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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

QUIANA MAILLIE FARROW,

Defendant and Appellant.

F070057

(Super. Ct. No. MCR037601)

OPINION

APPEAL from a judgment of the Superior Court of Madera County. Joseph A. Soldani, Judge.

James Bisnow, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Stephen G. Herndon and Paul E. O'Connor, Deputy Attorneys General, for Plaintiff and Respondent.

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Appellant Quiana Maillie Farrow challenges the trial court's order extending her commitment to a state hospital pursuant to Penal Code sections 1026 and 1026.5.¹ She contends the prosecutor failed to timely file the underlying petition to extend her

¹ Further statutory references are to the Penal Code unless otherwise specified.

commitment before her initial commitment term expired and, therefore, the trial court lacked fundamental jurisdiction to act on the extension petition and this court should dismiss the petition and order her immediate release. We disagree and affirm.

BACKGROUND

On March 16, 2010, a complaint was filed charging appellant with committing one count of battery on a nonconfined person while confined in state prison (§ 4501.5) and alleged she suffered one prior strike conviction (§ 667, subds. (b)–(i)) and two prior prison terms (§ 667.5, subd. (b)).

On August 18, 2010, appellant entered a dual plea of guilty and not guilty by reason of insanity (NGI) to an attempted violation of section 4501.5, and admitted the prior strike allegation, in exchange for a maximum commitment term of two years (“the low-term doubled”) and striking of the prior prison term allegations.

At the August 18, 2010, hearing, the trial court accepted appellant’s plea and found her NGI. The court then referred the matter to the Conditional Release Program (CONREP) to prepare a recommendation on whether appellant should initially be treated in an outpatient or inpatient setting, and set a hearing to review the CONREP report on September 15, 2010.

There is no reporter’s transcript of the September 15, 2010, hearing in the record on appeal. But the clerk’s transcript for the hearing reflects that the parties submitted on the CONREP report, which recommended that appellant be placed in Patton State Hospital (Patton) for treatment. Based on the report, the court ordered appellant placed in Patton as soon as a bed became available and directed the prosecutor to prepare an order in the matter.

On September 21, 2010, the trial court signed and filed an order committing appellant to Patton for restoration of sanity pursuant to section 1026. The order stated that appellant’s maximum term of commitment was four years pursuant to section 1026.5, subdivision (a)(1). That subdivision specifically provides:

“In the case of any person committed to a state hospital ... pursuant to Section 1026 ..., who committed a felony ..., *the court shall state in the commitment order the maximum term of commitment*, and the person may not be kept in actual custody longer than the maximum term of commitment, except as provided in this section. *For purposes of this section, ‘maximum term of commitment’ shall mean the longest term of imprisonment which could have been imposed for the offense or offenses of which the person was convicted*, including the upper term of the base offense and any additional terms for enhancements” (§ 1026.5, subd. (a)(1); italics and emphasis added.)

At the time, appellant did not appeal or otherwise seek to challenge the September 2010 commitment order, imposing an initial NGI commitment term of four years. Four years appears to have been the longest term of imprisonment which could have been imposed for appellant’s conviction and enhancement (i.e., the upper term of two years doubled)² and, thus, constituted the “maximum term of commitment” under the definition of the term set forth in section 1026.5, subdivision (a)(1).

On April 1, 2014, the prosecutor filed the extension petition at issue here pursuant to section 1026.5, subdivision (b). At the conclusion of a one-day court trial on August 19, 2014, the court found that appellant continued to suffer a mental disorder and was a substantial risk to others. The court granted the extension petition and ordered appellant’s commitment extended for an additional period of two years, from September 15, 2014 to September 15, 2016.

² Under section 664, subdivision (a), “[i]f the crime attempted is punishable by imprisonment in the state prison, ... the person guilty of the attempt shall be punished by imprisonment in the state prison ... for one-half the term of imprisonment prescribed upon a conviction of the offense attempted.”

Section 4501.5 provides: “Every person confined in state prison of this state who commits a battery upon the person of any individual who is not himself a person confined therein ... shall be imprisoned in the state prison for two, three, or four years”

Section 667, subdivision (e), states: “For the purposes of subdivisions (b) to (i), inclusive, ... [¶] (1) If a defendant has one prior serious and/or violent felony conviction ... that has been pled and proved, the determinate term ... shall be twice the term otherwise provided as punishment for the current felony conviction.”

We have omitted a recitation of the facts underlying the initial NGI commitment order as well as the current order extending appellant's commitment as unnecessary to resolution of the issues raised by appellant's timely appeal from the latter.

DISCUSSION

I. Appellant's Contentions

On appeal, appellant contends the trial court was without jurisdiction to rule on the extension petition—and that the petition must therefore be dismissed and her immediate release from Patton ordered—because the petition was untimely filed in 2014 *after* her maximum term of commitment expired in 2012. Appellant's contention depends on this court finding that her maximum term of commitment was two years under the August 2010 plea agreement, not the four years stated in the trial court's September 2010 commitment order.

To the extent appellant's failure to raise this theory of untimeliness in the trial court forfeited the issue on appeal, appellant claims she received ineffective assistance of counsel. In this regard, appellant argues there can be no possible tactical or strategic reason for her counsel's failure to alert the trial court to the fact the "petition appeared untimely because the prosecution had filed it two years after the agreed-upon maximum commitment date," and that, had her counsel "objected to the extension petition, and pointed out its untimeliness, the trial court should have dismissed it."

II. An NGI Commitment and Extension

Under the statutory scheme for NGI commitments, a defendant who has been committed to a state hospital after being found NGI may not be kept in actual custody longer than the maximum state prison term to which he or she could have been sentenced for the underlying offense. (§ 1026.5, subd. (a)(1).) At the end of that period, the district attorney can seek a two-year extension by filing a petition alleging that the defendant presents a substantial danger of physical harm to others because of his or her mental disease, defect, or disorder. (§ 1026.5, subd. (b)(1), (2).)

“[S]ection 1026.5 sets out the exclusive procedures under which a commitment may be extended.... [S]ubdivision (b) set[s] out specific time limits within which actions ‘shall’ be taken. At least 180 days before the current term ends the medical director ‘shall’ provide the district attorney with an opinion as to whether the defendant’s commitment should be extended. [Citation.] The prosecution ‘may’ then file for an extension of commitment. [Citation.] Unless good cause is shown, the petition ‘shall’ be filed at least 90 days before the commitment is to expire. [Citation.] Unless good cause is shown, a trial on the petition ‘shall’ begin at least 30 days before the existing commitment is due to end. [Citation.] If the defendant is proven to currently represent a substantial danger as described in the statute, the court shall order a recommitment for an additional two years. [Citation.] The defendant ‘may not be kept in actual custody longer than two years unless another extension of commitment is obtained in accordance with the provisions of this subdivision.’” (*People v. Lara* (2010) 48 Cal.4th 216, 222 (*Lara*.)

Appellant’s contention on appeal is based on *Lara, supra*, 48 Cal.4th 216. There, the petition to extend the defendant’s commitment was filed less than a month before his scheduled release date. (*Lara, supra*, 48 Cal.4th at p. 222.) The prosecutor conceded there was no good cause for the delay. (*Ibid.*) The trial court denied the defendant’s motion to dismiss the petition, and seven months after his initial commitment ended, a jury found that he represented a substantial danger of physical harm to others. (*Id.* at p. 223.) His commitment was extended, and he appealed. (*Ibid.*) The Court of Appeal reversed, directing the trial court to grant the dismissal motion. (*Ibid.*)

The California Supreme Court reversed, holding that section 1026.5’s deadlines are directory rather than mandatory, “so long as the petition is filed before the expiration of the current commitment.” (*Lara, supra*, 48 Cal.4th at p. 221.) The court explained that the difference between a mandatory statutory deadline and a directory one is that failure to comply with a mandatory deadline deprives the court of jurisdiction in the

fundamental sense, rendering the court's action void. (*Id.* at pp. 224–225.) Failure to comply with a directory deadline, by contrast, does not deprive the court of jurisdiction in the fundamental sense, and for that reason renders the court's action merely voidable. (*Id.* at p. 225.) ““Unless the Legislature clearly expresses a contrary intent, time limits are typically deemed directory.”” (*Id.* at p. 225.) In section 1026.5, “the Legislature made its intent quite clear” by stating, in subdivision (a)(2), that “[t]he time limits of this section are not jurisdictional.”” (*Lara, supra*, at p. 225, italics omitted.)

The court's conclusion that section 1026.5's time limits are directory rather than mandatory was bolstered by the Legislature's failure to specify a penalty or consequence for not complying with them and by its inclusion of good cause and waiver exceptions. (*Lara, supra*, 48 Cal.4th at p. 227.) To interpret the time limits as mandatory, the court emphasized, “would run counter to the very purpose of the NGI statutes” (*Id.* at p. 228.) “It would elevate the secondary benefit to the defendant derived from the time limit over the fundamental purposes of the NGI provisions, to ensure that needed treatment is provided and the public protected.” (*Ibid.*)

Turning to the issue of prejudice, the court explained that where one or more of the section 1026.5 time limits have not been met, “the due process question must be evaluated on a case-by-case basis.” (*Lara, supra*, 48 Cal.4th at p. 232.) “[D]ue process in this context requires a flexible balancing of “any prejudicial effect of the delay against the justification for the delay.”” (*Ibid.*) “The degree of prejudice will depend on a variety of factors, including how late the filing is, the amount of time reasonably required to prepare for trial and mount a defense, and whether action by the court or defense counsel contributed to the delay.” (*Id.* at p. 232, italics omitted.)

The court held that the defendant in *Lara* “did not suffer prejudice in the primary sense of the term” because “[t]he fairness of his eventual trial was not affected by the due process violation.” (*Lara, supra*, 48 Cal.4th at p. 233.) For that reason, he was not entitled to dismissal of the petition. (*Id.* at p. 236.) But he “did suffer prejudice in one

sense,” because “[t]he prosecution’s unexcused late filing forced him to choose between going to trial unprepared or being held without trial beyond his release date.” (*Id.* at p. 233.) The remedy for that prejudice, the court held, would have been release pending trial, subject to LPS³ proceedings. (*Ibid.*) The defendant was no longer eligible for release, however. “The court retained jurisdiction to try the petition. The trial, while untimely, was ultimately fair. Therefore, violation of the statutory timelines does not warrant reversal.” (*Id.* at p. 236, fn. omitted.)

III. The Extension Petition Was Not Untimely Filed

Appellant argues that, because her initial NGI commitment expired in 2012 under the two-year maximum commitment term of the August 2010 plea agreement, long before the prosecution filed its extension petition in April 2014, the section 1026.5 time limits became mandatory and the trial court was deprived of fundamental jurisdiction to act on the petition under our Supreme Court’s analysis in *Lara*. However, as mentioned above, appellant’s argument depends on this court concluding that the length of her maximum term of commitment is controlled by the August 2010 plea agreement and not the trial court’s September 2010 commitment order. Appellant has not presented us with sufficient legal or factual grounds upon which to base such a conclusion. Rather, as respondent correctly asserts, the court’s initial NGI commitment order imposing a four-year maximum term of commitment was a valid judgment at the time the extension petition was filed in April 2014. Therefore, appellant has not shown the petition was untimely as it was undisputedly filed (and tried) before the expiration of the four-year term.

A judgment is valid until it is set aside, unless the court lacked fundamental jurisdiction to act. (*People v. Medina* (2009) 171 Cal.App.4th 805, 815; *People v. Williams* (1997) 77 Cal.App.4th 436, 447.) Lack of jurisdiction in a fundamental sense

³ Welfare and Institutions Code section 5000 et seq.; Lanterman-Petris-Short Act.

means ““an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties.”” (*Medina*, at p. 815.) A lack of fundamental jurisdiction is to be distinguished from a case where the court has jurisdiction over the parties and the subject matter, but has no power to act except in a particular manner. (*Id.* at pp. 815–816.) This is often referred to as an act in excess of jurisdiction. (*Ibid.*)

A judgment rendered without fundamental jurisdiction is void, while a judgment rendered in excess of jurisdiction is merely voidable. (*People v. Gerold* (2009) 174 Cal.App.4th 781, 787.) “[A]n individual is subject to all the disabilities of a judgment, commitment or sentence which, though voidable, has not been judicially voided” (*People v. Dubose* (1971) 17 Cal.App.3d 43, 49.)

In her reply brief, appellant rightly does not dispute that the trial court had fundamental jurisdiction to act when it entered the September 2010 commitment order imposing a maximum commitment term of four years. Rarely does a court have no power over the parties or the subject of the dispute. “Lack of jurisdiction in its most fundamental or strict sense means an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties.” (*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 288.) Instead, appellant’s argument on appeal essentially seeks specific enforcement of the two-year maximum commitment term under the August 2010 plea agreement because, in her view, this will protect the integrity of the plea-bargaining process. However, appellant cites no authority that she is entitled to specific performance of the plea agreement at this late date, despite her failure to appeal or otherwise seek to timely set aside the September 2010 commitment order.

In countering appellant’s specific claims on appeal, respondent repeatedly assumes the trial court erred in various ways purely for the sake of argument. However, we think it bears noting that appellant has not demonstrated any error actually occurred in this case. Appellant’s authorities do not support her repeated assertions that the trial court’s

September 2010 commitment order imposing a four-year maximum commitment term was an *illegal order* or *illegal expansion* of the two-year term in the plea agreement. As set forth in the background section, *ante*, the “maximum term of commitment” for appellant’s conviction and enhancement under the definition provided in section 1026.5, subdivision (a)(1) *was* four years.

In addition, the subdivision’s use of the mandatory “shall” indicates that the court was *required* to impose the longest term for appellant’s conviction, and that it was without authority under section 1026.5, subdivision (a)(1), to impose the reduced term negotiated by the parties under the plea agreement, which could explain why defense counsel never directly challenged the original commitment order or raised a timeliness challenge to the extension petition at issue here. Although we can only speculate in this regard, it is conceivable that the parties recognized and discussed the trial court’s lack of authority *prior* to the preparation and filing of the initial NGI commitment order, which was apparently prepared by the prosecutor per the court’s order at the September 15, 2010, hearing, for which (as previously mentioned) there is no reporter’s transcript in the record on appeal. For the same reason, we cannot agree with appellant’s characterization suggesting the prosecutor had “unclean hands” or “knowingly” and unilaterally prepared an order violating the plea agreement to get appellant committed “two years longer than legally permitted.”

Moreover, under the circumstances at the time the September 2010 commitment order was entered, it does not appear appellant would have been entitled to the remedy of specific performance of the plea agreement, in any event, but would only have been allowed to withdraw the plea on the ground the court’s imposition of the statutorily mandated four-year maximum commitment term violated the two-year term of the plea agreement. (See *People v. Brown* (2007) 147 Cal.App.4th 1213, 1224 [specific performance not available remedy when negotiated sentence invalid or unauthorized]; see also *People v. Renfro* (2004) 125 Cal.App.4th 223, 233 [specific performance of plea

agreement that went beyond sentencing court's authority would undermine applicable law and public policy, public safety, and administration of justice by courts].) Despite appellant's suggestions to the contrary, defense counsel could have reasonably decided not to appeal or otherwise challenge the September 2010 commitment order, after weighing the disadvantage of accepting the maximum commitment term of four years, which was only two years longer than the term in the plea agreement, against the risk of withdrawing the plea and going to trial on the original charge and enhancement allegations and the potential of receiving an even longer prison sentence if convicted.

The issue of defense counsel's performance in 2010 is not before us, however, because the initial NGI commitment order imposing a four-year maximum term of commitment, which was never directly challenged, remained a valid judgment when the extension petition was timely filed under section 1026.5, subdivision (b). The foregoing discussion simply demonstrates that many of the assumptions underlying appellant's arguments on appeal are unsupported by the law she cites and the facts in the record before us. In short, appellant has failed to demonstrate any reversible error occurred in this case.

DISPOSITION

The judgment (order extending commitment) is affirmed.

HILL, P.J.

WE CONCUR:

FRANSON, J.

SMITH, J.