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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

PEDRO GOMEZ, Petitioner, v. THE SUPERIOR COURT OF CONTRA COSTA COUNTY, Respondent; THE PEOPLE, Real Party in Interest.	A148452 (Contra Costa County Super. Ct. No. 23203577)

Petitioner Pedro Gomez, whose competency to stand trial is at issue, filed a petition for a writ of mandate seeking to compel the Contra Costa Superior Court to appoint the Regional Center of the East Bay (RCEB) to evaluate his competency pursuant to Penal Code section 1369. The Attorney General conceded that the superior court erred when it declined to follow the procedure mandated by that statute. The parties then filed a written stipulation providing that we remand the matter to the superior court, which should be directed to make the threshold determination of whether there is a suspicion that Gomez is developmentally disabled and, if so, to appoint the Regional Center to evaluate his competency to stand trial. Because the need for the stipulated relief is clear, we now order the superior court to vacate its previous order denying the appointment of the RCEB and to proceed as directed below. The July 1, 2016 trial of this matter is temporarily stayed.

FACTUAL AND PROCEDURAL BACKGROUND

Gomez was charged by felony complaint with three counts of attempted murder and one count of shooting at an occupied motor vehicle, plus various enhancements, on June 21, 2015. On September 18, 2015, via counsel, Gomez pled not guilty to the charges and denied the enhancements. Defense counsel, however, informed the court on October 16, 2015 that she questioned Gomez's competence to stand trial; the superior court declared a doubt regarding his competency, suspended proceedings, and appointed Robbin Broadman, M.D. to evaluate Gomez's competency. Dr. Broadman, in her December 27, 2015 report, declined to offer an opinion regarding Gomez's competency due to a lack of relevant information. Dr. Broadman suspected both that Gomez's ability to understand was genuinely impaired and that he was also pretending to be confused.

The matter was then set for trial. On April 18, 2016, the parties made their expert disclosures. On April 27, however the prosecution requested to augment its expert witness list to include a certain detective. The matter was heard by the Honorable Clare Maire, who granted the prosecution request, but also granted leave for the defense to depose the detective. The trial was then continued to July 1, 2016. At the hearing to augment the prosecution's expert witness list, the defense requested that the RCEB be appointed to evaluate Gomez. Judge Maire deferred that matter to Judge Scanlon, who, on May 16, 2016, declined to appoint the RCEB to evaluate Gomez.

On May 27, 2016, Gomez filed his petition for writ of mandate in this court seeking a writ requiring the superior court to appoint the RCEB to evaluate Gomez. On June 2, 2016 we requested informal opposition from the Attorney General and gave notice, pursuant to *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180 (*Palma*), that, if appropriate, we might issue a peremptory writ in the first instance. On June 9, 2016, the Attorney General filed her opposition, partially agreeing with Gomez, in that the regional center director must be appointed to evaluate Gomez, but only if the superior court suspected that Gomez is developmentally disabled.

In response to the Attorney General's opposition, this court, on June 10, 2016, invited the parties to "engage in discussions aimed at agreeing on an appropriate

stipulation." On June 17, 2016, the parties filed a signed stipulation which states, in pertinent part:

> Penal Code § 1369, subdivision (a) requires the court to appoint the Regional Center to evaluate a defendant if it is 'suspected the defendant is developmentally disabled.'
>
> The trial court committed legal error by concluding that the Regional Center did not need to be appointed pursuant to section 1369 because other doctors had already opined regarding the defendant's trial competency.
>
> The matter should be remanded to the trial court to comply with section 1369, subdivision (a), for the trial court to make the threshold determination of whether there is a suspicion that the defendant is developmentally disabled. If the court concludes that the defendant is developmentally disabled, the court must appoint the Regional Center to evaluate the defendant's competency to stand trial.
>
> The trial court must receive the Regional Center report prior to commencement of trial.

DISCUSSION

Penal Code section 1369 states in pertinent part: "Except as stated in subdivision (g), a trial by court or jury of the question of mental competence shall proceed in the following order: [¶] . . . If it is suspected the defendant is developmentally disabled, the court shall appoint the director of the regional center for the developmentally disabled established under Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code, or the designee of the director, to examine the defendant."

In *People v. Leonard* (2007) 40 Cal.4th 1370, Leonard was convicted of six counts of murder and two counts of robbery. The trial court declared a doubt regarding Leonard's competency to stand trial because of a defense expert's opinion that Leonard was delusional due to chronic severe epilepsy.[1] (*Id*. at p. 1385.) The court appointed two psychiatrists to evaluate him, who disagreed regarding his competency to stand trial.

[1]A developmental disability is defined by statute to include epilepsy. (Pen. Code, § 1370.1(a)(1)(H).)

(*Id*. at p. 1386.) A defense expert also testified regarding Leonard's mental state, but did not offer an opinion regarding his competency. (*Id*. at pp. 1386–1387.) The regional center director, however, was not appointed to evaluate petitioner and the trial court determined that Leonard was competent to stand trial. (*Ibid*.) The Supreme Court ruled that the failure to appoint the regional center director in that instance was harmless error because the testifying experts possessed the necessary expertise to support the trial court's ruling. (*Id*. at pp. 1390–1391.)

That in a specific instance where it was required, the failure to appoint the regional center director constituted harmless error, does not excuse courts from prospectively appointing the regional center director to evaluate defendants in appropriate cases, as mandated by statute. Harmless error analysis involves an inquiry as to whether the departure from what the law requires actually prejudices or tends to prejudice the defendant's substantial rights. (Pen. Code, § 1404.) It does not justify a prospective course of action that violates a defendant's rights. (See *People v. Lightsey* (2012) 54 Cal.4th 668, 693 [harmless error rule is to be applied when reviewing a judgment; it is not a "license for the trial court in the first instance to ignore or contravene the provisions of the Penal Code so long as the court believes its actions will not prejudice the defendant"].)

DISPOSITION

The accelerated *Palma* procedure is appropriate "when petitioner's entitlement to relief is so obvious that no purpose could reasonably be served by plenary consideration of the issue" such as "when such entitlement is conceded." (*Ng v. Superior Court* (1992) 4 Cal.4th 29, 35.) Here, the parties' stipulation amply justifies issuance of a decision pursuant to *Palma*, *supra*, 36 Cal.3d 171.

Accordingly, we order the Contra Costa Superior Court (1) to vacate its May 16, 2016 order declining to appoint the director of the RCEB to evaluate Gomez; (2) to conduct a further hearing and determine whether it suspects that Gomez is developmentally disabled; and (3) if it does so find, appoint the RCEB director (or his designee) to evaluate Gomez' competency to stand trial.

Furthermore, the trial in this matter is hereby stayed. The stay shall be automatically dissolved if the superior court determines that there is no suspicion that Gomez is developmentally disabled or, if the superior court does suspect that Gomez is developmentally disabled, upon receipt by the court of the RCEB's report concerning his competency. Our decision is immediately final as to this court. (Cal. Rules of Court, rule 8.490(b)(2)(A).)

McGuiness, P.J.

We concur:

Pollak, J.

Siggins, J.

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