

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVEN V. BANKS,

Defendant and Appellant.

A141287

(San Francisco County
Super. Ct. No. 194950)

Steven V. Banks (appellant) appeals from an order committing him to the Department of State Hospitals (DSH) (formerly the Department of Mental Health), for an indeterminate period as a sexually violent predator (SVP) under the Sexually Violent Predators Act (SVPA). (Welf. & Inst. Code, § 6600 et seq.) Appellant contends his commitment is unconstitutional on various grounds. We affirm.

BACKGROUND

In January 2011, the District Attorney for the City and County of San Francisco filed a petition to commit appellant as an SVP under the SVPA. In March 2014, a jury found the petition true and the trial court committed appellant to the custody of the DSH for an indeterminate term. This appeal followed. The parties agree the underlying facts are not pertinent on appeal.

DISCUSSION

Appellant argues the SVPA denies him equal protection of the law because SVP's are treated more harshly than other classes of people subject to civil commitments. He acknowledges this claim was rejected in *People v. McKee* (2012) 207 Cal.App.4th 1325

(*McKee II*) and subsequent decisions following *McKee II*. Appellant “presents his argument to preserve his rights in Federal Court.”

In *People v. McKee* (2010) 47 Cal.4th 1172 (*McKee I*), the California Supreme Court held that the SVPA, amended to increase the commitment term of SVP’s from two years to an indeterminate term, was potentially unconstitutional. The court concluded that SVPs are similarly situated to mentally disordered offenders (MDO) (Pen. Code, § 2960 et seq.) and insanity acquittees (NGI) (Pen. Code, § 1026 et seq.) for purposes of the term of commitment and burden of proof for release. (*McKee I*, at pp. 1203, 1207.) The court remanded the case to the trial court “to determine whether the People . . . can demonstrate the constitutional justification for imposing on SVP’s a greater burden than is imposed on MDO’s and NGI’s in order to obtain release from commitment.” (*Id.* at pp. 1208–1209.)

On remand from *McKee I*, the trial court found the indeterminate commitment provisions of the SVPA do not violate equal protection, and the Fourth District Court of Appeal affirmed. (*McKee II, supra*, 207 Cal.App.4th at p. 1347.) Appellant argues at length that *McKee II* was incorrectly decided, but we agree with our colleagues in Division Three that *McKee II* is correct. (*People v. McKnight* (2012) 212 Cal.App.4th 860; see *People v. Kisling* (2014) 223 Cal.App.4th 544, 547–548; see also *People v. McDonald* (2013) 214 Cal.App.4th 1367, 1376–1382; *People v. Landau* (2013) 214 Cal.App.4th 1, 47–48.)

Appellant also contends the indeterminate term of commitment prescribed by the SVPA violates the due process clause, and constitutional proscriptions against ex post facto laws, double jeopardy, and cruel and unusual punishment. As appellant recognizes, those contentions are foreclosed by the decision in *McKee I, supra*, 47 Cal.4th at pages 1193, 1195, which we are bound to follow. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

DISPOSITION

The trial court’s judgment is affirmed.

SIMONS, J.

We concur.

JONES, P.J.

NEEDHAM, J.