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IN THE SUPREME COURT FOR THE STATE OF CALIFORNIA

PATRICK LOWELL JACKSON,

Petitioner,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE,

Respondent.

THE PEOPLE OF THE STATE OF CALIFORNIA, AND

Real Party in Interest.

Docket No.: S

Ct. App. No. E064010

Super.Ct.No. INF1500950

PETITION FOR REVIEW

From the Published Opinion of the California Court of Appeal for the Fourth District, Division Two

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PATRICK LOWELL JACKSON, Petitioner, v. THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE, Respondent. THE PEOPLE OF THE STATE OF CALIFORNIA, AND Real Party in Interest.	Docket No.: C.A. No. E064010 Super Ct. No.: INF1500950 **PETITION FOR REVIEW**

TO: THE HONORABLE CHIEF JUSTICE CANTIL-SAKAUYE AND THE HONORABLE JUSTICES OF THE CALIFORNIA SUPREME COURT

Petitioner hereby petitions this honorable court to grant review of the published opinion in *Jackson v. Superior Court* (2016) 247 Cal.App.4th 767 (Attachment A), which has caused a split of authority among the lower courts with regard to the mandate of Penal Code section 1370, subdivision (c), subparagraph (1), that an incompetent defendant who has reached the expiration of his three year maximum term of commitment without achieving competency to stand trial be "returned to the committing court" and released, at least with respect to the unadjudicated criminal charges (see *People v. Quiroz* (2016) 244 Cal.App.4th 1371).

INTRODUCTION

For the third time this past year, a California appellate court has certified for publication an opinion construing Penal Code[1] section 1370, subdivision (c), subparagraph (1), and the results have been all over the map.

The first of these cases was *Calloway v. Superior Court,* previously at 239 Cal.App.4th 253, review denied and ordered not to be officially published (November 10, 2015, S222841), in which the Court acknowledged the existence of section 1370, subdivision (c), subparagraph (1), but concluded that section 1368 permits continued confinement of a criminal defendant on unadjudicated criminal charges and renewal of competency proceedings even after his commitment term has expired. The second was *People v. Quiroz* (2016) 244 Cal.App.4th 1371, review denied on May 25, 2016 (S233482), in which the Court held that California's statutory scheme pertaining to incompetent criminal defendants does not authorize competency proceedings, at the court's discretion, after the defendant's commitment term has expired. (*Id.,* at p. 1381.) Now, a third case, *Jackson v. Superior Court* (2016) 247 Cal.App.4th 767, 202 Cal.Rptr.3d 247, has been published, holding that "section 1370 does not … advise a trial court of its options if a defendant who has been declared incompetent remains incompetent at the end of a three-year commitment" (*id.*, at p. 249), and concluding that nothing prohibits the involuntary continued conferment and prosecution of the defendant

[1] Subsequent statutory references are to the Penal Code unless otherwise indicated.

on the same underlying charges, subsequently refiled and assigned a new case number, unless he is again found incompetent at the conclusion of new section 1368 proceedings (*id.*, at p. 250). Confusion among lower courts has reached an unacceptable level, resulting in repeated violations of state law and due process rights of criminal defendants. Without review and clarification by this Court, this situation will likely worsen.

QUESTIONS PRESENTED

What is the meaning of Penal Code section 1370, subdivision (c)(1)'s mandate that a defendant who has not achieved mental competence at the expiration of his term of involuntary commitment under section 1368, et seq., "be returned to the committing court"? If such a defendant is not the subject of proceedings under Welfare and Institutions Code section 5008, et seq., when his term of commitment as a mental incompetent expires, does California law require that he be ordered released?

Does section 1370, or any law, authorize a trial court to continue incarcerating such a defendant at the prosecution's request and to conduct competency proceedings anew to re-determine the defendant's current capacity to stand trial?

Following the release of an incompetent defendant under section 1370, subdivision (c)(1), is his or her continued confinement on the unadjudicated criminal charges prohibited by the Fourteenth Amendment?

WHY REVIEW SHOULD BE GRANTED

While section 1370, subdivision (c), subparagraph (1) does not expressly state that an incompetent defendant must be released from confinement in the underlying criminal proceeding upon expiration of his or her term of commitment, California courts have never before appeared to have so much difficulty discerning the statute's mandate. (See, e.g. *People v. Waterman* (1986) 42 Cal.3d 565, 568 [A defendant must be returned to court after maximum period of confinement as an incompetent, and if he is not made the subject of a conservatorship, "the court must release him from confinement"]; *People v. Karriker* (2007) 149 Cal.App.4th 763, 788 ["Penal Code section 1370 explicitly contemplates that some defendants charged with felonies will be released if they are not restored to competency within the allowable time period."]; *In re Newmann* (1976) 65 Cal.App.3d 57, 64 [pending criminal charges no longer afford a valid basis for involuntary confinement once the court has found no substantial likelihood that the defendant will become competent to stand trial on the charges in the foreseeable future. In such cases, "[t]he defendant must be released, or an alternative basis for confinement must be established"].)

Notwithstanding the foregoing, the Court of Appeal denied to grant relief to Petitioner, who *still* remains confined pretrial as a result of criminal charges which have been pending since 2008. Remarkably, the Court held that section 1370,

subdivision (c) does not require his release in the underlying criminal case, because the same charges were re-filed under a new case number following expiration of his commitment term. (*Jackson v. Sup. Ct., supra*, 247 Cal.App.4th 767, 202 Cal.Rptr. 247, pp. 249-250.) The Court also held that such confinement implicates no due process concerns, because a separate conservatorship proceeding was initiated after Petitioner was re-arrested on the new case, and he has not yet been found incompetent to stand trial in the new case. (*Ibid.*)

Review should be granted, not only because this case was wrongly decided, but also because the publication of the case has resulted in a split of authority as to what trial courts can and cannot do in situations like this, which appear to occur with surprising frequency. Earlier this year, this Court ordered depublication of a case decided by the First District Court of Appeal, Fourth Division, holding that section 1368 authorizes trial courts to conduct competency proceedings anew following a section 1370, subdivision (c), subparagraph (1) release. (*Calloway v. Superior Court of Contra Costa County*, formerly published at 239 Cal.App.4th 253, review denied and ordered not to be officially published (Nov. 10, 2015; S222841).)

Then, a few months ago, the Court of Appeal for the Third District decided *People v. Quiroz*, *supra*, 244 Cal.App.4th at p. 1380 ("*Quiroz*"), holding that the statutes governing competency proceedings do not authorize a trial court to convene a new competency hearing upon the prosecution's request when the

hospital returns a defendant from commitment at the end of three years or when the public guardian determines not to initiate conservatorship proceedings. (*Quiroz, supra,* at p. 1380.) Absent such authorization, the Court reasoned, a trial court abuses its discretion when it grants a request by the prosecution that the defendant remain confined and be subjected to competency proceedings anew, rather than released. (*Quiroz, supra,* at p. 1380-1381.) In interpreting the statute, the *Quiroz* court properly considered extrinsic evidence as to the drafters' intent and discussed a law review article authored by Marjory Winston Parker, the Deputy Attorney General who worked with the legislature to develop the 1974 amendments to California's competency statutes. In her opinion, " 'if the defendant is still not competent to stand trial, he is again returned to the committing court, which shall order the defendant committed civilly pursuant to the amended LPS Act or released if he is not eligible for a civil conservatorship.' " (*Quiroz, supra,* at pp. 1380-1381, quoting Parker, California's New Scheme for the Commitment of Individuals Found Incompetent to Stand Trial (1975) 6 Pacific L.J. 484, 492 ("*Parker*").) "'While the statute contains no express instruction that the defendant will be ordered released, it is apparent that such must be the result because there is no authority allowing further confinement or prosecution of the criminal offense.'" (*Id.,* at p. 1381, citing *Parker* at p. 492, fn. 70.)

The court below found *Quiroz* distinguishable, due to the fact that the charges here had been refiled and assigned a new case number.

> While it is true that the indictment in case No. INF1500950 stems from the same alleged conduct as the complaint in case No. INF061963, petitioner has offered no reason why the People could not prosecute him on charges related to his conduct on May 3, 2008, under a new case number if he were currently competent to stand trial. If the prosecution in case No. INF1500950 may continue, and the record and the briefing before us present no bar to that occurrence, we are aware of no reason why petitioner could not be confined in jail awaiting trial on those charges absent another incompetency finding. As we noted ante, the record contains no evidence that petitioner has actually been declared incompetent to stand trial in case No. INF1500950, and it contains no other proof that the incompetency the court found to exist in case No. INF061963 still continues. Without substantiating this fact, petitioner has failed to show that his current confinement is due to nothing other than a present incapacity to stand trial. In a similar vein, he has not shown that he has been "committed" at all in case No. INF1500950.

(*Jackson v. Superior Court, supra,* 202 Cal.Rptr. 3d at pp. 249-250.)[2]

Lower appellate courts, trial courts, prosecutors, and those responsible for initiating conservatorship proceedings need guidance from this court with regard to what should occur in situations like these. When no alternative basis for confinement has been established, should the courts follow *Quiroz* and order a defendant released with respect to the unadjudicated criminal charges? Or, should they follow *Jackson* and permit such prolonged pretrial incarceration, so long as the charges are eventually re-filed under a new case number, and conduct competency proceedings anew? Unless review is granted, the split of authority

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[2] The Court also faulted deficiencies in the record as justification for denying Petitioner relief. As explained in the petition for rehearing, denied by the lower court on June 6, 2016, the record includes all information necessary to establish

created by *Jackson* and *Quiroz* will cause substantial confusion, leading to inconsistent rulings and, potentially, irreparable harm to the statutory and constitutional rights of a very vulnerable population of criminal defendants.

STATEMENT OF THE CASE

The following relevant facts, which were established by the record and recounted in the writ petition and the petition for rehearing, demonstrate that Petitioner is entitled to the relief he requested, a writ of prohibition directing the superior court to take no action in his pending criminal case other than to vacate its order committing him to count jail with a million dollars bail and ordering his immediate release as to the unadjudicated criminal charges.

In case INF061963, filed in May, 2008, Petitioner was charged with various sexual crimes alleged to have been committed against John Doe, a 16 year-old male. These are the same charges he now faces in case INF1500950.

On March 29, 2012, Petitioner, after having been found incompetent to stand trial, was committed to Patton State Hospital for a period not to exceed three years. On September 23, 2014, the court received a section 1370 report from Patton State Hospital, recommending that the court initiate conservatorship proceedings in accordance with section 1370, subdivision (b)(1), due to the absence of a substantial likelihood that Petitioner would be competent to stand trial before his commitment term expired. A conservatorship investigation was

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Petitioner's entitlement to relief.

initiated, and Petitioner's three-year term of commitment expired on March 29, 2015.

Before the commitment expired, the Riverside County Public Guardian initiated an LPS conservatorship proceeding, and Petitioner was made the subject of a temporary conservatorship. On May 7, the Public Guardian abandoned the conservatorship proceeding due to the fact that Petitioner is not a resident of Riverside County.

On May 14, 2016, the Riverside District Attorney's office asked the superior court to order that Petitioner remain confined at Patton State Hospital, so that a grand jury could be impaneled and an indictment procured. The court expressly found that Petitioner had "timed out" on his 1368 commitment on May 1, 2015 and denied the prosecution's request. That afternoon the assigned deputy district attorney, Amity Armes, forwarded confidential reports she had received from the Public Guardian a week prior to Petitioner's parole agent of record, James Araiza.

The following day, May 15, 2015, the District Attorney filed a motion for an order compelling the Public Guardian to initiate conservatorship proceedings anew. The motion was heard and denied.

On May 18, 2015, the court, having previously found that Petitioner had been confined for the maximum term allowable under section 1370, ordered him released from custody. Ms. Armes did not tell the court that she previously had

emailed Petitioner's confidential records to Agent Araiza for the purpose of procuring a parole hold, but she did ask the court to order that Petitioner be released to the custody of his parole agent, representing that parole would do their best efforts to monitor him. Petitioner's counsel was suspicious about this request and expressed her concerns, but the court accepted the prosecutor's representations at face value and granted this request.

Counsel's suspicion proved to be well-founded. The next morning, Petitioner was picked up at the jail by Agent James Araiza and transported directly to the West Valley Detention Center in San Bernardino, where he was booked in jail based on an allegation that he had violated parole while committed at Patton State Hospital.

At this point, there was still no question that Petitioner remained incompetent as indicated by the May 19th entry in the CDCR 2271 form, "Medically and mentally unable to proceed w/process" and the May 21st entry in the CDCR 1500 form, "Subject not coherent to give a statement." On May 21, 2015, the Unit Supervisor, after receiving word from the Riverside District Attorney that an indictment had been secured, that case INF1500950 had been initiated, and that a warrant had been issued for Petitioner's arrest, directed that the parole violation be dismissed based on insufficient evidence and that the parole hold be lifted. The following day, the hold was lifted, the violation was dismissed. Petitioner was immediately transported by an Investigator from the Riverside

District Attorney's Office back to Riverside county jail, where he was booked on the warrant which had been issued upon the filing of the new case.

Petitioner's bail was set at one million dollars in case INF1500950. On June 2, 2015, he was produced for arraignment, at which time the judge suspended criminal proceedings under section 1368, appointed a doctor to conduct a competency evaluation, and made a referral to the Inland Regional Center.

On June 30, 2015, Petitioner's counsel moved for an order releasing him in the criminal proceeding only and invited the court to dismiss the indictment under section 1385. Both motions were denied, and a timely writ petition followed. As of the date of the filing of this petition, Petitioner remains confined on criminal charges for which he "timed out" more than a year ago.

ARGUMENT

WHEN AN INCOMPETENT DEFENDANT "TIMES OUT," WITHIN THE MEANING OF SECTION 1370, SUBDIVISION (c)(1), AND IS 'RETURNED TO COURT," HE MUST BE RELEASED, UNLESS INDEPENDENT LEGAL GROUNDS EXIST TO CONTINUE HIS CONFINEMENT

Civil commitment of a mentally incompetent criminal defendant, necessarily constitutes a "massive curtailment of liberty." (*Pederson v. Superior Court* (2003) 105 Cal.App.4th 931, 940-941, citing *Humphrey v. Cady* (1972) 405 U.S. 504, 509.) That liberty interest is protected by the Fourteenth Amendment's due process guarantees. "The due process clauses, federal and state, are the most basic substantive checks on government's power to act unfairly or oppressively. As such, they protect against infringements by the state upon those 'fundamental'

rights 'implicit in the concept of ordered liberty.' (Citation.)" (*In re Banks* (1979) 88 Cal.App.3d 864, 869, quoting *Hale v. Morgan* (1978) 22 Cal.3d 388, 398, internal citation omitted..)

In 1972, the United States Supreme Court held that

> a person charged by a State with a criminal offense who is committed solely on account of his incapacity to proceed to trial cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future. If it is determined that this is not the case, then the State must either institute the customary civil commitment proceeding that would be required to commit indefinitely any other citizen, or release the defendant.

(*Jackson v. Indiana* (1972) 406 U.S. 715, 738, fn omitted.) In 1973, this Court adopted the *Jackson* rule and established guidelines for confinement, commitment, restoration, and later conservatorship or release of mentally incompetent defendants prosecuted in California courts. (*In re Davis, et. al.* (1973) 8 Cal.3d 798, 806-807 ("*Davis*").)

> [W]e think that in order to comply with *Jackson*'s demands the trial courts should henceforth direct the appropriate state hospital authorities to commence an immediate examination of the person committed and, within a reasonable time, report to the court the result of that examination and estimate the additional time probably necessary to restore the person to competence. ... ¶ If the report discloses that there exists no reasonable likelihood that the person will recover his competence to stand trial in the foreseeable future, then the court should either order him released from confinement or initiate appropriate alternative commitment proceedings under the Lanterman-Petris-Short Act (Welf. & Inst. Code, § 5000 et seq.).

After *Davis*, section 1370 was enacted, setting the maximum term of a commitment resulting from the filing of felony charges at no more than three years from the date of the commitment order. (§1370, subd. (c) (1); *In re Polk* (1999) 71 Cal.App.4th 1230, 1238.) The three year limit of section 1370 refers "to the aggregate of all commitments *on the same charges*." (*Ibid.*, emphasis added.)

Subdivision (b) of section 1370 is designed to insure that an incompetent criminal defendant remains involuntary confined only as long as is reasonably necessary to restore him to competency. It requires the Director of the state hospital at which the defendant is confined to send periodic reports to the committing court regarding the defendant's progress toward achieving mental competency. If the court receives a report indicating that there is no substantial likelihood that the defendant will regain competence in the foreseeable future, it "shall order the defendant to be returned to the court for proceedings pursuant to paragraph (2) of subdivision (c) no later than 10 days following receipt of the report." (§1370, subd. (b)(1)(A).) With respect to Petitioner, the Riverside Superior Court received the Director's section 1370, subdivision (b) report on September 23, 2014, and promptly ordered that a conservatorship investigation be initiated.

Section 1370, subdivision (c), subparagraph (1) is designed to prevent an incompetent defendant from being confined indefinitely. It requires that, at the end of the maximum term of commitment, an incompetent defendant be returned

to the committing court and, unless an independent basis for further confinement has been established, released. The statute provides, in pertinent part:

> At the end of three years from the date of commitment ... but no later than 90 days prior to the expiration of the defendant's term of commitment, a defendant who has not recovered mental competence shall be returned to the committing court. The court shall notify the community program director or a designee of the return and of any resulting court orders.

(§1370, subd. (c)(1).)[3] Petitioner, having been committed on March 29, 2012, reached the three-year mark on March 29, 2015.

When a defendant is "returned to the committing court" pursuant to subdivision (c), subparagraph (1) of section 1370, the judge must notify the community program of the defendant's return and must order that a conservatorship investigation be initiated by the appropriate government agency. (§1370, subd. (c)(2).) The filing of a conservatorship petition can provide independent grounds for the defendant's continued confinement in an appropriate facility, including the psychiatric unit of a detention facility, pending the outcome of the conservatorship proceedings. But, absent this, as the *Quiroz* court recognized, courts are not authorized to continue confining the defendant. When no conservatorship petition is filed or a petition is filed, but not sustained, or, as occurred here, a conservatorship is initiated and later abandoned, the defendant's continued confinement is not statutorily authorized. He or she must be released.

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[3] Because Petitioner was committed to Patton on March 29, 2012, his return date under section 1370, subdivision (c), subparagraph (1) was March 29, 2015.

As the lower court recognized, section 1370 is not a model of clarity. But, until recently, California courts have had no difficulty deciphering the meaning of section 1370, subdivision (c), subparagraph (1). (See, e.g. *People v. Waterman* (1986) 42 Cal.3d 565, 568 [A defendant must be returned to court after maximum period of confinement as an incompetent and, if he is not made the subject of a conservatorship, "the court must release him from confinement"]; *People v. Karriker, supra,* 149 Cal.App.4th at p. 788 ["Penal Code section 1370 explicitly contemplates that some defendants charged with felonies will be released if they are not restored to competency within the allowable time period."]; *In re Newmann* (1976) 65 Cal.App.3d 57, 64 [pending criminal charges no longer afford a valid basis for involuntary confinement once the court has found no substantial likelihood that the defendant will become competent to stand trial on the charges in the foreseeable future. In such cases, "[t]he defendant must be released, or an alternative basis for confinement must be established"].)[4]

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[4] Such an interpretation is the only one consistent with California's other civil commitment schemes. (See e.g. *In re Kernan* (1966) 242 Cal.App.2d 488, 491-492 [at end of maximum term of commitment, civilly committed narcotics addict must be discharged]; *People v. Allen* (2007) 42 Cal.4th 91, 104 [at end of maximum term of commitment, civilly committed mentally disordered offender must be released]; Former Welf. & Inst. Code section 6604 [civilly committed SVP "shall not be kept in actual custody longer than two years unless a subsequent extended commitment is obtained from the court incident to the filing of a petition for commitment under this article or unless the term of commitment changes"]; §1026.5 [a person committed as NGI "may not be kept in actual custody longer than the maximum term of commitment"]; Welf. & Inst. §6316.1 [a person committed as MDSO "may not be kept in actual custody longer than the maximum term of commitment"].)

Here, however, the Court of Appeal noted that section 1370, subdivision (c) provides no express instruction regarding what to do when an incompetent defendant is "returned to the committing court" and no independent grounds for his confinement has been established. In light of this, the Court opined, section 1370 does not bar his continued confinement, even if his maximum term of commitment has expired, as long as the charges have been refiled under a new case number. (*Jackson v. Superior Court, supra,* 202 Cal.Rptr. 3d at p. 249.)

This is wrong. The indictment in INF1500960 and amended complaint in INF061963 charge Petitioner with the same crimes. The filing of a new case with a different case number, charging the same crimes, has no effect on the statutory and constitutional mandates discussed above, does not authorize a "do-over," and does not establish an alternate basis for confining a defendant on the charges or for conducting section 1368 proceedings anew. Carried to its extreme, such an exception would allow prosecutors to dismiss and refile felony charges whenever a defendant reaches the three year maximum term of commitment, thereby converting the maximum three year permissible period of pretrial confinement into a six year period, or even longer. This would be contrary to the holding of *Jackson v. Indiana* and *Davis* and contrary to the Legislature's intent in enacting section 1370.

CONCLUSION

In enacting section 1370, subdivision (c), the Legislature plainly intended that a mentally incompetent defendant be confined no longer than is reasonably necessary to restore him or her to competency and, at the expiration of the commitment term, be made the subject of a conservatorship proceeding where appropriate. But incompetency commitments do not always result in sustained conservatorship petitions. And without any independent statutory authorization, superior courts cannot continue to confine criminal defendants on unadjudicated criminal charges beyond the time periods articulated in section 1370. When they do, they abuse their discretion. This case presents important statutory and constitutional issues, and review is necessary to resolve the split of authority created by its publication. Based on the foregoing and the record in the proceedings below, Petitioner respectfully requests that this Court grant review.

Dated: June 28, 2016

Respectfully submitted,

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Public Defender
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by: Laura Arnold by William A. Harmon
LAURA ARNOLD
Deputy Public Defender

Attorneys for Petitioner
PATRICK LOWELL JACKSON

IN THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION TWO

PATRICK LOWELL JACKSON, Petitioner, v. THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE, Respondent. THE PEOPLE OF THE STATE OF CALIFORNIA, AND Real Party in Interest.	Docket No.: S CA No. E064010 **CERTIFICATE OF WORD COUNT**

I, William A. Meronek, do hereby certify that, according to the computer program used to prepare the instant petition for rehearing and accompanying memorandum, including headings and footnotes, the length of the petition and memorandum of points and authorities is 4,723 words. I declare the foregoing to be true under penalty of perjury.

Executed this 28th of June, 2016, at Riverside, California.

WILLIAM A. MERONEK

Attachment A

Filed 5/24/16

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

PATRICK LOWELL JACKSON, Petitioner, v. THE SUPERIOR COURT OF RIVERSIDE COUNTY, Respondent; THE PEOPLE, Real Party in Interest.	E064010 (Super.Ct.No. INF1500950) OPINION

ORIGINAL PROCEEDINGS; petition for writ of mandate/prohibition. Mark E. Johnson, Judge. Petition denied.

Steven L. Harmon, Public Defender, Laura Arnold, Deputy Public Defender, for Petitioner.

No appearance for Respondent.

Michael A. Hestrin, District Attorney, Natalie M. Lough and Matt Reilly, Deputy District Attorneys, for Real Party in Interest.

In this matter we have reviewed the petition, the informal response by real party in interest, and the reply. Having determined that petitioner may have established a right to relief, we set an order to show cause. We subsequently reviewed the return and traverse. For the reasons we set forth *post*, we conclude that, at least on the record presently before us, we must deny the petition. Nonetheless, and as we explain in more detail *post*, we publish this opinion to urge the Legislature to amend Penal Code section 1370, subdivision (c)(2),[1] in ways that provide more clarity to trial courts faced with a defendant who has been committed as incompetent for the maximum period allowed by law but who does not meet the criteria for the type of conservatorship the statute describes.

FACTUAL AND PROCEDURAL BACKGROUND

On May 7, 2008, real party in interest (the People) charged petitioner with a violation of section 288, subdivision (b), under case No. INF061963 based on conduct that allegedly occurred on May 3, 2008. On July 24, 2008, the trial court declared doubts as to petitioner's competency to stand trial in case No. INF061963. On February 3, 2010, the trial court found petitioner to be incompetent to stand trial.[2] Petitioner was ordered

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[1] Unless otherwise specified, all statutory references are to the Penal Code.

[2] The trial court again found petitioner incompetent to stand trial in case No. INF061963 on December 7, 2011. It appears this occurred after petitioner was deemed competent and pled guilty to a violation of Penal Code section 288, subdivision (a), in a different county.

committed to Patton State Hospital on March 29, 2012, in conjunction with case No. INF061963.

On May 18, 2015, the trial court in case No. INF061963 ordered petitioner's release from custody. It found petitioner had reached the maximum time of commitment authorized by law. (See § 1370, subd. (c)(1) [defendant who has not regained competency must be returned to court no later than, as relevant here, "the end of three years from the date of commitment"].)

The People then secured an indictment and initiated case No. INF1500950 against petitioner on May 21, 2015. The counts alleged in the indictment also relate to petitioner's alleged conduct on May 3, 2008. In case No. INF1500950, the trial court declared doubts regarding petitioner's competency to stand trial on June 2, 2015. However, the record before us does not demonstrate that a determination regarding petitioner's competence to stand trial has been made in connection with case No. INF1500950.

Arguing that he could no longer be confined because he had exceeded the maximum commitment period authorized by law, petitioner, just as he had done in case No. INF061963, moved for his release from custody in case No. INF01500950. The trial court denied that motion on June 30, 2015. This writ petition followed.

DISCUSSION

Petitioner contends he cannot be lawfully confined in connection with case No. INF1500950 because he has already exceeded the maximum time for which he could

have been committed as incompetent to stand trial in relation to the crimes he allegedly committed on May 3, 2008. Because the record fails to support at least two assumptions central to petitioner's reasoning, we must deny the petition.

In *Jackson v. Indiana* (1972) 406 U.S. 715, 731-739 (*Jackson*), the United States Supreme Court considered whether the due process provisions of the Fourteenth Amendment to the United States Constitution can allow a state to commit a criminal defendant found incompetent to stand trial on an indefinite basis. The Court held, "that a person charged by a State with a criminal offense who is committed solely on account of his incapacity to proceed to trial cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future." (*Jackson*, at p. 738.) The California Supreme Court adopted the same rule the following year when it held "that no person charged with a criminal offense and committed to a state hospital solely on account of his incapacity to proceed to trial may be so confined more than a reasonable period of time necessary to determine whether there is a substantial likelihood that he will recover that capacity in the foreseeable future." (*In re Davis* (1973) 8 Cal.3d 798, 801.) Both courts added that a defendant who has been found incompetent to stand trial and will not regain competency "in the foreseeable future" must either be released or committed under an alternative procedure. (*Jackson*, at p. 738; see *Davis*, at p. 801.)

The Legislature then amended former Penal Code section 1370, subdivision (c)(1), in an attempt to provide guidance regarding some of the principles announced in *Davis*.

(*In re Polk* (1999) 71 Cal.App.4th 1230, 1236-1238.) Subdivision (c)(1) of section 1370 requires any defendant who has been found incompetent to stand trial and whose competence has not been recovered to be "returned to the committing court" within, as is relevant to this case, 90 days of the date that is three years after the date of commitment. If such a defendant appears to be "gravely disabled, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, the court shall order the conservatorship investigator of the county of commitment of the defendant to initiate conservatorship proceedings for the defendant pursuant to" provisions of the Welfare and Institutions Code. (Pen. Code, § 1370, subd. (c)(2).) The type of conservatorship described in the aforementioned section of the Welfare and Institutions Code "is commonly referred to as a 'Murphy conservatorship' after the legislator who sponsored the amendment that added the definition to the [Lanterman-Petris-Short Act] Act in 1974. (Stats. 1974, ch. 1511, pp. 3316–3324.)" (*People v. Karriker* (2007) 149 Cal.App.4th 763, 775.) Aside from mentioning the possibility of a Murphy conservatorship, Penal Code section 1370 does not otherwise advise a trial court of its options if a defendant who has been declared incompetent to stand trial is still incompetent at the end of a three-year commitment.

In the absence of such statutory language, defendant relies on *Jackson* and *Davis* to support his contention that complete release from custody is the only outcome that can pass constitutional muster. As we now explain, however, he is trying to capitalize on language to the effect that a defendant who is still incompetent at the end of the

permissible period of confinement must be released, if he is not civilly committed, without actually demonstrating that he meets the conditions precedent to this rule.

First, petitioner has not shown that he is currently "committed *solely* on account of his incapacity to proceed to trial." (*Jackson*, *supra*, 406 U.S. at p. 738 italics added; see similar language in *In re Davis*, *supra*, 8 Cal.3d at p. 801.) While it is true that the indictment in case No. INF1500950 stems from the same alleged conduct as the complaint in case No. INF061963, petitioner has offered no reason why the People could not prosecute him on charges related to his conduct on May 3, 2008, under a new case number if he were currently competent to stand trial. If the prosecution in case No. INF1500950 may continue, and the record and the briefing before us present no bar to that occurrence, we are aware of no reason why petitioner could not be confined in jail awaiting trial on those charges absent another incompetency finding. As we noted *ante*, the record contains no evidence that petitioner has actually been declared incompetent to stand trial in case No. INF1500950, and it contains no other proof that the incompetency the court found to exist in case No. INF061963 still continues. Without substantiating this fact, petitioner has failed to show that his current confinement is due to nothing other than a present incapacity to stand trial. In a similar vein, he has not shown that he has been "committed" at all in case No. INF1500950.

Second, the record contains no evidence regarding "whether there is a substantial probability that [petitioner] will attain . . . capacity [to stand trial] in the foreseeable future." (*Jackson*, *supra*, 406 U.S. at p. 738.) Again, no incompetency finding has yet

been made in case No. INF1500950, and the record does not contain any of the reports regarding petitioner's competency that were issued in case No. INF061963. Faced with the same problem, the *Davis* court wrote: "Unlike the situation in *Jackson*, however, the record in the cases before us furnishes no basis for concluding that petitioners are not likely to respond to treatment. Accordingly, it would be premature for us to order petitioners released from confinement at this time." (*In re Davis*, *supra*, 8 Cal.3d at p. 806.) We agree with the *Davis* court that a defendant such as petitioner cannot demonstrate his entitlement to release from all confinement in connection with unadjudicated criminal charges without some basis for concluding that he is both presently incompetent and unlikely to regain competency in the near future.

In a letter brief filed prior to oral argument and at oral argument, petitioner cited *People v. Quiroz* (2016) 244 Cal.App.4th 1371 (*Quiroz*) for the proposition that the People lack the authority to proceed on the indictment they obtained in case No. INF1500950 because petitioner had already been committed for the maximum term authorized by law in case No. INF061963. *Quiroz* stands for no such proposition, as all it held is that a competency hearing is a "special proceeding" that must be authorized by statute, and no statute authorizes holding another competency hearing at the end of a three-year commitment due to incompetency to stand trial when the hospital reports that the defendant is still incompetent and is not likely to recover competency in the near future. (*Id.* at pp. 1379-1380.) Moreover, *Quiroz* is factually distinguishable, as there the record contained a report showing that the defendant seeking release from confinement

was both incompetent and not likely to regain competency. (*Id.* at pp. 1375, 1379-1380.) The absence of such evidence in the record here is a large part of why, as we described *ante*, we cannot grant petitioner the relief he seeks.

We close by suggesting that at least some of the issues the trial court faced in ruling on the motion that is the subject of this writ petition could have been avoided, or at least ameliorated, if section 1370, subdivision (c)(2), provided clearer guidance. For example, *Quiroz* asserts that, "if the defendant remains incompetent but is not a dangerous accused violent felon, the court must release him from confinement" when the defendant is returned to court at the end of the maximum commitment period. (*Quiroz*, *supra*, 244 Cal.App.4th at p. 1379.) However, section 1370, subdivision (c)(2), gives no such instruction. As we noted *ante*, it instructs that the trial court "shall order the conservatorship investigator of the county of commitment of the defendant to initiate conservatorship proceedings for the defendant," but only when "a defendant is returned to the court pursuant to paragraph (1) or (4) of subdivision (b) or paragraph (1) of this subdivision and it appears to the court that the defendant is gravely disabled" within the meaning of the Murphy conservatorship statute. *Jackson*, *Davis*, and *Quiroz* all note that a defendant who is returned to court at the end of a commitment due to the defendant's incompetency to stand trial may need to be released under certain circumstances, but neither they nor the statutory scheme that authorizes the commitment provide any instruction as to under what criteria and upon what proof such a release is required. We therefore implore the Legislature to examine subdivision (c)(2) of section 1370 and

clarify for trial courts statewide what procedures they should follow when faced with a defendant who has been committed as incompetent for the maximum time allowed under the law but who does not qualify for a Murphy conservatorship.

DISPOSITION

The petition is denied.

CERTIFIED FOR PUBLICATION

RAMIREZ
P. J.

We concur:

HOLLENHORST
J.

MILLER
J.

PROOF OF SERVICE BY MAIL

(C.C.P. 1013a and 2015.5)

Jackson v. Superior Court
Case Number: E064010; INF1500950

I am a citizen of the United States and a resident of the county of Riverside, State of California. I am over the age of 18 years and not a party to the within action. I am employed by the Law Offices of the Public Defender and am familiar with the business practice at the Office for collection and processing of correspondence for mailing with the Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Law Offices of the Public Defender is deposited with the United States Postal Service, with postage fully paid, that same day in the ordinary course of business.

On the date of execution of this document, I served the foregoing Petition for Review; Attachment A by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Law Offices of the Public Defender, 4200 Orange St., Riverside, CA 92501, addressed as follows:

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Patrick L. Jackson
(*through counsel*)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 28, 2016, at Riverside, California.

Kimberly Meyer
KIMBERLY MEYER