Supreme Court Copy

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

COPY

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

SUPREME COURT
FILED
SEP 07 2010
Frederick K. Ohlrich Clerk
Deputy

REAL PARTY IN INTEREST'S REPLY BRIEF ON THE MERITS

MICHAEL P. JUDGE, PUBLIC DEFENDER
OF LOS ANGELES COUNTY, CALIFORNIA

Albert J. Menaster,
Karen King,
Jack T. Weedin,
(State Bar No. 73086)
Deputy Public Defenders

Appellate Branch
320 West Temple Street, Suite 590
Los Angeles, California 90012
Telephone No.: (213) 974-3067
Fax No.: (213) 626-3519

Attorneys for Real Party in Interest

TOPICAL INDEX

Page

REAL PARTY IN INTEREST'S REPLY BRIEF ON THE MERITS 1

ARGUMENT

I

WELFARE AND INSTITUTIONS CODE SECTION 6601.3'S "GOOD CAUSE" PROVISION REQUIRES A SHOWING OF BOTH "EXCEPTIONAL CIRCUMSTANCES" AND EVIDENCE THAT AN INMATE FALLS WITHIN THE PURVIEW OF THE SEXUALLY VIOLENT PREDATOR ACT 2

II

SECTION 6601, SUBDIVISION (A)(2)'S "GOOD FAITH OF MISTAKE OF FACT OR LAW" EXCEPTION IS INAPPLICABLE 10

CONCLUSION 11

CERTIFICATE OF COMPLIANCE

TABLE OF AUTHORITIES

Page

CASES

	Page
California Portland Cement Co. v. Cal. Unemployment Insurance App. Board (1960) 178 Cal.App.2d 263	3
People v. Otto (2001) 26 Cal.4th 200	4
In re Prewitt (1972) 8 Cal.3d 470	4

STATUTES

	Page
Penal Code	
§ 3000, subd. (a)	4
§ 6601, subd. (a)(1)	2
§ 6601, subd. (a)(2)	10
§ 6601, subd. (k)	4
§ 6601.3	2,3,4
Rules of Court	
Rule 29.3(a)	1

OTHER

	Page
Senate Com. on Criminal Procedure, Analysis of Ass. Bill No. 3130	8

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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

REAL PARTY IN INTEREST'S REPLY BRIEF ON THE MERITS

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Real party in interest, Christopher Sharkey, hereinafter "real party," by and through his attorney Michael P. Judge, Public Defender of Los Angeles County, hereby respectfully files his Reply Brief on the Merits. (Cal. Rules of Ct., Rule 29.3(a).)

ARGUMENT

I

WELFARE AND INSTITUTIONS CODE SECTION 6601.3'S "GOOD CAUSE" PROVISION REQUIRES A SHOWING OF BOTH "EXCEPTIONAL CIRCUMSTANCES" AND EVIDENCE THAT AN INMATE FALLS WITHIN THE PURVIEW OF THE SEXUALLY VIOLENT PREDATOR ACT

The recurrent theme of petitioner's Answer Brief on the Merits, hereinafter "A.B.M.," is that if the term "good cause" embodied in Welfare and Institutions Code[1/] section 6601.3 is construed so as to require a showing of "exceptional circumstances" before a 45-day hold may be imposed to extend an individual's release date it will undermine the legislative intent of the Sexually Violent Predator Act, hereinafter "SVPA," which 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'" (See e.g., A.B.M. at pp. 13-14.) Petitioner's contention is without merit. Section 6601, subdivision (a)(1), provides that the identification process of individuals potentially falling within the purview of the SVPA is to commence "at least six months prior to the individual's scheduled date for release from prison. . . ." In the above-entitled

---

[1/] All statutory reference are to the Welfare and Institutions Code unless otherwise stated.

case, the SVPA identification process began on February 19, 2008, approximately nine months prior to real party's release date of November 24, 2008. (Slip Opn. at pp. 2-4; Pet. for Writ of Mandate, Exh. 5, CDC 7377, at p. 84.) Significantly, petitioner avoids any discussion of section 6601.3's legislative history which demonstrates that only in situations "in which an inmate's release date may be unexpectedly moved up, or when a parole revocation term allows insufficient time to complete the evaluation process" may 45-day hold be invoked. (E.g., Mot. For Jud. Notice, Exh. F, Assembly Committee on Appropriations Analysis, Apr. 12, 2000, p. 1.) Real party's scheduled release date was never moved up or shortened, nor was he subject to a shortened parole revocation. Therefore, the time frame in which to evaluate and identify real party as a potential SVP in the above-entitled case fully comports with legislative intent that six months was adequate and that no further time was necessary absent evidence of exceptional circumstances why the evaluation could not be completed on a timely basis.

The legislative intent behind section 6601.3's invocation of 45-day holds only in limited circumstances–e.g., when an inmate's parole revocation term is moved up or when a parole revocation terms allows insufficient time to complete an evaluation--comports with the decision in California Portland Cement Co. v. Cal. Unemployment Insurance App. Board (1960) 178

Cal.App.2d 263, 272-73, that "good cause" must take account "'as minimum requirements, real circumstances, substantial reasons, objective conditions, palpable forces that operate to produce correlative results adequate excuse that will bear the test of reason, just grounds for action, and always the element of good faith.'" (See generally A.B.M. at pp. 8-10.)

Petitioner would have this court condone the rescission of real party's parole date and the extension of his imprisonment for 45-days under section 6601.3 notwithstanding the fact that the Department of Corrections and Rehabilitation, hereinafter "CDCR," the Board of Prison Terms, hereinafter "BPT," and the Department of Mental Health, hereinafter "DMH," had more than six months to evaluate him under section 6601. Both rescission of parole and proceedings under the SVPA implicate an individuals constitutional rights to liberty and due process. (In re Prewitt (1972) 8 Cal.3d 470, 474; People v. Otto (2001) 26 Cal.4th 200, 209.)[2/] In enacting section 6601.3 the Legislature sought to strike a balance between an individual's liberty interest and the need for extending time in order to complete an evaluation in exceptional cases.

[2/] Petitioner inaccurately states that "[a]s 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." (A.B.M. at p. 14, fn. 9.) Parole is only tolled upon a judicial finding that a person is a SVP, and not upon merely identifying a person through the DMH's evaluation process as a potential SVP. (Pen. Code § 3000, subd. (a)(4); § 6601, subd. (k); Reg. 2600.1, subd. (f).)

Completely absent from the consideration by the CDCR, BPH, and DMH in the above-entitled case are any facts demonstrating why the section 6601 evaluation could not have reasonably been completed within the statutory six month time period. Instead, the record demonstrates that the evaluation was not completed on a timely basis due to the negligence and ineptitude of the CDCR, BPH, and DMH.

Petitioner mischaracterizes the facts surrounding the reason why the section 6600 evaluation was not completed in six months. The delay was not attributable to economic cutbacks necessitating a change in parole agents, difficulty in obtaining old records, or the complexity of the case. (A.B.M. at p. 4.) Rather it was because the BPH failed to timely conduct and complete its evaluation which merely entailed verification of information supplied by CDCR which was sufficient, in and of itself, to commence the DMH evaluation process without further investigation or delay according to the testimony of supervising parole agent Lopez. Instead, the evaluation process was negligently allowed to languish from March 17, 2008, when parole agent Perry was assigned until it was reassigned to parole agent Zahner on August 13, 2008–i.e., a period of almost four months. Notably, after the case was reassigned to parole agent Zahner, she was able to complete the evaluation in approximately 29 days. A second negligent, unwarranted, and unnecessary

delay occurred when the DMH allowed one of its evaluators, Dr. Koetting, to delay the completion his final report notwithstanding the fact that Dr. Koetting had submitted his Clinical Evaluation Summary seven days before real party's parole date in which he concluded real party met the SVPA criteria and the other evaluator, Dr. Karlsson, timely completed his final report approximately three weeks prior to real party's parole date. (See real party's Opening Brief on the Merits, hereinafter "O.B.M.," at pp. 4-8.) Arguendo, even if Dr. Koetting legitimately required more time to complete his final report, need to resort to a 45-day hold would have been unnecessary if parole agent Perry and his supervisor, parole agent Lopez, had not allowed real party's case to languish for approximately four months.

Petitioner's invocation of the "protection of society" scare tactic is meritless. (A.B.M. at p. 12.) The public is protected. All the CDCR, BPH, and DMH must do to protect the public is follow the mandates of sections 6601 and 6601.3, the legislative intent behind the enactment of section 6601.3, and the sum and substance of California Code of Regulations, title 15, section 2600.1, hereinafter "Regulation 2600.1."

Petitioner further complains that the requiring of "exceptional circumstances" would limit the use of 45-day holds to very limited circumstances. (A.B.M. at pp. 13-14.) This is precisely what the Legislature intended. (See e.g., Mot. For Jud. Notice, Exh. E, Enrolled Bill Report,

Department of Corrections, dated Apr. 8, 1998, p. 1, "It is important to identify these persons [potential SVP's] early in their incarceration in order for the DMH evaluation to be completed by the time the person would otherwise parole from prison, at which time they can be turned over to county jurisdiction for civil commitment trial. Many persons, especially parole violators, serve a very short time in prison (often 6 months or less). It is difficult to complete the identification process and DMH evaluation by the time they would be released to serve parole. [¶] S.B. 536 would reestablish W&I Code Section 6601.3 allowing BPT to place a hold ... on these persons for up to 45 days for DMH to complete their evaluation."

In a feeble attempt to glean the legislative intent behind section 6601.3, without ever addressing that sections legislative history as set for the real party's Opening Brief on the Merits (pp. 15-19), petitioner attempts to bootstrap section 6602.5's prohibition against placing a person in a state hospital under the SVP statute without a probable cause finding under section 6601.3 or section 6602, that the person is likely to engage in SVP criminal behavior. (A.B.M. at pp. 16, 20.) The nuance petitioner conveniently overlooks is the fact that there are different purposes, requirements, standards, and ramifications for extending an individual's incarceration and parole release date for 45-days versus for placing an individual in a state hospital during the pendency of SVPA proceedings. For example, section 6602.5

hospital replacement restrictions were enacted out of concern that "scarce mental health monies may be diverted to care for a new population of prisoners in mental health facilities" and because "Sexually Violent Predators already at Atascadero [State Hospital] are proving incompatible with hospital milieu and damaging people with severe and persistent mental illness." (Senate Com. on Criminal Procedure, Analysis of Ass. Bill No. 3130 (1995-1996 Reg. Sess.) July 9, 1996, pp. 6, 8.) Although compliance with Regulation 2600.1, subdivision (d), is sufficient for hospitalization, is insufficient in and of itself for extending an individual's parole release date without also complying with the "exceptional circumstances" requirement set forth in subdivisions (a) and (b) of Regulation 2600.1.

Before a 45-day hold may be imposed pursuant to Regulation 2600.1, subdivision (d), the Board must first comply with subdivision (a). By its express terms, Regulation 2600.1, subdivision (a), requires a determination of "exceptional circumstances [which] preclude an earlier evaluation by the person pursuant to 6601 of the Welfare and Institutions Code" pending a determination of "good cause" pursuant to section 6601.3. The "exceptional circumstances" provision Regulation 2600.1, subdivision (a), effectuates section 6601.3's legislative intent that 45-day holds be reserved for situations where an individual's release date was unexpectedly moved up or when a

parole revocation term allows insufficient time to complete the evaluation process.

Regulation 2600.1, subdivision (b), expressly states that "[t]he good cause determination by the board pursuant to subdivisions (c) and (d) of this section must occur within the time constraints of the temporary hold." Regulation 2600.1, subdivision (d), referred to in subdivision (b), is the subdivision authorizing a 45-day hold upon an additional finding of good cause. Although the actual imposition of a 3-day temporary hold under subdivision (a) of Regulation 2600.1 is discretionary, the requirement that "exceptional circumstances" be demonstrated is mandatory in all cases.[3/] In other words in order to obtain a 45-day hold, there must be a showing of good cause and the existence of "exceptional circumstances" why an earlier evaluation was precluded. It would constitute an absurd result if the imposition of a 3-day hold required a finding of "exceptional circumstances" while the imposition of a 45-day hold did not.

[3/] Presumably, Regulation 2600.1, subdivision (a)'s, provision for a 3-day temporary hold would only come into play if time was needed to make the additional determination of "good cause" under subdivision (d) prior to an individual's parole release date. In the above entitled case, a 3-day hold was not required because the Regulation 2600.1, subdivision (d), determination was made four days prior to real party's scheduled parole release date. (Slip Opn. at p. 5; Pet., Exh. 4, p. 60; Pet., Exh. 5, at p. 83.)

II

SECTION 6601, SUBDIVISION (A)(2)'S "GOOD FAITH OF MISTAKE OF FACT OR LAW" EXCEPTION IS INAPPLICABLE

Petitioner contends that section 6601, subdivision (a)(2)'s, "good faith mistake of law or fact" exception is applicable in the event that this court finds the application of Regulation 2600.1 in the above-entitled case unlawful. (A.B.M. at p. 22.) Section 6601, subdivision (a)(2)'s, exception is inapplicable because a mistake of law or fact is not involved in the instant case. What is involved is the failure of the CDCR, BPT, and DMH to correctly apply section 6601.3 and Regulation 2600.1. (See O.B.M. at pp. 22-25, 33.) It would be disingenuous for the CDCR claim the defense of mistake in light of the fact that it affirmatively acknowledged the constraints on 45-day holds during the legislative process and because its role in the drafting of Regulation 2600.1. (See O.B.M. at pp. 17-18, Mot. For Jud. Notice, Exh. A, Enrolled Bill Report, Department of Corrections, Jan. 25, 1996, p. 2; p. 19, Mot. For Jud. Notice, Exh. E, Enrolled Bill Report, Department of Corrections, dated Apr. 8, 1998, p. 1; and, p. 20, Mot. For Jud. Notice, Exh. G, Enrolled Bill Report, Department of Corrections, June 12, 14, 2000, p. 2.)

Alternatively, there can be no good faith reliance on Regulation 2600.1, subdivision (d), because its definition of "good cause" was so "facially

deficient" that no commissioner could not reasonably presume it to be valid and because negligence cannot be properly categorized as a good faith mistake of fact or law. (See O.B.M. at pp. 10-11, 28-31, 33-37.)

CONCLUSION[4/]

For all the reasons stated above and in Real Parties' Opening Brief on the Merits, this court should affirm the factual findings and ruling made by the trial court.

Respectfully submitted,

MICHAEL P. JUDGE, PUBLIC DEFENDER
OF LOS ANGELES COUNTY, CALIFORNIA

Albert J. Menaster,
Karen King,
Jack T. Weedin,
(State Bar No. 73086)
Deputy Public Defenders

By:
JACK T. WEEDIN
Deputy Public Defender

Attorneys for Real Party in Interest

[4/] Real party takes issue with petitioner's additional contentions advanced in his Answer Brief on the Merits. However, because the argument and points and authorities in real party's Opening Brief on the Merits adequately address petitioner's additional contentions, real party will not repeat these points again for the sake of clarity and brevity.

CERTIFICATE OF COMPLIANCE
PURSUANT TO CALIFORNIA RULES OF COURT,
RULE 8.204, SUBDIVISION (c)(1)

I certify that the attached Reply Brief on the Merits contains 2,398 words according to the word count of the computer program used to prepare the document.

DATED: September 2, 2010.

JACK T. WEEDIN
Deputy Public Defender

DECLARATION OF SERVICE

I, the undersigned, declare I am over eighteen years of age, and not a party to the within cause; my business address is 320 West Temple Street, Suite 590, Los Angeles, California 90012;

That on September 2, 2010, I served a copy of the within REAL PARTY IN INTEREST'S REPLY BRIEF ON THE MERITS, CHRISTOPHER SHARKEY, on each of the persons named below by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail in the City of Los Angeles, addressed as follows:

PAMELA C. HAMANAKA
SENIOR ASSISTANT ATTORNEY GENERAL
STATE OF CALIFORNIA
300 SOUTH SPRING STREET
LOS ANGELES, CA 90013

HONORABLE MARIA E. STRANTON
JUDGE, LOS ANGELES SUPERIOR COURT
DEPARTMENT 95
1150 NORTH SAN FERNANDO ROAD
LOS ANGELES, CA 90065

CLERK, CALIFORNIA COURT OF APPEAL
DIVISION THREE
300 SOUTH SPRING STREET
LOS ANGELES, CA 90013

I further declare that I served the above referred-to document by hand delivering a copy thereof addressed to:

STEVE COOLEY, DISTRICT ATTORNEY
APPELLATE DIVISION
320 WEST TEMPLE STREET, SUITE 540
LOS ANGELES, CA 90012

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 2, 2010, at Los Angeles, California.

ZENAIDA GAETOS