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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Petitioner, v. SUPERIOR COURT OF CALIFORNIA FOR LOS ANGELES COUNTY, Respondent. CHRISTOPHER SHARKEY, Real Party in Interest.	No. S 182355 2d Dist. No. B219011 (Los Angeles County Super.Ct.No.ZM014203)

SUPREME COURT
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ANSWER BRIEF ON THE MERITS

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,	) No. S 182355
	)
Petitioner,	) 2d Dist. No. B219011
	)
v.	) (Los Angeles County
	) Super.Ct.No.ZM014203)
SUPERIOR COURT OF CALIFORNIA FOR	)
LOS ANGELES COUNTY,	) **ANSWER BRIEF ON**
	) **THE MERITS**
Respondent.	)
	)
CHRISTOPHER SHARKEY,	)
	)
Real Party in Interest.	)
	)

ISSUES PRESENTED

(1) What constitutes "good cause" for the imposition of a 45-day hold and extension of a scheduled parole date under Welfare and Institutions Code[1] section 6601.3 to permit evaluation of the defendant under the Sexually Violent Predator Act (hereafter "SVPA")?

(2) Is California Code of Regulations, title 15, section 2600.1, subdivision (d), which defines the term "good cause" as used in section 6601.3 as "some evidence" that the inmate has a prior qualifying conviction and is likely to engage in predatory criminal behavior, a valid regulation?

(3) Does the "good faith mistake of law or fact" exception apply in *Lucas*[2] and the instant case (hereafter "*Sharkey*")?

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1. Further statutory references, unless otherwise indicated, are to the Welfare and Institutions Code.

2. *Lucas (David) on H. C.*, Supreme Court No. S 1181788.

STATEMENT OF THE CASE AND OF THE FACTS

Sharkey and *Lucas*[3] come before this Court after the respective Courts of Appeal held that the "good faith mistake of law or fact" exception applied to prevent the dismissal of their SVP petitions. In *Lucas*, this holding led the Court of Appeal to deny habeas corpus relief. In *Sharkey*, this holding was secondary, the primary holding being that it was proper to extend Sharkey's scheduled parole date under section 6601.3 to permit his evaluation under the SVPA based upon a "good cause" showing as defined by California Code of Regulations (hereafter "CCR"), title 15, section 2600.1, subdivision (d) (hereafter "the regulation").

Sharkey was convicted of three sexually violent offenses within the meaning of section 6600, subdivisions (b) and (e): one count of forcible rape of a female victim (violation of Pen. Code, § 261, subds. (2) and (3)) in 1979 and one count each of forcible rape and assault with intent to commit rape against two female victims (violations of Pen. Code, § 261, subd. (2) and § 220, respectively). (Exhibit 2[4] – Petition for Commitment as a Sexually Violent Predator (hereafter "SVP Petition") – (hereafter "Ex. 2"), pp. 10, 12; Exhibit 4 – Petitioner's Response to Respondent's Motion to Dismiss Petition – (hereafter "Ex. 4"), p. 54.)

After California Department of Corrections and Rehabilitation

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3. As *Lucas* and *Sharkey* present similar issues about detaining potential sexually violent predator (hereafter "SVP") inmates past their scheduled release date (hereafter "EPRD") to allow completion of a full evaluation of their condition to be completed, to determine if a civil commitment petition should be filed on their behalf under sections 6600 et seq. (the SVPA), the People will address the merits of the *Lucas* holding at appropriate points where it might affect the outcome in *Sharkey*.

4. Numbered exhibits refer to Exhibits in Support of Petition for Writ of Mandate, filed in Court of Appeal Case No. B219011 (*Sharkey*).

(hereafter "CDCR") had calculated Sharkey's earliest possible release date (hereafter "EPRD") as November 24, 2008, and a correctional counselor, on or about February 19, 2008, conducted a screening that identified Sharkey as a potential SVP under section 6600, the initial requirements for referral to the State Department of Mental Health (hereafter "DMH") as a potential SVP under section 6601, subdivision (a), were met. Sharkey's case was referred to the Board of Parole Hearings[5] (hereafter "Board") under section 6601, subdivision (b), together with documents to support an SVP finding by the Board based on his criminal history. (Exhibit 5 – Supplement to Demurrer, Motion to Dismiss – (hereafter "Ex. 5"), p. 84; Ex. 4, pp. 44, 52; Reporter's Transcript of June 15, 2009 Proceedings (hereafter "RT"), pp. 8-16.)

The independent review of Sharkey's convictions for crimes of sexual violence against female victims by Parole Agent Sahner – assigned by the Board on August 13, 2008, after the part-time agent originally assigned to the case was laid off in July – confirmed that Sharkey met the first level SVP criteria for referral to DMH; accordingly, Sharkey's case was referred to DMH on or about September 11, 2008. (Ex. 4, pp. 53-54; RT, pp. 14-20.)

On or about September 19, 2008, Dr. Garrett Essres of DMH, finding high readings in SVP indicators and risk factors in a Level II screen of Sharkey's criminal history statistics, referred Sharkey for a full Level III SVP evaluation "because of high actuarial risk, possible applicable diagnosis, predatory, untested in the community and high chronicity." (Ex. 4, pp. 55-58.)

Dr. Karlsson's October 29, 2008 SVP Civil Commitment Clinical Evaluation, which followed his October 10, 2008 Clinical Evaluation

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5. The Board of Prison Terms was renamed "Board of Parole Hearings" about two years ago: some sections of the Welfare and Institutions Code and the Penal Code still refer to that office as the Board of Prison Terms.

Summary, concluded that Sharkey met the SVP criteria in section 6600, subdivision (a). A second evaluator, Dr. Koetting, indicated on November 17, 2008, that he needed more time to evaluate Sharkey because of the complexity of the case; accordingly, a 45-day hold was requested the next day, and on November 20, 2008, the Board imposed the "45-day WIC 6601.3 'No bail' hold effective from 12:01 a.m. 11/24/09 through 12:00 midnight on 1/08/09" "pursuant to section 6601.3, to facilitate full SVP evaluations to be concluded by the DMH." (Ex. 4, pp. 58, 60, 67-68.)

After receiving full evaluations, DMH referred Sharkey's case to the Los Angeles District Attorney for filing of a civil commitment petition under the SVPA. On December 18, 2008, DDA Greene filed an Affidavit and Order for Removal of Christopher Sharkey from the State Prison in Solano for arraignment on January 6, 2009, on the SVP Petition in the Mental Health Courthouse. The SVP Petition was filed on December 23, 2008, while Sharkey was in custody on "a hold placed pursuant to Section 6601.3." (Ex. 4, pp. 58, 61-64; Ex. 2, p. 9; see § 6601, subd. (a)(2).)

On or about January 13, 2009, the Public Defender on behalf of Sharkey filed a Motion to Dismiss the SVP petition on the ground that Sharkey was not in lawful custody when it had been filed because the government had failed to show good cause for imposing the 45-day hold and filing the SVP petition after the EPRD. The People responded that there was good cause to excuse the delay because of the economic cutbacks necessitating a change in parole agents to review Sharkey's records, the difficulty in obtaining Sharkey's old records and the complexity of Sharkey's case. In supplemental arguments, the People invoked CCR, title 15, section 2600.1, subdivision (d), as authorizing the imposition of a 45-day hold. That regulation provides: "good cause to place a 45-day hold pursuant to … section 6601.3 exists when … all

of the following criteria" [are met] as to the inmate or parolee in revoked status: "(1) Some evidence that the person committed a [qualifying offense] ... against one or more victims" that led to "a conviction or a finding of not guilty by reason of insanity ..." and "(2) Some evidence that the person is likely to engage in sexually violent predatory criminal behavior." (Exhibit 3 – Motion to Dismiss – (hereafter "Ex. 3"), pp. 15-20; Ex. 4, pp. 41-48; Ex. 5, pp. 77-78.)

On July 24, 2009, the court informed the parties that the motion to dismiss the SVP Petition was granted and that it would provide the parties with a written decision, which it did on August 21, 2009. The court acknowledged that the Board had good cause to impose the 45-day hold under the regulation's definition of good cause, but found that the Board's decision to place the section 6601.3 hold on Sharkey was not supported by a factual basis for good cause because "[c]ase law defines good cause as 'a good reason for a party's failure to perform that specific requirement [of the statute] from which he seeks to be excused.'" The court stayed the dismissal order until September 22, 2009. (Exhibit 9 – Minutes – (hereafter "Ex. 9"), pp. 119-120; Exhibit 1 – Ruling on Respondent's Motion to Dismiss – (hereafter "Ex. 1"), pp. 2, 6.)

On September 22, 2009, the People filed a Petition for Writ of Mandate, alleging that the court abused its discretion in finding "that the good cause definition set out in section 2600 of the CCR is clearly erroneous" when it failed to show: (1) why the Board, as an administrative agency charged with the enforcement of the SVP civil commitment statute, cannot, consistent with legislative intent, promulgate regulations which define the statutory terms for the particular purposes of that statutory scheme, nor (2) how the regulation's definition of "good cause" for purposes of imposing a 45-day hold under section 6601.3 violated legislative intent or was otherwise unauthorized. The People also alleged that the court exceeded its jurisdiction in dismissing the

SVP petition when the CDCR, Board, DMH, and District Attorney's Office all performed their duties vis-à-vis the processing, review and filing of Sharkey's case within the time periods and in the manner prescribed by the statute and governing regulations. Further, because the Board had good cause to place the section 6601.3 parole hold under section 6601, subdivision (a)(2), the court exceeded its jurisdiction in dismissing the SVP Petition if the Board's reliance on the regulation was a mistake of law or if the District Attorney was mistaken in believing that Sharkey was in lawful custody pursuant to a section 6601.3 hold when he filed the SVP Petition. (Petition for Writ of Mandate (hereafter "PWM"), pp. 8-9.)

On March 25, 2010, Division Three of the Second District Court of Appeal (hereafter "the *Sharkey* court") filed an opinion (Petition for Review Appendix, *Sharkey* Court of Appeal Opinion [hereafter "*Sharkey* Opn."]), certified for publication. It agreed with the People's position and the understanding under which government agencies responsible for carrying out the provisions of the SVPA have been operating for over 14 years: under the regulation, which properly defined "good cause to place a 45-day hold pursuant to … section 6601.3," good cause exists under section 6601.3 for the Board to detain an inmate for up to 45 days past his release date in order to do the full evaluation under section 6601, subdivisions (c) to (i), if there is some evidence (1) that the inmate suffered at least one qualifying SVP offense and (2) that the inmate is likely to engage in sexually violent predatory criminal behavior. There is no requirement to show why the evaluation could not be completed before the EPRD. (*Sharkey* Opn., pp. 2, 14-16, see especially fn.5.)

Earlier that month, the Third District Court of Appeal (hereafter "the *Lucas* court") held that the habeas corpus petitioner in *Lucas* was not in the lawful custody of CDCR when the SVP petition was filed because the

section 6601.3 hold was placed "without a showing of good cause." (*Lucas* Court of Appeal Opinion [hereafter "*Lucas* Opn."], p.8.) The *Lucas* court reasoned that "A 45-day hold under section 6603.1 cannot be justified based on the definition of good cause contained in regulation 2600.1(d) because the regulation is inconsistent with the legislative intent behind the statutory good cause requirement." (*Id.* at p. 12.) To arrive at its holding, the *Lucas* court assumed that all persons referred to DMH for SVP evaluation must have qualified as the result of the requisite SVP criminal history and some evidence of being likely to engage in sexually violent predatory criminal conduct, whereas in its view a statutory good cause requirement necessarily implies exceptional circumstances such that the normal time limits could not be met. (*Id.* at pp. 17-19.)

To resolve this conflict in the lower appellate court opinions, this Court has suggested that the parties address the first two issues set forth in the ISSUES PRESENTED section, *ante*. Additionally, although both lower courts held that "good faith mistake of law or fact" applied in their cases, this Court also queried whether the good faith exception applies in these cases.

ARGUMENT

I

"GOOD CAUSE" EXISTS TO IMPOSE A 45-DAY HOLD AND EXTEND A SCHEDULED PAROLE DATE UNDER SECTION 6601.3 TO PERMIT AN INMATE TO BE EVALUATED UNDER THE SVPA WHEN SOME EVIDENCE SHOWS THAT INMATE TO BE A POTENTIAL SVP

Under section 6601.3, the Board could detain an inmate referred to DMH under section 6601, subdivision (b), for up to 45 days past his EPRD,[6]

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6. Inmates not referred or found not to be SVPs are released no later than 45 days beyond their EPRD. (Cal. Code Regs., tit. 15, § 2600.1, subd. (e).)

"[u]pon a showing of good cause," in order to evaluate the inmate fully under section 6601, subdivisions (c) to (i). The issue here is what constitutes such good cause.

A.

"Good Cause" Must Be Determined By Reference To The Particular Circumstances Of Each Case

The *Lucas* court began its analysis of "good cause" as used in section 6601.3 by acknowledging that the term "may be difficult to define with precision, since it must, in a great measure, be determined by reference to the particular circumstances appearing in each case." (*Lucas* Opn., pp. 12-13, citing *Ex Parte Bull* (1871) 42 Cal. 196, 199.) The *Lucas* court went on to cite from *Cal. Portland Cement Co. v. Cal. Unemp. Ins. Appeals Board* (1960) 178 Cal.App.2d 263 (hereafter "*Cal. Portland*") what has been said about "good cause" in the case law: "'Good cause' must be so interpreted that the fundamental purpose of the legislation shall not be destroyed." (*Lucas* Opn., p. 13; *Cal. Portland*, *supra*, 178 Cal.App.2d at p. 272.)

The issue in *Cal. Portland* was what the Legislature had in mind when it provided that the employer's account would not be chargeable for unemployment benefits vis-à-vis an employee who left his employ "voluntarily and without good cause." One appellate court offered this contextual interpretation for "good cause": "'By "good cause" as used in the Act is obviously meant such a cause as justifies an employee's voluntarily leaving the ranks of the employed and joining the ranks of the unemployed.'" (*Cal. Portland*, *supra*, 178 Cal.App.2d at p. 272, quoting *Sun Shipbuilding & Dry D. Co. v. Unemployment Comp. Board of Review* (1948) 358 Pa. 224, 231 [56 A.2d 254, 258] (hereafter "*Sun Shipbuilding*").)

The concept of implied exception was introduced into "good cause" in order to explicate the incongruity of an unemployment benefits

statute providing benefits for those who voluntarily left their employment with good cause even though the declared purpose of the statutory scheme was to relieve economic insecurity due to "involuntary unemployment."[7] In this connection, the court stated:

> "'good cause' and 'personal reasons' are flexible phrases, ... However, in whatever context they appear, they connote, as minimum requirements, real circumstances, substantial reasons, objective conditions, palpable forces that operate to produce correlative results, adequate excuses that will bear the test of reason, just grounds for action, and always the element of good faith. [¶] When related to the context of the statute, 'good cause' takes on the hue of its surroundings, and it ... must be construed in the light reflected by its text and objectives."

(*Cal. Portland*, *supra*, 178 Cal.App.2d at pp. 272-273, quoting *Bliley Electric*, *supra*, 158 Pa.Super. at p. 556 [45 A.2d at p. 903].)

In holding that a section 6601.3 hold "cannot be justified based on the definition of good cause contained in regulation 2600.1(d) because the regulation is inconsistent with the legislative intent behind the statutory good cause requirement" which necessarily implies exceptional circumstances that made it impossible to meet the normal time limits (*Lucas* Opn., pp. 12, 17-19),

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7. *Cal. Portland*, *supra*, 178 Cal.App.2d at p. 273, quoting *Bliley Electric Co. v. Unemployment Comp. Board of Review* (1946) 158 Pa.Super. 548, 556 [45 A.2d 898, 903] (hereafter "*Bliley Electric*"):

> "The purpose of [the unemployment statute] is to relieve economic insecurity due to 'involuntary unemployment.' Yet selection of involuntarily unemployed workers is accomplished by means of several eligibility and disqualification provisions, and the provision under review provides benefits for employes who voluntarily leave employment with good cause. Thus the legislature enacted, paradoxical as it may seem, that an employe who voluntarily leaves his work with good cause is involuntarily unemployed."

the *Lucas* court took only the "adequate excuses"[8] meaning of "good cause" from the case law analysis. (*Cal. Portland*, *supra*, 178 Cal.App.2d at p. 273.) But "good cause" can also mean "real circumstances, substantial reasons, objective conditions, palpable forces that operate to produce correlative results ... [or] just grounds for action," if in each case there is "the element of good faith." (*Id.* at pp. 272-273.)

Clearly, the meaning of "good cause" must be derived from a close reading of the statute, with particular attention to the context in which it appears, following the rules of statutory interpretation and bearing in mind the legislative intent of the statute and the scheme of which it is a part. Thus, just as "good cause" in the context of leaving one's employment "voluntarily and without good cause" as set forth in the unemployment benefits statute means "'such a cause as justifies an employee's voluntarily leaving the ranks of the employed and joining the ranks of the unemployed.'" (*Cal. Portland*, *supra*, 178 Cal.App.2d at p. 272, quoting *Sun Shipbuilding*, *supra*, 358 Pa. at p. 231 [56 A.2d at p. 258]), so "good cause" in the context of section 6601.3 means cause to justify detaining an inmate referred to DMH under section 6601, subdivision (b), past his EPRD

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8. The *Sharkey* trial court also only considered the "adequate excuses" meaning of "good cause" in its ruling. (Ex. 1, pp. 2, 6.) This is the meaning applicable to motions to continue hearings, e.g., under Penal Code sections 859b or 1050. But the legislative intent of time limits in Penal Code section 859b, for example, is clearly to guarantee a speedy preliminary hearing for accused persons who have remained in custody. Thus, the prosecution must establish good cause for a continuance or suffer dismissal of the complaint, and the trade-off for continuing the hearing past the statutory time for good cause is to release the defendant on his own recognizance. (Pen. Code, § 859b, ¶¶ 3, 5.) The legislative intent of the SVPA is the identification of SVPs so that they may be detained. Thus, upon a showing of good cause, the inmate is detained beyond his EPRD and not released.

in order to evaluate the inmate fully under section 6601, subdivisions (c) to (i). (§ 6601.3.) This interpretation of "good cause" obviously gives the words their plain meaning and thus comports with the first rule of statutory interpretation. (*Solberg v. Superior Court* (1977) 19 Cal.3d 182, 198 ["When statutory language is thus clear and unambiguous there is no need for construction, and courts should not indulge in it"]; *People v. Belleci* (1979) 24 Cal.3d 879, 884 ["We have declined to follow the plain meaning of a statute only when it would inevitably have frustrated the manifest purposes of the legislation as a whole or led to absurd results"]; *Green v. State of California* (2007) 42 Cal.4th 254, 260 ["we ascertain the Legislature's intent in order to effectuate the law's purpose. ... We must look to the statute's words and give them their usual and ordinary meaning. ... The statute's plain meaning controls the court's interpretation unless its words are ambiguous"].)

In sum, if the showing of "good cause" in its statutory context is to justify detaining an inmate referred under section 6601, subdivision (b), past his EPRD in order to evaluate him fully under section 6601, subdivisions (c) to (i), viewing "good cause" as "substantial reasons, objective conditions, [or] just grounds for [detaining someone for evaluation]" (*Cal. Portland*, *supra*, 178 Cal. App.2d at pp. 272-273, quoting *Bliley Electric*, *supra*, 158 Pa.Super. at p. 556 [45 A.2d at p. 903]) is consonant with its statutory context without further construction beyond the plain meaning of the statutory language.

B.

The Regulation's Definition Of "Good Cause" As Used In Section 6601.3 Is Consistent With The Legislative Intent Of The SVPA As A Whole And The "Good Cause" Requirement Of That Section

The legislative intent of the SVPA is indisputably "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* Opn., p. 15, citing *People v. Dean* (2009) 174 Cal.App.4th 186, 191; cf. *Lucas* Opn., pp. 5-6, 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.)

Both Real Party Sharkey and the *Lucas* court assume that the Legislature's intent in enacting provisions for identifying SVPs while they are incarcerated was to balance the interests of SVP inmates "in ending their imprisonment as soon as otherwise provided by law" against the public interest in treating the mental disorders of SVPs which make them a threat to society. (*Lucas* Opn., pp. 14-15.) Accordingly, Sharkey argues that the legislative history of section 6601.3, with its repeated references to short and judicially modified prison terms or advanced EPRDs which would prevent DMH from finishing the inmate's evaluation before his EPRD, "demonstrates legislative intent that 45-day holds only be granted in very limited circumstances." (Real Party's Opening Brief on the Merits (hereafter "RPOB"), p. 16, see pp. 16-20.) He further contends that both Courts of Appeal erred in their interpretation of the regulation and that "exceptional circumstances" and "good cause" are required before a 3-day and in turn a 45-day hold may be imposed. (*Id.* at pp. 20-26.) But legislative committee analyses of background are not exhaustive, but merely instructive or illustrative, and Sharkey is mistaken as to what regulation 2600.1 requires.

In analyzing what constitutes "good cause," our focus should be on the fundamental purpose of the SVPA. (*Cal. Portland*, *supra*, 178 Cal.App.2d at p. 272 ["'Good cause' must be so interpreted that the fundamental purpose of the legislation shall not be destroyed"].) The SVPA

contemplates screening and evaluating inmates beginning six months before their EPRD to determine whether the People should seek to have certain inmates civilly committed as SVPs. (§ 6601, subds. (a) - (d).) However, full evaluation pursuant to subdivisions (c) to (i) of section 6601 is a lengthy process. An evaluation in accordance with a standardized assessment protocol developed by DMH to determine whether the person is an SVP as defined by the statute (§ 6601, subd. (c)) is followed by evaluation by two practicing psychiatrists or psychologists. If the professionals concur that the inmate has a diagnosed mental disorder that makes him likely to engage in acts of sexual violence without appropriate treatment, the evaluation reports and supporting documents are forwarded to the County's designated counsel who may file a petition for civil commitment if (s)he concurs with the recommendation. (*Id.*, subds. (d)-(i).) Moreover, full evaluation contemplates further psychological evaluations, if the initial psychiatrist or psychologist evaluators disagree as to whether the inmate has a diagnosed SVP-type mental disorder. (See § 6601, subd. (e).) Thus, the SVPA requires not merely the identification of inmates with diagnosed mental disorders that make them potential SVPs, but also that this process be carried out by a standardized, meticulous procedure that promises accuracy.

In light of this clear interest in accurately identifying SVPs and diagnosing their mental disease so that they can be treated, section 6601.3 by its own terms serves SVPA's purpose of identifying SVP inmates before their release by allowing the Board to detain potential SVPs for up to 45 days past their EPRD where a full evaluation is needed but not finished. To interpret "good cause" under section 6601.3 as requiring the state agencies to show exceptional circumstances to excuse compliance with EPRD deadlines so that 45-day holds would be granted only in very limited circumstances, as

Sharkey urges, is to transform the EPRD into a statutory right[9] to cut off the government's ability to act under the SVPA on that date. Yet the Legislature declared that early determination of the SVP status of inmates before expiration of their terms of imprisonment, "is in the interest of society" (Stats. 1995, ch. 763, § 1, p. 5921): i.e., the suggested deadlines do not serve the inmates' interest "in ending their imprisonment as soon as otherwise provided by law" (*Lucas* Opn., p. 15), but are the best way to insure that SVPs are not released into society before their psychological condition is fully evaluated, to pose a danger to the public. (Cf. *Sharkey* Opn., pp. 15, 17.) In fact, the EPRD may be extended according to the provisions of the SVPA.

When the DMH evaluation of an inmate with qualifying prior convictions yields the requisite indicia of mental disease, the potential SVP is detained for civil commitment proceedings and treatment in a state hospital according to the provisions of the SVPA. (§§ 6601, subd. (a)(2), 6601.5, 6602, 6602.5.) As to persons identified through the DMH's evaluation process as potential SVPs, the EPRD is extended (parole is tolled) until the judicial process and SVP treatment is successfully completed. (§ 6601, subd. (k); Cal. Code Regs., tit. 15, § 2600.1, subd. (f).) Plainly, the paramount purpose of the SVPA is to detain identified SVPs for treatment of their mental disease. (*People v. Dean*, *supra*, 174 Cal.App.4th at p. 191; *Lee v. Superior Court*, *supra*, 177 Cal.App.4th at p. 1122; *People v. Allen*, *supra*,

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9. Interpreting "good cause" as "exceptional circumstances" to excuse compliance with the statutory deadlines does not comport with the SVPA's purpose of accurately identifying potential SVPs before they are released from prison or benefit the inmate population as a whole. Under Sharkey's definition of good cause, loss of prison records through fire as an exceptional circumstance is good cause for extending the EPRD of any inmate, even without evidence of SVP criminal history. This would infringe the liberty interest of non-SVP inmates, contrary to the purpose of the SVPA.

44 Cal.4th at p. 857; Stats. 1995, ch. 763, § 1, pp. 5921-5922.) The evidence of prior SVP criminal history and a diagnosis by DMH of a current mental disease making them prone to predatory criminal conduct suffice to have an inmate detained for further civil commitment proceedings.

Since an inmate's EPRD may be extended based on evidence of prior SVP criminal history and a diagnosis by DMH of a current mental disease making them prone to predatory criminal conduct, imposing a 45-day hold under section 6601.3 for good cause shown, to allow DMH to complete its mental evaluation would put the inmate temporarily in the approximate posture as an inmate pending civil commitment proceedings. Moreover, since the object of section 6601.3 is to let DMH complete its evaluation during the 45-day hold period (which, assuming an SVP diagnosis, puts the inmate in the same posture as one whose parole is tolled pending SVPA proceedings), the validity of a 45-day hold under section 6601.3 should turn upon the existence of reasonable cause to detain the inmate for a complete evaluation of his mental condition.

When there is some evidence that the inmate has a prior qualifying conviction and is likely to engage in predatory criminal behavior (this is the regulation's definition of "good cause"), there is reasonable cause to believe that he is a potential SVP and should be fully evaluated by DMH. There is also some ground for believing that DMH would diagnose him with a current mental disease posing a danger to society so that his EPRD would be extended under the SVPA. (§ 6601, subd. (k).) Thus, consistent with the fundamental purpose of the SVPA to identify and detain SVPs for treatment and the objective of section 6601.3, the Board may extend an inmate's EPRD where good cause exists to believe that a full evaluation by DMH is needed (i.e., there is some evidence of an SVP prior conviction and a likelihood of

predatory criminal behavior) but such an evaluation has not been done.

One provision in the SVPA scheme itself persuasively shows that the regulation's definition of "good cause" as something like, but not quite probable cause is consistent with legislative intent. (*People v. Vessell* (1995) 36 Cal.App.4th 285, 289 [statute must be construed to conform to legislative purpose, in light of context of entire scheme of law of which it is a part; courts assume Legislature when enacting statute was aware of existing related laws and intended to maintain consistent body of rules].) Section 6602.5 prohibits placing a person in a state hospital under the SVP statute without a probable cause finding, either under section 6601.3 or section 6602, that the person is likely to engage in SVP criminal behavior. This is revealing about the legislative intent of section 6601.3: for purposes of placing an inmate in a state hospital following a determination that he might be an SVP, the Legislature put the "good cause" finding in section 6601.3 on a par with the probable cause determination under section 6602. This is strong evidence that the Legislature viewed "good cause" under section 6601.3 as just grounds for detaining an inmate for evaluation as a potential SVP.

C.

The Regulation Does Not Require "Exceptional Circumstances" And A 3-Day Hold Before A 45-Day Hold May Be Imposed For "Good Cause" Under Section 6601.3.

Sharkey argues that the Board must comply with the 3-day hold requirement under subdivision (a) requiring "exceptional circumstances" before a 45-day hold may be imposed under the regulation. That is not what CCR, title 15, section 2600.1 says.

Fairly stated, CCR, title 15, section 2600.1 provides that one commissioner or deputy commissioner will conduct Board determinations

under section 6601.3. (Cal. Code Regs., tit. 15, § 2600.1, subd. (c).) When an inmate or parolee in revoked status is referred to DMH for a full evaluation, if the Board commissioner or deputy commissioner could not evaluate the inmate under section 6601 before the EPRD because of exceptional circumstances, the Board could impose a temporary hold on the inmate up to 3 days beyond his EPRD pending a "good cause" determination under section 6601.3. (*Id.*, subd. (a).) If the 3-day hold is imposed, the staff of the Board must document whether the inmate has been screened or is being screened as a likely SVP; the "good cause" determination must be made during the temporary 3-day hold. (*Id.*, subd. (b).) "Good cause" is defined in subdivision (d) without any reference to "exceptional circumstances."

Under section 6601, the CDCR and staff of the Board should normally have evaluated an inmate beginning about 6 months before his EPRD sufficient for a "good cause" determination, but when such an evaluation has not been conducted before the EPRD because of exceptional circumstances, subdivision (a) of CCR, title 15, section 2600.1 provides that the Board may impose a 3-day temporary hold to make the "good cause" determination. In such exceptional cases, the inmate might not even have been screened, and the staff must document whether screening has occurred under subdivision (b). These subdivisions are addressed to the short or judicially modified sentences and administratively advanced EPRD situations referred to in the legislative history, but they are not preconditions for imposing a 45-day hold under section 6601.3 nor the only situations eligible for such a hold.[10] Indeed, nothing in the language of section 6601.3

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10. As discussed under section I.B., at p. 13, *ante*, the clear interest in accurately identifying SVPs and diagnosing their mental disease has resulted in a long and meticulous procedure which could often cause the inmate's referral to DMH to be delayed so that it cannot complete a full evaluation of

or CCR, Title 15, section 2600.1, subdivisions (a) and (b) or subdivision (d) supports Sharkey's conclusion that "a correct interpretation of regulation 2600.1 requires the imposition of a 3-day hold and a finding of 'exceptional circumstances' in addition to a finding of 'good cause' before a 45-day hold may be imposed." (RPOB, p. 26.)

To the contrary, consistent with the fundamental purpose of the SVPA and the objective of section 6601.3, the existence of some evidence that an inmate has the qualifying SVP prior criminal history and is likely to engage in predatory criminal conduct, without more, constitutes "good cause" to impose a 45-day hold under section 6601.3 to allow DMH to finish a complete evaluation of an inmate referred under the SVPA.

II

CALIFORNIA CODE OF REGULATIONS, TITLE 15, SECTION 2600.1, SUBDIVISION (D), WHICH DEFINES "GOOD CAUSE" AS "SOME EVIDENCE" THAT THE INMATE HAS A PRIOR QUALIFYING CONVICTION AND IS LIKELY TO ENGAGE IN PREDATORY CRIMINAL BEHAVIOR, IS A VALID REGULATION

A.

Section 2600.1, Subdivision (d), Is Procedurally Valid Because The Board Is Empowered To Promulgate Such Regulations

The Board is statutorily vested with "the power to establish and enforce rules and regulations under which prisoners committed to state prisons may be allowed to go upon parole outside the prison buildings and enclosures when eligible for parole." (Pen. Code, § 3052.) Pursuant to that enabling statute, the Board established its parole hold policy in Chapter 6

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the inmate's mental condition before his EPRD.

(Parole Revocation), article 1, under CCR, title 15 (Crime Prevention and Correction). As that policy applies to potential SVP inmates, section 2600.1, subdivision (d), of the CCR regulates the "good cause" required to impose 45-day holds pursuant to section 6601.3.

In addition, in section 6601.3 of the SVPA, the Legislature specifically delegated to the Board the authority to impose 45-day holds for "good cause." Where the Legislature has empowered the Board both to makes rules to regulate parole eligibility and to impose a 45-day hold under the SVPA, the Board is clearly authorized to promulgate the regulation at issue here. Thus, the regulation is "'"'"within the scope of the authority conferred."'"'"[11] (See *Sharkey* Opn., p. 14.) Moreover, because of this legislative delegation of authority, "the Board's view of what constitutes good cause for imposition of [a 45-day hold] is entitled to deference." (*Sharkey* Opn., p. 12; see discussion of review of administrative regulations at pp. 12-14.)

B.

The Regulation Is Substantively Valid Because It Sets Proper Guidelines For Enforcing Section 6601.3 In Accordance With The Fundamental Purpose Of The SVPA

As the People argued in section I, *ante*, the regulation defines "good cause" as used in section 6601.3 in a manner that effectuates the fundamental purpose of the SVPA and reflects the text and objective of section 6601.3 itself. (Cf. *Sharkey* Opn., p. 15; also *Cal. Portland*, *supra*, 178

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11. When reviewing the validity of a regulation which an administrative agency has adopted pursuant to a legislative delegation of authority, the reviewing court decides "'"'whether the regulation (1) is "within the scope of the authority conferred" [citation] and (2) is "reasonably necessary to effectuate the purpose of the statute" [citation].'"'" (*Ramirez v. Yosemite Water Co.* (1999) 20 Cal.4th 785, 800 (hereafter "*Ramirez*").)

Cal.App.2d at pp. 272, 273.) As such, it is a valid interpretation of the text of section 6601.3. Because the regulation properly interprets the statute, it is a valid regulation.

As previously noted, section 6602.5[12] is instructive on how the Legislature viewed the determination of good cause under section 6601.3. (*People v. Vessell*, *supra*, 36 Cal.App.4th at p. 289; see end of section I.B., *ante.*) Because under section 6602.5, a section 6601.3 determination of good cause is sufficiently similar to a probable cause finding under section 6602 for purposes of placing an inmate in a state hospital, "good cause" in section 6601.3 is similar to probable cause under section 6602 but based on less evidence because there has been no diagnosis of a mental disease by DMH. This is exactly reflected in the regulation's definition of "good cause" as "some evidence" that the inmate has a prior qualifying conviction and is likely to engage in predatory criminal behavior.

The regulation is also "'"'"reasonably necessary to effectuate the purpose of the statute"'"'" (*Ramirez*, *supra*, 20 Cal.4th at p. 800.) The fundamental purpose of the statute is to identify and diagnose with

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12. One Court of Appeal appears to have similarly understood "good cause" as used in section 6601.3. See *People v. Ciancio* (2003) 109 Cal.App.4th 175, 181, fn. 1:

> Section 6602.5, subdivision (a) provides in pertinent part: "No person may be placed in a state hospital pursuant to the provisions of this article until there has been a determination pursuant to Section 6601.3 or 6602 that there is probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior." Section 6602 sets out the procedures for the probable cause hearing. Section 6601.3 allows the Board of Prison Terms, with good cause, to hold an alleged SVP in custody for up to 45 days beyond his release date for the purpose of conducting the mental health evaluation under section 6601.

reasonable accuracy potential SVPs in the prison population in order to detain them for treatment. The legislative intent is two-fold: to prevent the release of SVPs into the general population and to place in the state hospital for treatment only those persons who may reasonably be thought to be SVPs. (§ 6602.5.) The regulation addresses both objectives. Its definition of good cause for purposes of section 6601.3 as "some evidence" (a low standard met by documentation of SVP priors and screening of criminal history statistics) prevents the premature release of persons who could not be evaluated before their EPRD (possibly because of lugubrious procedures engendered by the need for an accurate evaluation). It also ensures that only inmates who may potentially be SVPs would be detained past their EPRD by requiring some evidence ("substantial reasons [or] objective conditions") to support the detention. (*Bliley Electric*, *supra*, 158 Pa.Super. at p. 556 [45 A.2d at p. 903].)

Thus, CCR, title 15, section 2600.1, subdivision (d), is a valid regulation because it was within the Board's scope of authority and reasonably necessary to effectuate the purpose of the SVPA. (*Ramirez*, *supra*, 20 Cal.4th at p. 800.)

III

THE "GOOD FAITH MISTAKE OF LAW OR FACT" EXCEPTION CLEARLY APPLIED TO THE *SHARKEY* AND *LUCAS* CASES

Because CCR, title 15, section 2600.1, subdivision (d), is a valid regulation and there was good cause to detain Sharkey and Lucas for up to 45 days past their EPRD under section 6601.3, as the regulation defined good cause, this Court should uphold the regulation and affirm the *Sharkey* decision. In that case, there would be no need to address the good faith mistake exception issue.

However, based upon the procedural history of the two cases, it may be said that the "good faith mistake of law or fact" exception applied to both cases at some point during that history. When the *Lucas* appellate court and the *Sharkey* trial court held that the regulation's definition of "good cause" could not be used to justify the imposition of a 45-hold on Lucas and Sharkey under section 6601.3, that such a hold was imposed in reliance upon the regulation should have been deemed a good faith mistake of law. Up to that time, no appellate court had ever invalidated the regulation, and the Board had acted for nearly 15 years in accordance with that regulation. (See *Sharkey* Opn., p. 15, fn. 5 and text thereat.)

By the same token, if this Court were to invalidate the regulation, the "good faith mistake of law" exception would apply to save the SVP petitions in *Lucas* and *Sharkey* from being dismissed.

CONCLUSION

For the reasons stated, this case should be affirmed, and the *Lucas* decision should be affirmed in part and reversed in part.

Respectfully submitted,

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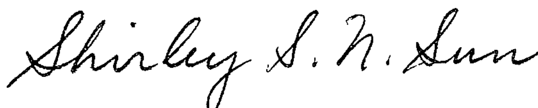
By

IRENE WAKABAYASHI



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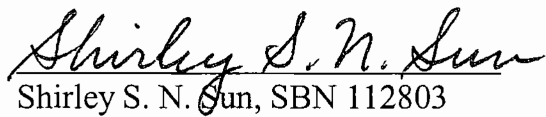
CERTIFICATION

Pursuant to rule 8.520(c)(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 Brief on the Merits, excluding cover page, tables, certification, and proof of service, contains about 6,668 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 Brief on the Merits 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:

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I further declare that I served the attached Answer Brief on the Merits by hand delivering a copy thereof addressed to:

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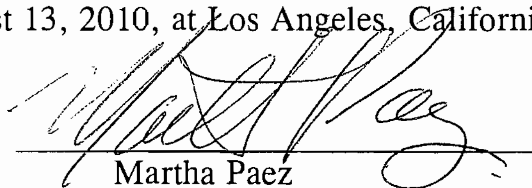
Executed on August 13, 2010, at Los Angeles, California.



Martha Paez