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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Petitioner,

v.

THE SUPERIOR COURT OF
RIVERSIDE COUNTY,

Respondent;

EARL JOSEPH GOMEZ,

Real Party in Interest.

E056437

(Super.Ct.No. BLF1200033)

OPINION

ORIGINAL PROCEEDINGS; petition for writ of mandate/prohibition. Sarah Adams Christian, Judge. Petition granted.

Paul Zellerbach, District Attorney, and Kelli M. Catlett, Deputy District Attorney, for Petitioner.

No appearance for Respondent.

No appearance for Real Party in Interest.

In this matter, we have reviewed the petition and considered the record. Although invited to do so, real party in interest has not filed a response. We have determined that resolution of the matter involves the application of settled principles of law, and that an alternative writ would add nothing to the presentation already made and would cause undue delay in resolving this matter. We therefore issue a peremptory writ in the first instance. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 178.)

With certain exceptions, the procedures for determining whether a “developmentally disabled” defendant is incompetent to stand trial are the same as a non-developmentally disabled defendant. Thus, the question of mental competence is determined at trial by a court or jury under Penal Code section 1369¹ at which both the defendant and the prosecution may present evidence and argument. (§ 1369, subd. (b)(1)-(e).) It shall be presumed that the defendant is mentally competent unless it is proved by a preponderance of the evidence that he is mentally incompetent. (§ 1369, subd. (f).)

In the case of a developmentally disabled defendant, the evaluation is provided by the director of the state-contracted Regional Center for the Care and Treatment of Developmentally Disabled Individuals. (§ 1370.1, subd. (a)(1).) The purpose of this appointment is to ensure that a developmentally disabled defendant is evaluated by experts experienced in the field, which will enable the trier of fact to make an

¹ Statutory references are to the Penal Code unless otherwise stated.

informed determination of the defendant's competence to stand trial. (*People v. Leonard* (2007) 40 Cal.4th 1370, 1391.)²

In this case, the trial court refused to afford the prosecution a trial on the issue of real party in interest's competency with an opportunity to cross-examine the court-appointed expert and present its own evidence and experts. This was error, and the matter must be remanded to the trial court with directions to conduct further proceedings in accordance with sections 1368-1375.5. In the event that real party in interest is again found mentally incompetent, the trial court shall consider the prosecution's arguments regarding authorized placement, including whether 180 days' confinement is required under section 1601. (See *People v. Amonson* (2003) 114 Cal.App.4th 463.)

DISPOSITION

Let a peremptory writ of mandate issue directing the Superior Court of Riverside County to set aside its order finding real party in interest mentally incompetent to stand trial and to conduct further proceedings in accordance with the views expressed herein.

Petitioner is directed to prepare and have the peremptory writ of mandate issued, copies served, and the original filed with the clerk of this court, together with proof of service on all parties.

² Failure to appoint the regional center director may be harmless error if the defendant is evaluated by others having appropriate expertise. (*Leonard, supra*, 40 Cal.4th at pp. 1390-1391.)

The previously ordered stay is hereby lifted.

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KING
Acting P.J.

We concur:

McKINSTER
J.

CODRINGTON
J.