a defendant like Ms. Hilton.

Mistake #3: A total failure to have the case moved from the arraignment court to a special IC (individual calendar) court. Ms. Hilton would have, without using her one peremptory challenge, got a "free look" at any of the other 12 judges. It is a no brainer that any of the other 12 judges in the building were better draws than the oldest judge on the Superior Court who just won't retire. All the defense had to do was enter a plea of NOT GUILTY and the case would have been assigned out to an IC court. Allowing the case to stay with Judge Sauer was very unwise,

as is now self evident.

Mistake #4: Ms. Hilton's counsel requested a DMV hearing which was held in the middle of November of 2006. An order dated November 21, 2006 made findings she was driving with .08% or greater in her blood. A .08% chemical test result is a very winnable hearing with client participation and an expert. Instead of being informed about these options, she was left out of the process. She lost the hearing and her license was set for actual suspension on November 29, 2006. The ACTUAL suspension period was for only 30 days with the last 90 days, stayed, if she enrolled in the driver's safety class. Therefore, the actual term from December 29, 2006 to March 29, 2006 was entirely avoidable.

Mistake #5: She had a right to appeal the DMV decision suspending her license, seek a stay, and then have a writ of mandate hearing which would have delayed any suspension for one year. This avenue was never pursued to Ms. Hilton's detriment.

Mistake #6: The ACTUAL suspension period ended on December 28, 2006. Yet, seeing as no one was paying attention, instead of paying a $125.00 fee to the DMV to get a restricted license for the final 90 days of the suspension period (which would have allowed Ms. Hilton to drive to work and classes) no one did anything. To stay a suspension is as simple as paying $125.00 to the DMV and enrolling someone in the class.[1]

Mistake #7: On January 15, 2007, Paris was stopped by the CHP. They told her

[1] ...the Department shall, after review pursuant to Section 13557, suspend the person's privilege to operate a motor vehicle for **30 days and then issue** the person a restricted driver's license under the following conditions:
(1) The program shall report any failure to participate in the program to the department and shall certify successful completion of the program to the department.
(2) The person was 21 years of age or older at the time the offense occurred and gives proof of financial responsibility as defined in Section 16430.
(3) The restriction shall be imposed for a period of five months.
West's Ann. Cal. Vehicle Code § 13353.7.

that her license was suspended. Did anyone do anything at that time? Was her defense team aware that her license was suspended? They were aware yet they forgot to have her license issued. The defense team participated in the DMV hearing in mid November of 06, they received the order of suspension on November 22, 2006, and Paris's business office received the notice around the same time. This was simply negligent lawyering.

Mistake #8: Instead of straightening out this suspension issue BEFORE A PLEA WAS ENTERED, somebody had Paris sign *Tahl* waivers and went to Court on January 22, 2007 and entered a plea of guilty. THIS WAS HORRENDOUSLY STUPID. First, Paris was NOT GUILTY. She only had a .08%. Had she been represented by an experienced attorney in DUI's, she could have got an aiding and abetting a speed exhibition, NO POINTS on the record, NO CLASSES, just a fine and 24 months summary probation. (See Vehicle Code 23109(b).[2]

Mistake #9: Taking the plea in front of Judge Sauer instead of any of the readily available alternatives added insult to injury. Taking a plea to a WET RECKLESS was as good as no plea at all. The City Attorney gave her nothing. A WET RECKLESS[3][4] has the exact same consequences as a DUI except there is a lower minium fine and a lower maximum jail sentence. You still get the points on your

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[2](b) A person shall not aid or abet in any motor vehicle speed contest on any highway. West's Ann. Cal. Vehicle Code § 23109

[3]c) Persons convicted of the offense of reckless driving shall be punished by imprisonment in a county jail for not less than five days nor more than 90 days or by a fine of not less than one hundred forty-five dollars ($145) nor more than one thousand dollars ($1,000), or by both that fine and imprisonment, West's Ann. Cal. Vehicle Code § 23103(c)

[4](a) When the prosecution agrees to a plea of guilty or nolo contendere to a charge of a violation of Section 23103 in satisfaction of, or as a substitute for, an original charge of a violation of Section 23152, the prosecution shall state for the record a factual basis for the satisfaction or substitution, including whether or not there had been consumption of any alcoholic beverage or ingestion or administration of any drug, or both, by the defendant in connection with the offense. The statement shall set forth the facts that show whether or not there was a consumption of any alcoholic beverage or the ingestion or administration of any drug by the defendant in connection with the offense. West's Ann.Cal.Vehicle Code § 23103.5

DMV record, it is still priorable, and it was a lousy deal. Paris should have never pleaded guilty to that offense. The plea bargain was NO BARGAIN. It was 40 hours community service, 12 days jail or 12 days Cal Trans or 166 hours community service. This was the highest wet reckless sentence anyone has ever heard of on a first time .08% wet reckless. She was not sentenced on the facts but who she was. She had ZERO to lose to go to trial. Her trial sentence to a straight DUI would have been better. She didn't even have to appear at trial if she didn't want to. For misdemeanors, she could have appeared through her attorney just as she did for the plea of guilty.

Mistake #10: After January 22, 2007, she was put on probation. She entered the plea via Penal Code section 977(a)[5] which allows appearances by counsel on misdemeanors. Her attorney was responsible for probation condition number 5, enrolling her in the SB 1176 12 hour alcohol program. On February 12, 2007, Paris was supposed to be enrolled because her attorney accepted the conditions of probation on her behalf. Even assuming arguendo that no one did anything relating to the DMV from December 28, 2006 to January 22, 2007, what is the excuse that an attorney who accepts a plea for a client, accepts the conditions of probation for the client, but then fails to follow the conditions he accepted? Does anyone really expect Paris to have enrolled herself, gone to the DMV and reissued her own license when an attorney handled it? Certainly not. The grave error of pleading guilty was compounded by no one simply following up on the conditions of probation.

Mistake #11: On February 27, 2007, Paris is again stopped for a moving violation. It is simply incomprehensible that no one bothered to help her get her license back. At that point, she has not had a license for January and almost all of February. Eight weeks of time when she was completely eligible to have her license re-issued! There is simply no explanation to have allowed this to occur. No one would expect a 977(a) defendant who plead guilty through counsel to know or appreciate any of these requirements.

[5](a)(1) In all cases in which the accused is charged with a misdemeanor only, he or she may appear by counsel only. West's Ann. Cal. Penal Code § 977

Mistake #12: No effort was made to remedy the situation. No one enrolled Paris in the class as of April 17, 2007. Prosecutors by the end of March were clamoring with a threatened probation violation and no one made any efforts to bring Ms. Hilton into compliance with her probation requirements. Enrollment could have and should have been handled by her attorneys.

Mistake #13: Paris is served with a voluminous motion to revoke her probation on April 30, 2007. The California Rules of Court require 10 days notice. The motion raised numerous issues. The motion itself raised the issue of an erroneous advice of counsel defense by Paris. Her counsel should have immediately asked for a continuance and discovery. Instead, they did nothing.

Mistake #14: California Rules of Professional Conduct 5-210 prevents an attorney from acting as a witness in a case. This is known as the advocate witness rule. It was obvious from the moving papers that the City Attorney anticipated an advice of counsel defense. However, as they pointed out, advice of counsel does not save a defendant on a general intent crime. A mistake of fact defense does and none was credibly presented. At that very moment, her attorneys had an actual conflict of interest.

Mistake #15: The failure of Ms. Hilton's attorneys to withdraw from the case was a colossal mistake. Under California law, a defendant can terminate their attorneys without cause at anytime. A change of counsel would have bought some time by creating a mandatory continuance. It would provided the incoming attorney a perfect scapegoat. It would have provided an avenue of defense, blame, and escape for Paris.

Mistake #16: A failure to go back and attempt to withdraw the plea prior to the revocation hearing was bad, failing to do it now due to having the same counsel, is stupid. When a guilty plea is invalidated, the parties are generally restored to the positions they occupied before the plea bargain was entered. (See *People v. Romanoski* (1984) 157 Cal.App.3d 353, 363, 204 Cal.Rptr. 33; *People v. Hill* (1974) 12 Cal.3d 731, 769, 117 Cal.Rptr. 393, 528 P.2d 1, overruled on another point in *People v. DeVaughn* (1977) 18 Cal.3d 889, 896, fn. 5, 135 Cal.Rptr. 786, 558 P.2d 872.)

The defendant may withdraw the plea and the prosecution may reinstate any

charges that were dismissed in consequence of the plea. (*People v. Webb* (1973) 36 Cal.App.3d 460, 471, 111 Cal.Rptr. 524; *People v. Romanoski, supra,* 157 Cal.App.3d at pp. 362-363, 204 Cal.Rptr. 33; *People v. Fry* (1969) 271 Cal.App.2d 350, 359, 76 Cal.Rptr. 718.) People v. Aragon 11 Cal.App.4th 749, 756-757, 14 Cal.Rptr.2d 561, 565 (Cal.App. 1 Dist.,1992).

Therefore, it is critical to put Ms. Hilton back in the same position she was before she plead guilty.

Mistake #17: The defense at the hearing was destined to fail for many reasons. It was D.O.A. (Dead on arrival).

A probation revocation hearing assesses whether conditions relating to punishment for a prior crime have been violated so that probation should be modified or revoked, while a criminal prosecution seeks conviction for wholly new offenses. If the prosecution prevails at the revocation hearing, the result is not a new felony conviction.

The fundamental role and responsibility of the hearing judge in a revocation proceeding are not to determine whether the probationer is guilty or innocent of a crime, but whether a violation of the terms of probation has occurred and, if so, whether it would be appropriate to allow the probationer to continue to retain his or her conditional liberty.

The revocation hearing may precede the criminal trial or vice versa and, if the revocation hearing is held first, the probationer's testimony at that hearing is inadmissible at the later criminal trial. This is critical because all of Ms. Hilton's unprepared testimony at the probation violation hearing is inadmissible if the plea is set aside.

The defense that was advocated was poorly advised. Blaming the lack of notice of the suspension on her publicist was "worthless" as Judge Sauer so aptly put it. The attorneys needed to take the blame, not the publicist. The publicist's only source of information was the attorneys!

Mistake #18: Believing that Judge Sauer will change his mind. Paris's counsel already said the following:

"I'm shocked and disappointed at the sentence by the judge," attorney Howard Weitzman said

after the socialite, singer and actress was sentenced Friday in Superior Court. He said he would appeal the sentence.

"To sentence Paris Hilton to jail is uncalled for, inappropriate and ludicrous," Weitzman said. "She was singled out for who she is. She's been selectively targeted. Paris was honest in her testimony. We plan to appeal. Shame on the system."

Judge Sauer reads the papers and will not be happy with this post mortum speech.

Mistake #19: Keeping the same legal team prevents Paris from doing the following:

1. Moving to withdraw her conviction.
2. Arguing a 6th Amendment violation due to counsel having a conflict.
3. Expanding the scope of issues in any appeal to include Mistakes 1-19.

Mistake #20: Believing she has any chance of winning an appeal of a 45 day sentence. Appealing the sentence of a probation violation is a big waste of time on this record. When the trial court suspends imposition of sentence, no judgment is then pending against the probationer, who is subject only to the terms and conditions of the probation. (*People v. Banks* (1959) 53 Cal.2d 370, 386 [1 Cal.Rptr. 669, 348 P.2d 102]; *Stephens v. Toomey* (1959) 51 Cal.2d 864, 871 [338 P.2d 182].)

On the defendant's re-arrest and revocation of her probation, "... the court may, if the sentence has been suspended, pronounce judgment for any time within the longest period for which the person might have been sentenced." (§ 1203.2, subd. (c); see also Cal. Rules of Court, rule 435(b)(1) ["If the imposition of sentence was previously suspended, the judge shall impose judgment and sentence" in accordance with circumstances existing at time probation was granted and other proper sentencing considerations]. *People v. Howard* 16 Cal.4th 1081, 1087 (Cal. 1997)

In other words, Ms. Hilton, who had no priors, a .08% would do no worse at a trial in this matter. A 45 day sentence for a first offense misdemeanor is normally not a big deal. However, she committed two driving while suspended driving violations and the Court was aware of one of them on January 22, 2007, for sentencing purposes. Imposing a mid range custody time of 45 days is not an abuse of discretion for a non probationary sentence. It is a wrong sentence and

unfair and unjust but within the Court's discretion. To simply provide one ground for appeal is legally foolish.

Mistake #21: Filing a notice of appeal the same day the Court issued the sentence was impulsive and not well planned. Now the Court has lost jurisdiction to modify that unfair sentence or hear arguments on modifying the sentence. May 4, 2007 was Ms. Hilton's worst day as she not only received an unfair sentence but she also deprived herself of any legal ability to resurrect freedom.

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