

Docket (Register of Actions)

Mitchell Sims et al. v. California Department of Corrections & Rehabilitation et al.

Division 2

Case Number **A129789**

Date	Description	Notes
09/27/2010	Notice of appeal lodged/received.	by attorney Sara J. Eisenberg for Mitchell Sims and attorney Jan B. Norman for Albert Greenwood Brown Jr. (plaintiffs); notice of appeal filed in the superior court on 09/27/2010
09/27/2010	Notice per rule 8.124 - with reporter's transcript.	designation included in notice of appeal
09/27/2010	Notified parties of local rules and procedures.	
09/27/2010	70 day letter sent (rule 8.124).	
09/28/2010	Motion filed.	Motion for Stay.
09/28/2010	Opposition requested.	Opposition to Motion for Stay Pending Appeal due by 12 noon on 9-29-10; Reply due by 3pm on 9-29-10
09/29/2010	Opposition filed.	Respondent's Opposition to Motion for Stay Pending Appeal
09/29/2010	Exhibits lodged.	Respondent's Supplemental Exhibits in Support of Opposition to Motion for Stay Pending Appeal (one volume)
09/29/2010	Filing fee.	
09/29/2010	Reply filed to:	Appellant's Reply in Support of Motion for Stay Pending Appeal
09/29/2010	Motion filed.	Appellant's Motion for Voluntary Dismissal of Motion for Stay Pending Appeal
09/30/2010	Order filed.	Appellants are appealing from the trial court's denial of their application for a temporary restraining order, challenging newly adopted lethal injection execution regulations and, in conjunction with that appeal, filed a "motion for stay pending appeal" on September 28, 2010. On September 29, 2010, appellants then filed a motion for voluntary dismissal of the motion for stay pending appeal. Pursuant to appellants request, the motion for stay is dismissed.
09/30/2010	Received document entitled:	appellant's notice designating reporter's transcript on appeal; designation filed in the superior court on 09/28/2010
10/05/2010	Record in box.	Motion to stay, opposition, and exhibits in box

10/07/2010	Request for dismissal filed.	(dismissal order in prep)
10/13/2010	Dismissal order filed.	Appellant having filed a request for dismissal in this court, the appeal is dismissed.
12/13/2010	Remittitur issued.	
12/13/2010	Case complete.	
04/25/2011	Shipped to state retention center, box # / list #:	L313

Date	Description	Notes
04/30/2012	Notice of appeal lodged/received.	by Deputy Attorney General Thomas S. Patterson for California Department of Corrections & Rehabilitations and Matthew Cate (defendants); notice of appeal filed in the superior court on 04/26/2012
04/30/2012	Exempt filing fee.	as to California Department of Corrections & Rehabilitations et al. appeal
04/30/2012	Notified parties of local rules and procedures.	
05/10/2012	Received document entitled:	appellant's notice designating record on appeal; notice filed in the superior court on 05/07/2012; designation of clerk and reporter transcripts
05/11/2012	Filed declaration of:	Dep. Co. Clerk Joey Dale's Declaration Re: Clerk's Transcript, dated 5-9-12, re: The following items listed in the Appellant's designation of the Clerk's Transcript, filed on May 7, 2012, were not found in the trial court's file: 1. #16 [Proposed] Order Ruling on Defendant's Objections to Plaintiffs' Evidence in Support of Plaintiffs' Motion for Summary Judgment, Designated as Filed 10/21/2011 If the parties wish to include the above documents in the Clerk's Transcripts they shall have 10 days within the date of mailing of this declaration to submit copies that bear the Filed Stamp or the Received Stamp of the Marin County Superior Court. If Filed/Received copies are not received within the specified time, then the superior court clerk shall proceed with the Clerk's Transcript under CRC Rule 8.122. The following items were found, but not under the dates specified: 1. #2 Defendant's General Denial - Designated as Filed 09/02/2010 - Found Filed 10/12/2010 2. #3-14. Motion For Summary Judgment & "Related Docs" - Designated as Filed 09/02/2011 - Found Filed 08/12/2011

05/18/2012	Default letter sent; no case information statement filed.	
05/24/2012	Rec'd co. notice to appellant re: estimate.	notice issued by the superior court on 05/22/2012
05/25/2012	Civil case information statement filed.	by attorney Michael J. Quinn for appellant (Calif. Dept. of Corrections & Rehab; Matthew Cate) w/a copy of the judgment attached.
06/21/2012	Notice of record completion received.	
06/21/2012	Record on appeal filed.	c-9-r-1
06/21/2012	Record in box.	one (1) box
07/30/2012	Stipulation of extension of time filed to:	Appellant's opening brief. Due on 08/21/2012 By 21 Day(s)
08/21/2012	Appellant's opening brief.	Defendant and Appellant: California Department of Corrections & Rehabilitations Attorney: Thomas Stuart Patterson
08/22/2012	Filed proof of service.	Amended POS to Appellants' Opening Brief
09/19/2012	Stipulation of extension of time filed to:	Respondent's brief. Due on 10/22/2012 By 32 Day(s)
09/21/2012	Respondent notified re failure to file respondent's brief.	Interested Entity/Party: Albert Greenwood Brown, Jr. Attorney: Jan Burns Norman *** not respondents on appeal ***
09/21/2012	Respondent notified re failure to file respondent's brief.	Interested Entity/Party: Kevin Cooper Attorney: Norman Carter Hile *** not respondents on appeal ***
10/02/2012	Telephone conversation with:	John Carrillo w/Arnold & Porter, counsel for respondent Mitchell Sims, re: the court has listed Albert Brown and Kevin Cooper as respondents; on appeal they are interested parties only
10/02/2012	Letter sent rescinding 8.220(a) notice.	as to respondents Albert Greenwood Brown Jr. and Kevin Cooper, now interested persons
10/04/2012	Received letter from:	Norman Hile, counsel for Kevin Cooper, re: Kevin Cooper is not a party to this appeal; as the record reflects, he was not a party to the judgment entered in the Marin County Superior Court which is the subject of this appeal.
10/11/2012	Filed letter from:	Sara J. Eisenberg, dated 10/10/12, re: "With respect to the above captioned case, I write to request that I be removed from the docket in this action. Effective October 11, 2012, I will no longer serve as counsel for Respondent Mitchell Sims, as I am leaving the law firm of Arnold &

		Porter LLP. Kenneth G. Hausman and Julian Y. Waldo of Arnold & Porter LLP will continue the representation of Respondent Sims..." (see full text of letter)
10/16/2012	Stipulation of extension of time filed to:	Respondent's brief. Due on 11/19/2012 By 28 Day(s)
11/20/2012	Respondent notified re failure to file respondent's brief.	Plaintiff and Respondent: Mitchell Sims Attorney: Julian Peter Waldon Attorney: Kenneth Gibbs Hausman
12/04/2012	Received:	Respondent's Brief; attachment to brief exceeds 10 page limit; to court for permission to file
12/04/2012	Respondent's brief.	Plaintiff and Respondent: Mitchell Sims Attorney: Julian Yale Waldo (filed with permission)
12/04/2012	Filing fee.	Responsive filing fee for respondent's brief (check #6421 from Freewheelin' Atty. Service)
12/10/2012	Filed letter from:	Julain Y. Waldo, counsel for respondent, dated 12/7/12, re: "Please be advised that the list of attorneys representing Mitchell Sims in the above-referenced matter incorrectly states my name as 'Julian Peter Waldon.' Please correct it to read 'Julian Yale Waldo.' Thank you for your assistance in the matter."
12/19/2012	Stipulation of extension of time filed to:	Appellant's reply brief. Due on 01/23/2013 By 30 Day(s)
01/23/2013	Appellant's reply brief.	Defendant and Appellant: California Department of Corrections & Rehabilitations Attorney: Michael James Quinn
01/23/2013	Case fully briefed.	
01/24/2013	Request filed to:	Appellants' Request for Substitution of Party
02/01/2013	Case on conference list.	13-2
02/01/2013	Oral argument waiver notice sent.	
02/01/2013	Record to court for review.	
02/07/2013	Application to file amicus curiae brief filed by:	Application for Permission to File and Brief Amici Curiae of Bradley S. Winchell and Kermit Alexander in Support of Neither Party (brief attached) (filed by Atty Kent S. Scheidegger with Criminal Justice Legal Foundation)
02/08/2013	Request for oral argument filed by:	Respondent
02/11/2013	To court.	Appellants' Request for Substitution of Party
02/15/2013	Order filed.	Appellant's request to substitute Jeffrey

		Beard, Secretary of the California Department of Correction and Rehabilitation, in place of Matthew Cate, the former Secretary of the department, is granted.
02/20/2013	Opposition filed.	Respondent's Opposition to Application for Permission to File Brief Amici Curiae of Bradley S. Winchell and Kermit Alexander in support of neither party
02/20/2013	To court.	Application for Permission to File and Brief Amici Curiae of Bradley S. Winchell and Kermit Alexander in Support of Neither Party (brief attached)
02/26/2013	Received:	1) Reply to Opposition to Application for Permission to File Brief Amici Curiae and 2) Motion for Judicial Notice and Supporting Declaration of Kent S. Scheidegger (to court for permission to file)
02/27/2013	Reply filed to:	Reply to Opposition to Application for Permission to File Brief Amici Curiae (filed w/permission)
02/27/2013	Request for judicial notice filed.	Motion for Judicial Notice and Supporting Declaration of Kent S. Scheidegger (filed w/permission)
02/27/2013	Order filed.	The application of Bradley S. Winchell and Kermit Alexander to file an amici curiae brief in support of neither party and motion for judicial notice are denied.
03/06/2013	Filed letter from:	Steven L. Mayer, counsel for respondent, dated 3/5/13, re: requesting oral argument not be set between July 5 and 28, 2013, as he will be out of the State during that time.
03/25/2013	Argument order sent.	4/16/13 @ 9:30 a.m.
03/29/2013	Letter sent to counsel re:	Dear Counsel: At oral argument, in addition to any other relevant argument, please be prepared to focus on the following questions: Whether the requirement that a failure to comply with the APA must amount to a "substantial failure" in order to support invalidation of a regulation (§ 11350, subd. (a)) is equivalent to a "harmless error" requirement? What cases, if any, define "substantial failure" in connection with compliance with the APA? Does California Assn. of Medical Products Suppliers v. Maxwell-Jolly (2011) 199 Cal.App.4th 286, hold the Office of Administrative Law has exclusive jurisdiction to determine whether proposed regulations satisfy the "clarity" requirement of the APA? In the absence of regulations pertaining to execution of female inmates or execution by lethal gas, why are these issues not moot? DIANA HERBERT Clerk/Administrator of the Court Stacy Wheeler Deputy Clerk

04/05/2013	Mail returned and re-sent.	Jan Norman's copy of 3-29-13 re focus letter for OA resent this date (received 4-3-13; "no longer here"; used and updated address from State Bar website)
04/16/2013	Cause argued, additional briefing allowed.	Appellant to file letter addressing issue at oral argument by Monday, 4/22/13; cause to be submitted upon filing of letter
04/22/2013	Filed letter from:	Michael J. Quinn, counsel for CDCR, dated 4/22/13, re: addressing whether it must promulgate separate regulations concerning the execution of condemned female inmates before such executions can proceed (see full text of letter)
04/22/2013	Cause submitted.	
05/01/2013	Letter sent to:	Thomas Stuart Patterson, Deputy Attorney General Michael James Quinn, Deputy Attorney General Office of the Attorney General 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102 Re: A135290; Sims v. California Department of Corrections & Rehabilitation et al. (Assigned to Division Two) Dear Counsel, Due to (1) the fact that CDCR now has no regulations regarding the execution of female condemned inmates or executions by means of lethal gas, (2) the opinion in Morales v. California Dept. of Corrections and Rehabilitation (2008) 168 Cal.App.4th 729, 739, and (3) the Attorney General's letter to the court of April 22, 2013, regarding this matter, the Court assumes CDCR acknowledges that, as a matter of law, it cannot execute condemned female inmates or carry out any execution by means of lethal gas until it promulgates regulations regarding such executions in the manner prescribed by the Administrative Procedure Act. This letter requests the Attorney General to inform the Court whether the Court's assumption is correct and, if it is not correct, the respects in which that is so and the reasons. This information shall be provided by a letter not longer than two pages that shall be filed with the Clerk of the Court no later than three business days from the date of this letter, with a copy to respondents' counsel. In the event CDCR informs the Court that it disagrees with its assumption in any particular, respondent may file a response in the form of a letter not longer than two pages that shall be filed with the Clerk of the Court no later than three business days from its receipt of the Attorney General's letter. Very truly yours, DIANA HERBERT, Clerk by: Deputy Clerk cc: Steven Lee Mayer, Esq. Ginamarie C. Caya, Esq. Julian Yale Waldo, Esq.
05/06/2013	Filed letter from:	Attorney General in response to May 1, 2013 letter from court (due three business days from

		date of letter; not to exceed two pages)
05/30/2013	Opinion filed.	(Signed Published) For the foregoing reasons, paragraphs 4 and 5 of the judgment are hereby vacated. The judgment is affirmed insofar as it declares that the CDCR's lethal injection protocol (Cal. Code Regs., tit. 15, §§ 3349-3349.4.6) is invalid for substantial failure to comply with the requirements of the APA, and permanently enjoins the CDCR from carrying out the execution of any condemned inmate by lethal injection unless and until new regulations governing lethal injection execution are promulgated in compliance with the APA. Each party shall bear its own costs on appeal.
07/30/2013	Remittitur issued.	
07/30/2013	Case complete.	
05/19/2014	Shipped to state retention center, box # / list #:	L345