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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

AHADI ABU-AL MUHAMMAD,

Plaintiff and Appellant,

v.

LONG BEACH POLICE
DEPARTMENT,

Defendant and Respondent.

B277161

(Los Angeles County
Super. Ct. No. BS156052)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert H. O'Brien, Judge. Affirmed.

Ahadi Abu-al Muhammad, in pro. per., for Plaintiff and Appellant.

Office of the Long Beach City Attorney, Charles Parkin, City Attorney, Howard D. Russell, Deputy City Attorney, for Defendant and Respondent.

INTRODUCTION

Plaintiff and appellant Ahadi Abu-al Muhammad petitioned for writ of mandate to require defendant Long Beach Police Department to return a Cadillac, handgun, and ammunition seized when he was arrested for kidnapping. The trial court sustained without leave to amend defendant's demurrer to plaintiff's second amended writ petition and plaintiff appeals. We affirm.

BACKGROUND¹

Suspected of kidnapping, Muhammad was arrested on May 25, 2012. His Cadillac, a nine-millimeter Baretta handgun, and two magazines with a total of 25 live rounds of ammunition were seized. No charges were filed against plaintiff. Plaintiff's parole status had already been terminated as of the time of his arrest and the seizure of his property. Plaintiff did admit he was a convicted felon.

On February 27, 2013, the trial court granted plaintiff's motion for return of the Cadillac. The vehicle had been sold, however, and plaintiff alleged its value was \$7,000.00. The handgun and ammunition were not returned. They were not mentioned in the February 27, 2013 order.

Defendant filed a demurrer to the first amended petition. The trial court sustained the demurrer with leave to amend: "As a condition of amendment, [plaintiff] must clearly allege: (1) his compliance with the Tort Claims Act relative to his claim for \$7,000.00; (2) his legal right to own and possess a firearm; and (3) the basis for his assertion that he lacks an adequate remedy at

¹ The facts are taken from plaintiff's original, first amended, and second amended verified petitions for writ of mandate.

law, despite the fact of the prior proceeding that gave rise to [defendant's] alleged ministerial duty.”

Plaintiff's second amended petition for writ of mandate simply omitted the previously verified allegations that the Department sold the Cadillac and its value was \$7,000.00. Concerning the weapon and ammunition, plaintiff did not amend his previous allegations that defendant failed to return those items “in light of recent United States Supreme Court precedent.”

DISCUSSION

I. Standard of Review

“On appeal from a dismissal entered after an order sustaining a demurrer to a petition for writ of mandate, we review the order de novo, determining independently whether the petition states a cause of action as a matter of law.” (*Jones v. Omnitrans* (2004) 125 Cal.App.4th 273, 277.) We liberally construe the petition's allegations and “accept as true all facts properly pleaded or subject to judicial notice, but not contentions, deductions, or conclusions of fact or law.” (*Brown v. Crandall* (2011) 198 Cal.App.4th 1, 8.)

A trial court abuses its discretion in denying leave to amend if there is a reasonable probability the plaintiff could cure the defect by amendment. (*Las Lomas Land Co., LLC v. City of Los Angeles* (2009) 177 Cal.App.4th 837, 861.) Plaintiff has the burden to show how the pleading may be amended and the legal effect of the amendment. (*Ibid.*)

II. Analysis

A writ of mandate must issue “where there is not a plain, speedy, and adequate remedy, in the ordinary course of law.”

(Code Civ. Proc., § 1086.) As a general rule, a writ of mandate is not appropriate where the petitioning party has an adequate remedy at law. (*Flores v. California Department of Corrections and Rehabilitation* (2014) 224 Cal.App.4th 199, 205 (*Flores*).) The petitioning party has the burden to demonstrate the absence of another remedy. (*Ibid.*) An individual who claims to have “been wrongfully dispossessed of his or her personal property” may sue in conversion for recovery of the property or damages based on the property’s value. (*Id.* at p. 206.)

Although plaintiff alleged in conclusory terms that he had no plain, speedy, and adequate remedy at law, he failed to demonstrate to the trial court that a civil action for conversion was not available to him. (*Flores, supra*, 224 Cal.App.4th at pp. 205-206.) Nor has he shown in this court how he would amend the writ petition to cure that defect. Accordingly, we find no error in the trial court’s sustaining the Department’s demurrer without leave to amend as to the vehicle.

With respect to the firearm,² the trial court accepted the allegations that plaintiff was a felon and sustained defendant’s demurrer on the basis plaintiff had not alleged the right to possess a weapon. Plaintiff acknowledges Penal Code section 29800 (section 29800) bars convicted felons from possessing firearms. Nevertheless, he argues federal and state law provide a self-defense exception. Plaintiff misapprehends the law upon which he relies.

In *District of Columbia v. Heller* (2008) 554 U.S. 570 (*Heller*), the Supreme Court invalidated a District of Columbia

² Plaintiff does not address his claimed entitlement to the return of the two magazines loaded with 25 rounds of ammunition. The issue is forfeited.

law that banned the possession of handguns in homes on the basis the Second Amendment preserves an individual's right to keep and bear arms, particularly for self-defense. (*Id.* at pp. 629, 635.) The Court emphasized, however, nothing in the opinion “should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill” (*Id.* at p. 626.) Thus, *Heller* does not stand for the proposition that convicted felons retain the right to possess a firearm, even in self-defense.

Plaintiff's reliance on *People v. King* (1978) 22 Cal.3d 12 (*King*) is also unavailing. In *King*, the defendant, a convicted felon, was in an apartment with other people when a group of men hurled a barbecue grill through the window and attempted to force an entry. Afraid, a woman in the apartment handed the defendant her handgun. He stepped outside the apartment and fired warning shots to scare the intruders. (*Id.* at p. 18.)

A jury convicted the defendant of violating then Penal Code section 12021—felon in possession of a concealable firearm. Our Supreme Court reversed: “[T]he prohibition of section 12021 was not intended to affect a felon's right to use a concealable firearm in self-defense, but was intended only to prohibit members of the affected classes from arming themselves with concealable firearms or having such weapons in their custody or control in circumstances other than those in which the right to use deadly force in self-defense exists or reasonably appears to exist. Thus, when a member of one of the affected classes is in imminent peril of great bodily harm or reasonably believes himself or others to be in such danger, and without preconceived design on his part a firearm is made available to him, his temporary possession of that weapon for a period no longer than that in which the

necessity or apparent necessity to use it in self-defense continues, does not violate section 12021.” (*King, supra*, 12 Cal.3d at p. 24.) Accordingly, the court held, “as defendant’s brief use of a concealable firearm, without predesign or prior possession of the weapon, in the exercise of the right to self-defense, defense of others, or defense of habitation would not constitute the possession, custody, or control of the firearm which the Legislature has prohibited in section 12021, it was error for the court to fail to instruct the jury regarding the relevance of these defenses to the 12021 charge.” (*Id.* at pp. 26-27.)

King does not stand for the broad proposition that a convicted felon may possess a firearm so long as he declares the purpose is self-defense. Rather, *King* stands for the narrow proposition that a convicted felon may, under exigent circumstances, temporarily possess and use a firearm in self-defense for only so long as the need to defend oneself continues.

The trial court did not err in sustaining defendant’s petition without leave to amend. Plaintiff does not suggest how he, as a convicted felon, can amend his writ petition to plead entitlement to possess a firearm.

DISPOSITION

The judgment is affirmed. Defendant is awarded its costs on appeal.

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DUNNING, J.*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.