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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. LEWISTINE FARRAR, Defendant and Appellant.	E053428 (Super.Ct.No. INC1100190) OPINION

APPEAL from the Superior Court of Riverside County. Richard A. Erwood, Judge. Affirmed.

Rudy Kraft, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Barry Carlton and Marissa Bejarano, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant challenges the trial court's April 7, 2011, order continuing her involuntary treatment as a mentally disordered offender (MDO) after a jury trial. Appellant contends the trial court was fundamentally without jurisdiction to make this order because the Riverside County District Attorney's Office filed the Penal Code section 2970[1] MDO recommitment petition without the requisite, current request for commitment from the California Department of Mental Health. The People answer that appellant forfeited any claim of error on appeal by failing to object in the trial court. The People argue in the alternative that the trial court acted within its authority because the reports evaluating appellant's eligibility for recommitment were prepared and submitted within the timeframes contemplated by the applicable statutes for the 2011 recommitment. Appellant counters that, even if she did forfeit her claim of error, her trial counsel was ineffective for failing to object in the trial court or file a motion to dismiss for lack of jurisdiction. As discussed below, we conclude that, even if appellant did not waive her claim of error by failing to raise it in the trial court, the district attorney had authority to file the petition. Although the request for commitment from the California Department of Mental Health was prepared for the petition extending the commitment beyond the January 2010 end date, it was prepared and submitted within the timeframe required for extending the commitment beyond the January 2011 end date and, thus, represented the acting medical director's opinion that appellant's commitment should be extended beyond 2011. As a consequence,

[1] All statutory references are to the Penal Code unless otherwise indicated.

appellant's liberty interest in being free from unnecessary restraint was adequately guarded.

FACTS AND PROCEDURE

On December 5, 2004, appellant appeared at the door of the manager of her apartment complex, stabbed her in the arm with a pair of scissors, and choked her before a male tenant pulled appellant off of the manager. Appellant had told the manager, "I'm going to kill you bitch." Appellant told police, "I should have stabbed her in the throat; I'm going to buy a gun and kill that bitch."

On June 10, 2005, Appellant was convicted of assault with a deadly weapon (§ 245, subd. (a)(1)) and threats to injure (§ 422). She received a five-year prison sentence.

While still serving her prison sentence[2], appellant was transferred from prison to Patton State Hospital on February 26, 2007, because she was determined to be a mentally disordered offender.

On January 6, 2011, the Riverside County District Attorney's Office filed a petition for continued involuntary treatment of appellant under section 2970. On April 7, 2011, a jury found that appellant was a mentally disordered offender. That same day, the trial court ordered appellant to continue involuntary treatment until January 23, 2012. This appeal followed.

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[2] Appellant had her parole revoked in 2006 after only one month for threatening medical staff during one of her *three* hospitalizations while on parole.

DISCUSSION

Appellant contends the district attorney lacked the legal authority to file the MDO recommitment petition because it had not received a *current* referral from the California Department of Mental Health requesting such a commitment, as required in section 2970.

Consequently, appellant argues, the trial court was without jurisdiction to commit her for another year as an MDO. The People initially respond that appellant waived her right to appeal on this issue because she did not raise it in the trial court. Because we ultimately determine that appellant's substantive arguments are unavailing, we assume without deciding that appellant did not forfeit her right to raise the issue on appeal.

The Mentally Disordered Offender Act (§ 2960 et seq.) does not permit the People unfettered discretion to seek an extension of a defendant's involuntary treatment commitment. Section 2970 authorizes the People to initiate recommitment proceedings only if, not later than 180 days prior to the termination of the current commitment period (unless good cause is shown for the reduction of the 180-day period), the medical director of the state's treating facility certifies in a written evaluation that a defendant's severe mental disorder is not in remission or cannot be kept in remission without treatment. (§§ 2970, 2972; *People v. Marchman* (2006) 145 Cal.App.4th 79, 87-89.)

Here, the petition to extend appellant's MDO commitment date past January 23, 2011, was filed on January 6, 2011. As described in detail immediately below, the petition has attached to it the required documents, dated June and July of 2010.

However, each of these documents appears to have been prepared for the MDO commitment that had already expired in 2010[3], rather than for the 2011 expiration. The written certification and evaluation by Dien Mach, M.D., acting medical director of Patton State Hospital, requesting the district attorney to file the section 2970 petition, is dated July 16, 2010, but asks that the commitment date be extended from January 23, 2010 to January 23, 2011. Dr. Mach's letter asking the district attorney to file the petition, along with the accompanying affidavit and the "Renewal Evaluation of Mentally Disordered Offender Civil Commitment" (Mental Health form 7020) are each dated July 16, 2010, and refer to a termination date for the civil commitment as January 23, 2010. In addition, the attached six-page dispositional court report, authored by Jeffrey Cheng, M.D., is dated June 21, 2010, but, again, refers to a maximum commitment date of January 23, 2010.

Appellant argues that, because these documents refer to the January 23, 2010 MDO termination date rather than the January 23, 2011 termination date, the district attorney was without authority to file the 2011 petition, and the trial court was without fundamental jurisdiction to extend her commitment for another year until January 23, 2012.

Under the MDO law, to establish continued treatment of the parolee, the People must prove beyond a reasonable doubt that: (1) the parolee continued to have a severe mental disorder; (2) the mental disorder was not in remission or could not be kept in

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[3] It appears that appellant had waived time for the proceedings to extend the January 23, 2010 maximum commitment date.

remission without treatment; and (3) by reason of the mental disorder, the parolee continued to represent a substantial danger of physical harm to others. (§§ 2962, subds. (a) & (d)(1), 2966, subd. (c), 2972, subd. (e); *People v. Fernandez* (1999) 70 Cal.App.4th 117, 126; *People v. Superior Court* (*Myers*) (1996) 50 Cal.App.4th 826, 837.) As discussed above, section 2970 authorizes the district attorney to file the petition to extend the MDO commitment only after the acting medical director certifies the committee's continued eligibility for MDO commitment. This certification is to be submitted to the district attorney "[n]ot later than 180 days prior to" the end of the current MDO commitment, unless good cause is shown for the reduction of the 180-day period.

Because appellant's latest commitment was to end on January 23, 2011, the ideal time period for the above reports to be prepared and submitted by acting medical director Dr. Mach and by Dr. Chen was at least 180 days prior to that date—no later than approximately July 27, 2010. These reports were prepared on June 21 and July 16 of 2010, which is within the time period contemplated by the statutes. Further, if the reports had been prepared and submitted any later than July 27, 2010, the reports could be the grounds for the 2011 MDO recommitment petition only if good cause could be shown for their tardy preparation and submittal. Thus, we conclude that, because the reports were prepared and submitted within the statutory timelines for the 2011 recommitment petition, the district attorney did have the authority to file the petition and the trial court had jurisdiction to hear and rule on the petition.

We believe this result is consistent with the purposes of the MDO commitment statutes. The reviews of appellant's suitability for recommitment were performed and submitted within the preferred timeframes for the periodic, yearly reviews that the Legislature specified as required to recommit MDOs like appellant. In *People v. Allen* (2007) 42 Cal.4th 91, our Supreme Court recognized the importance of the yearly reviews to upholding the constitutionality of continued civil commitment. "Indeed, the drafters of the MDO Act recognized that 'a prisoner could conceivably be "treated" for the rest of his life as there is no limit on the number of times he may be recommitted to an inpatient facility.' (Assem. Com. on Public Safety, Analysis of Sen. Bill No. 1054 (1985-1986 Reg. Sess.) as amended May 30, 1985, p. 4.) Thus, it is paramount that '[p]eriodic reviews are required because if the basis for a commitment ceases to exist, continued confinement violates the substantive liberty interest in freedom from unnecessary restraint.' [Citations.]" (*Id.* at pp. 103-104.)

The required reports were prepared and submitted exactly within the timeframe contemplated by the MDO recommitment statutes. Thus, appellant received a timely, periodic review of her MDO recommitment ending on January 23, 2011, even if these reports were also used to justify the extension of her commitment from the previous year. Appellant's liberty interest in being free from confinement was protected as intended by the Legislature.

DISPOSITION

The trial court's judgment is affirmed.

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RAMIREZ
P. J.

We concur:

HOLLENHORST
J.

KING
J.