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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN REESE HENDRICKSON,

Defendant and Appellant.

A126390

(Humboldt County
Super. Ct. No. CV020989)

John Reese Hendrickson challenges his indeterminate recommitment as a sexually violent predator (SVP) within the meaning of the Sexually Violent Predators Act (SVPA or Act), (Welf. & Inst. Code, § 6600 et seq.). He contends the more onerous provisions of the SVPA than those imposed by other commitment statutes deny him equal protection of the laws. Under the California Supreme Court's decision in *People v. McKee* (2010) 47 Cal.4th 1172 (*McKee I*), he requests that the matter be remanded to the trial court to determine whether there is a reasonable basis for imposing more stringent provisions on SVP's than on those committed under other commitment statutes. Having awaited the outcome of the proceedings on remand following *McKee I*, we accept the determination in that case and agree that there is an acceptable constitutional justification for imposing a greater burden on SVP's to obtain release than on those committed under other statutes. (*People v. McKee* (2012) 207 Cal.App.4th 1325, 1330-1331 (*McKee II*)). Therefore, we shall affirm.

Background and Procedure

On November 29, 2007, a petition was filed to extend Hendrickson's commitment as a SVP pursuant to Welfare and Institutions Code section 6600. The petition alleged that in 1979 Hendrickson was convicted of one count of sodomy of a victim under the age of 14, and in 1986 and 1994, three counts of committing lewd and lascivious acts on a child under the age of 14. The petition alleged that Hendrickson was diagnosed with a mental disorder, posed a danger to the health and safety of others and was likely to engage in future sexually violent predatory behavior. A jury found these allegations true¹ and Hendrickson was committed to Atascadero State Hospital for an indeterminate term pursuant to the then-recently amended SVPA. Hendrickson timely appealed.

Hendrickson does not challenge the sufficiency of the evidence to support the jury's findings. On appeal he contends that he is denied equal protection by the statutory scheme of the SVPA which, unlike the statutes governing commitment of mentally disordered offenders (MDO) (Pen. Code, § 2960 et seq.) and persons found not guilty by reason of insanity (NGI) (Pen. Code, § 1026 et seq.), now imposes an indeterminate commitment on a person found to be a SVP and places on him the burden of establishing that he is no longer a SVP and is entitled to release. He contends this court should remand the case to the trial court pursuant to *McKee I, supra*, 47 Cal.4th 1172, to determine whether there is a constitutionally acceptable justification for the differential treatment.

The parties in this case agreed to suspended further proceedings pending the finality of the proceedings remanded in *McKee I*. On remand from the Supreme Court, after a 21-day evidentiary hearing, the trial court found that the People met their burden to justify the disparate treatment of SVP's under the standard prescribed by the Supreme Court. (*McKee II, supra*, 207 Cal.App.4th at p. 1330.) The Court of Appeal agreed,

¹ The jury was instructed that in order prove the allegation, "the People must prove beyond a reasonable doubt that [¶] (1) [John Reese Hendrickson] has been convicted of committing sexually violent offenses against one or more victims; [¶] (2) He has a diagnosed mental disorder; AND [¶] (3) As a result of that diagnosed mental disorder, he is a danger to the health and safety of others because it is likely that he will engage in sexually violent predatory criminal behavior."

concluding that the disparate treatment of SVP's furthers compelling state interests. (*Id.* at p. 1348.)

Discussion

The Supreme Court stated in *McKee I* that on remand the People must show “that, notwithstanding the similarities between SVP's and [other civilly committed individuals, such as] MDO's, the former as a class bear a substantially greater risk to society, and that therefore imposing on them a greater burden before they can be released from commitment is needed to protect society.” (*McKee I, supra*, 47 Cal.4th at p. 1208.) The court suggested a variety of ways the People might carry this burden, including the presentation of evidence that there is a greater risk of recidivism by SVP's because of the “inherent nature of the SVP's mental disorder” or that the “SVP's pose a greater risk to a particularly vulnerable class of victims.” (*Ibid.*)

The trial court found that the People presented substantial evidence to support a reasonable perception that SVP's pose a unique or greater danger to society than MDO's and NGI's. (*McKee II, supra*, 207 Cal.App.4th at p. 1347.) This evidence included testimony from experts that SVP's pose a higher risk of reoffending than MDO's or NGI's. (*Id.* at pp. 1340-1342.) The People also presented evidence that victims of sexual offenses go through greater trauma than victims of other traumas because of the intrusiveness and long-lasting effects of sexual assault or abuse. (*Id.* at pp. 1342-1344.) These effects include psychological, physiological, social and neuropsychological consequences on the victim. (*Ibid.*) Additionally, the People presented substantial evidence that SVP's have significantly different diagnoses and treatment plans than MDO's and NGI's, and that indeterminate commitment supports SVP's compliance and success rate of those treatment plans. (*Id.* at p. 1347.)

The Court of Appeal independently reviewed the evidence and agreed that the People had established “ ‘the inherent nature of the SVP's mental disorder makes recidivism as a class significantly more likely[;] . . . that SVP's pose a great risk [and unique dangers] to a particularly vulnerable class of victims, such as children’; and that SVP's have diagnostic and treatment differences from MDO's and NGI's thereby

supporting a reasonable perception . . . that the disparate treatment of SVP’s under the amended [SVPA] is necessary to further the state’s compelling interests in public safety and humanely treating the mentally disordered.” (*McKee II, supra*, 207 Cal.App.4th at p. 1347.) The court concluded that the disparate treatment of SVP’s under the Act “is reasonable and factually based” and, therefore, that the SVPA does not violate the SVP’s constitutional right to equal protection of the law. (*Id.* at p. 1349.) Having awaited the resolution of the equal protection challenge raised in *McKee II*, we see no reason not to accept its conclusion, and none has been urged upon us. We agree that application of the new SVP procedures to Hendrickson does not violate his right to equal protection. No other grounds have been advanced for disturbing the judgment below.

Disposition

The judgment is affirmed.

Pollak, Acting P.J.

We concur:

Siggins, J.

Jenkins, J.