

Supreme Court Copy

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

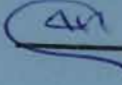
THE PEOPLE, v. SUPERIOR COURT OF LOS ANGELES COUNTY, CHRISTOPHER SHARKEY, Real Party in Interest.	Petitioner, Respondent, Real Party in Interest.	No. S182355 2d Dist. No. B219011 (LASC No. ZM014203)
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ANSWER TO PETITION FOR REVIEW

SUPREME COURT
FILED

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE,)	No. S182355
)	
Petitioner,)	2d Dist. No.
)	B219011
v.)	
)	(LASC No.
SUPERIOR COURT OF)	ZM014203)
LOS ANGELES COUNTY,)	
)	ANSWER TO
Respondent.)	PETITION FOR
)	REVIEW
CHRISTOPHER SHARKEY,)	
)	
Real Party in Interest.)	
)	

INTRODUCTION

The District Attorney of Los Angeles County, attorney for Petitioner People in *People v. Superior Court (Christopher Sharkey)*, opposes herewith Sharkey's Petition for Review of the Court of Appeal's opinion, certified for publication March 25, 2010, at 183 Cal.App.4th 85 (hereafter *Sharkey*). *In re Lucas*, certified for publication on March 5, 2010, at 182 Cal.App.4th 797 (hereafter *Lucas*), Petition for review – case S181788, addresses the same issues as this case.

STATEMENT OF FACTS AND OF THE CASE

Because the matters to be resolved on review are purely legal issues and the procedural history and underlying facts of this case are not in

dispute, Petitioner accepts the Procedural and Factual History as set forth in the Real Party's Petition for Review and the Court of Appeal's Opinion. (See Petition for Review (hereafter "Petition"), pp. 1-8, Appendix (*Sharkey* Opinion, pp. 3-8.)

ISSUES ON REVIEW

(1) The primary issue in the Court of Appeal's decisions in *Sharkey* and *Lucas* is the validity of relying on the definition of "good cause" in California Code of Regulations section 2600.1¹ when imposing a 45-day hold pursuant to section 6601.3 of the California Welfare and Institutions Code.² (Cf. Petition, p. 9, Issues on Review 1 and 2.) The *Sharkey* court found such reliance proper. (*Sharkey* Opinion,³ p. 2.) The *Lucas* court disagreed. (*Lucas* Opinion, p. 14.)

(2) A secondary issue addressed in *Sharkey* (and *Lucas*) is whether a civil commitment petition (hereafter "SVP petition") under the Sexually Violent Predator Act (hereafter "SVPA") – filed after a section 6601.3 extension, where the Board of Parole Hearings (hereafter "Board")

1. The term "the regulation" used hereafter refers to California Code of Regulations section 2600.1.

2. All further statutory references, unless otherwise indicated or required by context, will be to the California Welfare and Institutions Code.

3. Because the *Sharkey* and *Lucas* slip opinions are attached to the petitions for review in those respective cases, citations will be to the slip opinions.

applied, *arguendo* in error, the regulation’s good cause standard to impose the 45-day hold – is subject to dismissal notwithstanding that section 6601, subdivision (a)(2), specifies that “A petition shall not be dismissed on the basis of a later judicial or administrative determination that the individual’s custody was unlawful, if the unlawful custody was the result of a good faith mistake of fact or law.” (Welf. & Inst. Code, § 6601, subd. (a)(2).) The Courts of Appeal in *Sharkey* and *Lucas* both found dismissal improper in light of that provision.

GROUND FOR REVIEW

Real Party's two bases for urging this Court to grant review are: (1) “to secure uniformity” under California Rules of Court, rule 8.500(b)(1), inasmuch as the decision in *Sharkey* is contrary to the *Lucas* holding as to the first issue – namely, the validity of applying the regulation’s good cause standard when imposing a 45-day hold pursuant to section 6601.3, and (2) to settle important questions of law (rule 8.500(b)(1)) as to what constitutes “good cause” under section 6601.3 and as to the propriety of applying section 6601, subdivision (a)(2), to excuse the allegedly late filing of the SVP petition as a good faith mistake of fact or law.

A. Review May Be Unnecessary

While it is true that there are two conflicting published opinions regarding what constitutes “good cause” for purposes of section 6601.3 and

whether it will achieve the objective of section 6601.3, consistent with the legislative intent of the SVPA, to apply the good cause standard of section 2600.1 of the Code of Regulations in determining whether the 45-day hold should be imposed – and the People acknowledge that a ground of review under rule 8.500(b)(1) exists – nevertheless, review may not be necessary if this Court can find from the People’s Answer that the *Sharkey* analysis of the “good cause” issue is clearly correct and the *Lucas* decision, erroneous. In that case, this Court can deny review in *Sharkey* and order, under California Rules of Court, rule 8.1125 (c)(2), that the *Lucas* opinion not be published.

If this Court adopts the expedient suggested, it would not be necessary to reach the second issue, since the Board’s imposition of the 45-day hold was proper using the regulation’s good cause standard and the inmate was in legal custody when the SVP petition was filed.

B. Review Is Unnecessary As To The Second Issue

Even if this Court grants review to secure uniformity and settle the issue of what constitutes “good cause” under section 6601.3, review as to the second issue concerning section 6601, subdivision (a)(2), is unnecessary. The *Sharkey* and *Lucas* decisions on this issue are in harmony with each other and with prior appellate decisions, making review unnecessary under rule 8.500(b)(1).

Moreover, the result in *Sharkey* is not so much determined by

the ruling on the second issue as by the Court of Appeal's ruling on the first issue. Thus, if the *Sharkey* analysis of the first issue is accepted as correct, the second issue will not be relevant in future cases involving this issue under section 6601.3. Even if the *Lucas* view of "good cause" is accepted as law, nevertheless, that court's reversal of the lower court's dismissal order in *Lucas*, being the result of the good faith mistake of law or fact provision in section 6601, subdivision (a)(2), will not serve as precedent in future cases involving this same issue because the law will be settled as to whether the regulation's good cause standard may be applied in determining whether the 45-day hold under section 6601.3 should be imposed.

In sum, if this Court decides to grant review in this case, the People submit that it should be granted in both the *Sharkey* and *Lucas* cases, but limited to the first issue only.

ARGUMENT

The term "good cause" in section 6601.3 should be construed so as to effectuate the legislative intent of the SVPA to protect the public by optimizing the reach of the statute without infringing the liberty interest of incarcerated persons affected by the statute. Because *Sharkey* was correctly decided, and its interpretation of section 6601.3 reflects the objective of that statute and effectuates the stated purpose of the SVPA, *Sharkey* should be left intact by denying review.

I

INTERPRETING “GOOD CAUSE” IN SECTION 6601.3 AS IT IS DEFINED BY SECTION 2600.1 OF THE CODE OF REGULATIONS COMPORTS WITH THE TEXT AND OBJECTIVE OF SECTION 6601.3 AND EFFECTUATES THE LEGISLATIVE INTENT OF THE SVPA

As the *Lucas* court acknowledged, “... “good cause” ... must, in a great measure, be determined by reference to the particular circumstances appearing in each case.” (*Lucas* Opinion, pp. 12-13, citing *Ex Parte Bull* (1871) 42 Cal. 196, 199.) In a statutory context, ““good cause” ... must be construed in the light reflected by its text and objectives” and ““must be so interpreted that the fundamental purpose of the legislation shall not be destroyed.”” (*Lucas* Opinion, p. 13, citing *Cal. Portland Cement Co. v. Cal. Unemp. Ins. Appeals Board* (1960) 178 Cal.App.2d 263, 272, 273.) Thus, “good cause” for imposition of a 45-day hold under section 6601.3 must be construed to serve the objectives of the SVPA and section 6601.3 in particular.

It is undisputed that the Legislature’s intent in enacting the SVPA is “to identify persons who have certain diagnosed mental disorders that make them likely to engage in acts of sexual violence and to confine them for treatment of their disorders as long as the disorders persist.” (*Sharkey* Opinion, p. 15, citing *People v. Dean* (2009) 174 Cal.App.4th 186, 191; cf. *Lucas* Opinion, pp. 4-5, 14-15, citing respectively *Lee v. Superior*

Court (2009) 177 Cal.App.4th 1108, 1122, and *People v. Allen* (2008) 44 Cal.4th 843, 857; also see Stats. 1995, ch. 763, § 1, pp. 5921-5922.) While the SVPA contemplates screening and evaluating inmates prior to their scheduled release date to determine whether the People should pursue civil commitment of any particular individual as an SVP (Welf. & Inst. Code, § 6601, subds. (a) – (d)), section 6601.3 provides: “Upon a showing of good cause, the Board of Prison Terms^[4] may order that a person referred to the State Department of Mental Health pursuant to subdivision (b) of Section 6601 remain in custody for no more than 45 days beyond the person’s scheduled release date *for full evaluation pursuant to subdivisions (c) to (i), inclusive, of Section 6601.*” (Italics added.)

As noted, the Board is specifically empowered under the SVPA’s own terms (by section 6601.3) to delay the release from custody of the inmate to be evaluated for up to 45 days.⁵ The objective of this 45-day

4. Now the Board of Parole Hearings. (See *Sharkey* Opinion, p. 11, fn. 4, citing *In re Hovanski* (2009) 174 Cal.App.4th 1517, 1521, fn. 2.)

5. Because the specific prevails over the general provision when interpreting conflicting statutes (*Pacific Lumber Co. v. State Water Resources Control Bd.* (2006) 37 Cal.4th 921, 942; *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 908), this grant of authority under the SVPA is valid notwithstanding Penal Code section 3000, subdivision (b)(1). Because this Court has said that pursuant to this ““‘mandatory ‘kick-out’ provision” “[t]he Board ... has no discretion to grant or withhold parole to a prisoner who has served a determinate term”” (*Lucas* Opinion, pp. 15-16, citing *Terhune v. Superior Court* (1998) 65 Cal.App.4th 864, 873-874), the *Lucas* court erroneously took away the discretion specifically

hold, according to the text of section 6601.3, is to enable the named agencies to complete a full evaluation under section 6601, subdivisions (c) to (i), when such evaluation could not be completed before the scheduled release date. Thus, section 6601.3 helps to effectuate the legislative intent of identifying SVPs and confining them for treatment by allowing the Board to prevent the premature release of a potential SVP before the necessary evaluation can be completed. Consistent with the intent of the SVPA, the standard for “good cause” established in section 2600.1 of the Code of Regulations reflects the text and objective of section 6601.3. (Cf. *Sharkey* Opinion, p. 15; also *Cal. Portland Cement Co. v. Cal. Unemp. Ins. Appeals Board*, *supra*, 178 Cal.App.2d at pp. 272, 273.)

Finally and perhaps most persuasively, as the *Sharkey* court demonstrates, the Board’s standardization of good cause in section 2600.1 of the Code of Regulations should be upheld as a quasi-legislative and interpretive regulation that “is reasonably necessary to effectuate the purpose of section 6601.3 and of the SVPA generally.” Moreover, this interpretation is entitled to greater deference because it “is contained in a

granted to the Board in section 6601.3 and imposed a higher threshold showing for imposing the 45-day hold than that intended by the enactment of section 6601.3, i.e., when time is needed for full evaluation and there is some evidence that the inmate has the requisite prior convictions and is likely to engage in sexually violent predatory criminal behavior.

regulation formally adopted pursuant to the Administrative Procedure Act (Gov. Code, § 11340 et seq.)” and is “a statutory interpretation that the administrative agency has consistently maintained and is of long-standing, i.e., for over 14 years.” (*Sharkey* Opinion, pp. 12-15.)

II

THE LIBERTY INTEREST OF INMATES IS PROTECTED AS INTENDED UNDER THE SVPA BECAUSE THE “GOOD CAUSE” STANDARD IN CODE OF REGULATIONS SECTION 2600.1 ONLY ALLOWS A 45-DAY HOLD UNDER SECTION 6601.3 TO BE IMPOSED AGAINST POTENTIAL SEXUALLY VIOLENT PREDATORS

In the normal course of operations under the SVPA, an inmate identified by the California Department of Corrections and Rehabilitation and fully evaluated by the Department of Mental Health would be referred to the prosecuting agency for review and filing of an SVP petition before the date set for the inmate’s release on parole. In that event, the inmate would not be released on parole but confined pending trial and treatment of his condition.

Section 6601.3 permits the Board, for good cause shown, to continue the confinement of the inmate for up to 45 days to allow full evaluation of the inmate’s condition. The action for which good cause must be shown in section 6601.3 is not the postponement of the filing of the civil commitment petition – as the trial courts and trial counsel for the inmates suggested by the remedy that was requested and granted, namely the

dismissal of the SVP petition –, but the Board’s continued confinement of the inmates pending the full evaluation and filing of the petition. This 45-day confinement is the liberty interest at stake, not the filing of the petition or the ultimate civil commitment, either of which may not happen after evaluation.

The issue then in section 6601.3, properly defined, is what constitutes sufficient cause to continue to confine an inmate as a potential SVP when there has not been a full evaluation. What “““real circumstances, substantial reasons, objective conditions, ... adequate excuses that will bear the test of reason, just grounds for action”””⁶ would justify confining an inmate for 45 days past his release date, as if he were a diagnosed SVP, when a full evaluation identifying him sufficiently to warrant filing an SVP petition had not been completed? Drawing an analogy to Fourth Amendment law concerning temporary detention may be helpful in this analysis.

Given that an inmate may be confined under the SVPA after full evaluation and filing of the petition, the 45-day hold effectively treats the inmate, vis-à-vis his liberty interest, as if he had a diagnosed current SVP mental disease. Thus, if post-filing confinement under the SVPA were compared to being in custody after an accused is arrested and charged, the 45-day hold might be compared to a pre-arrest detention. This quasi pre-arrest

6. *Lucas* Opinion, p. 13, citing *Cal. Portland Cement Co. v. Cal. Unemp. Ins. Appeals Board*, *supra*, 178 Cal.App.2d at pp. 272-273.

detention, limited by statute to no more than 45 days, is justified by the need to resolve ambiguities giving rise to reasonable cause for detention, in this case, the existence of SVP prior convictions and some evidence suggesting that the inmate has the SVP mental disease. (See, e.g., *People v. Fisher* (1995) 38 Cal.App.4th 338, 344 [possibility of an innocent explanation does not prevent officer from entertaining reasonable suspicion of criminal conduct, particularly since principal function of police investigation is to resolve ambiguity and establish whether activity in question is legal or illegal]; *People v. Coulombe* (2000) 86 Cal.App.4th 52, 56 [temporary detention and patdown search proper when officer believes “criminal activity is afoot” and that defendant is involved].)

The purpose of the SVPA is to identify, confine, and treat potential SVPs until they no longer pose a threat to society, and the stated objective of section 6601.3 is to prevent the premature release of potential SVPs before full evaluations of their status can be completed. The good cause standard in section 2600.1 of the Code of Regulations fulfills that purpose and objective while minimizing the intrusion into the liberty interests of inmates by requiring some showing that the persons detained under section 6601.3 have the required prior convictions and might be diagnosed with the mental disease sought to be treated.

The reasoning of the *Lucas* court that “good cause for a hold

would exist in *every* case referred for a full evaluation, and the exception would swallow the rule” (*Lucas* Opinion, p. 18) assumes too much. If official duty is regularly performed (Evid. Code, § 664), only cases with exceptional circumstances would require imposition of the 45-day hold. Further, since the Board has *discretion* to impose the hold *for good cause shown*, the evaluation process must at least be sufficiently completed to make the required “good cause” showing so that the hold is only imposed against potential SVPs as contemplated by the statute. Moreover, the good faith of the government agents and the circumstances which might necessitate the 45-day hold are far less relevant for the purposes of the SVPA or crucial to the liberty interests of the inmates than the existence of some evidence to show that the *right individual* is being detained – i.e., the inmate has the SVP prior convictions and some indicia suggesting mental disease. This is exactly what is sought to be assured by the regulation’s good cause standard.

Thus, the regulation effectuates the purpose of section 6601.3 and of the SVPA both by preventing the premature release of potential SVPs and by ensuring that only potential SVPs still in need of full evaluation are detained under section 6601.3.

CONCLUSION

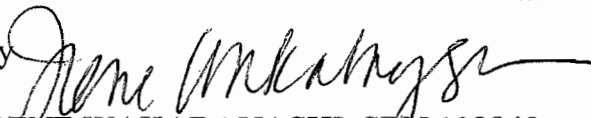
Because the purpose of the SVPA and the liberty interests of inmates are both best served by ensuring that only potential SVPs are subject

to the additional 45-day hold, “good cause” within the meaning of section 6601.3 should be interpreted under the standard set forth in section 2600.1 of the Code of Regulations. Furthermore, the fact that section 2600.1 of the Code of Regulations has been followed for over 14 years in applying section 6601.3 without corrective action by the Legislature shows that the Legislature agrees with that meaning of “good cause” under section 6601.3.

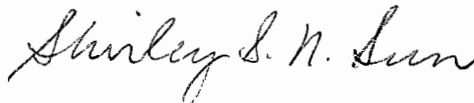
For all of the reasons stated herein, the *Sharkey* decision correctly interprets the meaning of “good cause” in section 6601.3 in light of the objective of section 6601.3 and the purpose and legislative intent of the SVP statutory scheme. The Los Angeles County District Attorney therefore respectfully urges this Court to deny review in the *Sharkey* case and allow lower courts to be guided by that decision.

Respectfully submitted,

STEVE COOLEY
District Attorney of
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By 

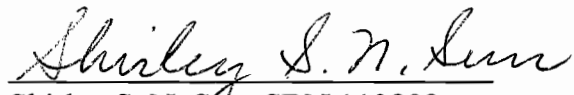
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CERTIFICATION

Pursuant to rule 8.504(d)(1) of the California Rules of Court, Appellate Rules, the undersigned appellate counsel, relying on the word count of the computer program used to prepare this brief, certifies that this Answer to Petition for Review, excluding cover page, tables, certification, and proof of service, contains about 2,975 words (less than 8,400 words).


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DECLARATION OF SERVICE BY MAIL

The undersigned declares under penalty of perjury that the following is true: I am over 18 years of age, not a party to the within cause and employed in the Office of the District Attorney of Los Angeles County with offices at 320 West Temple St., # 540, Los Angeles, California 90012.

On the date of execution hereof, I served the attached Answer to Petition for Review upon each addressee by depositing, in the United States mail in the County of Los Angeles, California, a true copy thereof enclosed in a sealed envelope with postage fully prepaid, addressed as follows:

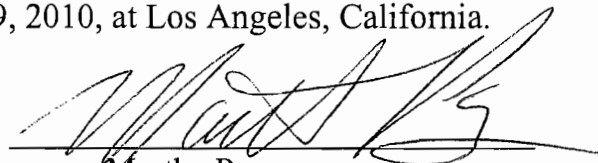
Honorable Maria E. Stratton Los Angeles Superior Court Mental Health Court, Dept. 95 1150 N. San Fernando Rd., Los Angeles, CA 90065	Clerk of the Court of Appeal, 2d District 300 South Spring Street, Division Three Los Angeles, CA 90013
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Executed on May 19, 2010, at Los Angeles, California.


Martha Paez