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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re JOSHUA R., a Person Coming Under  
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSHUA R.,

Defendant and Appellant.

G045170

(Super. Ct. No. M10665)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Gary S. Paer, Judge. Affirmed.

John F. Schuck, 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 Felicity Senoski, Deputy Attorneys General, for Plaintiff and Respondent.

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Joshua R. was committed to the California Youth Authority (now, Division of Juvenile Justice) in 2002. The Orange County District Attorney filed a petition to extend his detention under Welfare and Institutions Code<sup>1</sup> section 1800, alleging due to a mental or physical deficiency, disorder or abnormality, Joshua R. was a danger to the public if released. With his consent, Joshua R.'s trial was not held until years after the filing of an amended petition. He contends the petition should have been dismissed under section 1802 as his trial was not conducted within two years of the trial court's initial probable cause determination. We reject this argument because section 1802 does not set a timeframe within which a trial must be held. It sets a two-year limit on an order extending the individual's detention after the individual has been found beyond a reasonable doubt to meet the statutory criteria for an extended commitment. Joshua R. also argues the order extending his detention must be vacated because, *even though the evidence established beyond a reasonable doubt he qualifies for an extended detention*, no expert witness from the Division of Juvenile Justice testified he met the qualifications for an extended detention. We find that argument lacks merit as well.

## I

### PROCEDURAL BACKGROUND AND FACTS

On August 19, 2005, the Orange County District Attorney filed an amended petition to extend Joshua R.'s detention pursuant to section 1800. The district attorney filed the petition at the request of the Youthful Offender Parole Board. The amended petition alleged Joshua R. was initially declared a ward of the juvenile court in June 1999, was committed to the California Youth Authority in August 2002, after having been found to have violated Penal Code section 288, subdivision (a) (child molestation),

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<sup>1</sup> All statutory references are the Welfare and Institutions Code unless otherwise stated.

and his confinement was set to expire on August 15, 2004.<sup>2</sup> The amended petition further alleged the Youthful Offender Parole Board determined Joshua R., “due to a mental or physical deficiency, disorder or abnormality would be physically dangerous to the public if discharged from the California Youth Authority, and such deficiency, disorder or abnormality will cause [Joshua R.] serious difficulty in controlling his dangerous behavior.” The petition was supported by the declaration of a deputy district attorney and an addendum to the original section 1800 evaluation.

After the amended petition was filed, and prior to the probable cause hearing, the matter was continued a number of times on the parties’ stipulation or at Joshua R.’s request. The probable cause hearing eventually began on January 19, 2010. It was continued mid-hearing and concluded on March 16, 2010. After considering the evidence, the court found probable cause to believe Joshua R. would be physically dangerous if relieved “because of his physical or mental disorder, which causes [him] to have serious difficulty controlling his dangerous behavior.”

After conferring with counsel off the record, the court set the matter for an August 16, 2010 trial date. It appears the date selected was agreed upon by the parties in anticipation of the time required to obtain copies of the reporter’s transcript of the probable cause hearing. After Joshua R. waived time for trial, the parties finally answered ready for trial on March 2, 2011.

On March 7, 2011, Joshua R. filed a motion to dismiss the petition, contending section 1802 required dismissal because his trial was not held within two years of the court’s initial finding of probable cause. The trial court denied his motion.

The jury found Joshua R., now an adult, “has a mental or physical deficiency, disorder or abnormality which causes him to have serious difficulty controlling his dangerous behavior, and because of his mental or physical deficiency,

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<sup>2</sup> The original petition is not in the appellate record.

disorder or abnormality, he would be physically dangerous to the public if released from custody.” The court extended his detention for a two-year period as of March 29, 2011, the date the jury returned its finding.

### *The People’s Case*

Joshua R. was placed on juvenile court probation in June 1999 for indecent exposure and child annoyance. The victim in that matter was a six-year-old girl. In addition to the usual terms and conditions of probation placed on a juvenile offender, Joshua R. was ordered not to associate with children under 12 years old without an adult present, and to attend sex offender treatment. A second petition was filed against him and sustained in November 1999. He had passed a “love note” to an eight-year-old girl with directions to give it to her 12-year-old sister. He was 17 years old at the time.

In 2000, after his release from custody on the second delinquency petition, Joshua R.’s probation officer learned Joshua R. was involved with seven young girls between the ages of five and 10 years old at a laundromat. Joshua R. admitted he rubbed their genitals when their parents were distracted. He admitted knowing what he did was wrong and said he did not know why he did it.

Also in 2000, Joshua R. was found to have associated with two young girls approximately four or five years old, molested an eight-year-old girl in the stairway of a strip mall near a video store, and sexually battered a female student in his class when he touched her buttocks in a photography darkroom. The molestation of the eight-year-old girl appears to have predated his first delinquency petition and occurred in 1998.

Subsequent to those violations, Joshua R. was found in violation of probation for having unsupervised contact with a two-year-old girl. He admitted in a polygraph examination to having sexual contact with the girl. He rubbed the child’s vagina while he masturbated. Joshua R. was committed to the California Youth Authority in 2002 as a result of that incident. By the time Joshua R. was 19 years old, he

had 13 or more victims. None of his probation officer's other 50 to 60 probationers on probation for sex offenses had that many victims. Dr. Wesley Maram, a forensic psychologist and director of his own sex offender program, said he only knows of two or three 19 year olds who have had 13 victims.

Joshua R. is in a sexual behavior treatment program at the N.A. Chaderjian Youth Correctional Facility (CHAD). He is in stage five of the treatment program there. He is struggling at this level and does not understand the materials. To be in custody for so long and to have only progressed to stage five is not common.

Dr. L. C. Miccio-Fonseca, a forensic clinical psychologist specializing in sexually abusive individuals, evaluated Joshua R. after being retained by the district attorney. Joshua R. declined to be interviewed, so Miccio-Fonseca's evaluation was based on a review of police, probation, and clinician reports, as well as case notes, and testimony. Miccio-Fonseca concluded Joshua R. meets the criteria set forth in section 1800 and has a sexual disorder, paraphilia, not otherwise specified. The doctor said Joshua R. may also have "psychomotor seizures where he's not totally unconscious, but he might seem like he's sort of out of tune, then comes back." She said he has borderline intellectual functioning. She also said he is not a pedophile — an individual sexually aroused by prepubescent youth — because the victims of his sexual acts range from two years old to a grandmother. He exposed himself to the grandmother.

Miccio-Fonseca said the fact that a number of Joshua R.'s sexual offenses occurred while he was on probation, and one involved the use of force in a public place, indicate he was not able to control his actions. Having engaged in predatory behavior and having committed a number of offenses while on probation make him a high risk to reoffend. His having maintained an erection or experiencing orgasm during offenses means the action is pleasurable to him, and that means the conduct is more likely to be repeated.

The doctor said Joshua R. has admitted fantasies about little girls when masturbating. He also stated in the past “he was concerned if he was let out, he may harm another child.” She said a January 6, 2010 record indicates he appears to lack insight into his offensive sexual behavior. In addition, he lacks a complete prevention plan, a necessary element of treatment. Joshua R. also submitted victim’s empathy letter that was plagiarized,<sup>3</sup> indicating he did not take the victim empathy exercise seriously.

Miccio-Fonseca said there is no cure for paraphilia, although paraphilia may go into remission. She said Joshua R. suffers from the chronic disorder. She added he is at a high level of reoffending due to the early onset of his symptoms, the fact he has a wide range of ages in his victims, and he has violated probation by committing sex offenses. She believes he would be dangerous if released. She said he has difficulty controlling his behavior and needs to remain in custody because he has yet to learn the skills necessary to keep himself at a low risk for reoffending.

Dr. Gregory Kirkwood is a clinical psychologist with the Division of Juvenile Justice. He has treated Joshua R. The sexual behavior treatment program used at the Division of Juvenile Justice is a 12-step residential program.<sup>4</sup> Stages one through 10 are to be completed while the individual is in custody. The latter stages deal with relapse prevention, including the preparation of a relapse prevention plan. The program generally takes 30 to 36 months for most individuals to complete.

Kirkwood is familiar with the process of assessing an individual’s risk of reoffending. As a general rule, the assessment is made after the individual completes the treatment program. In determining the risk of reoffending, Kirkwood looks to the individual’s level of commitment to the program, including whether the individual has

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<sup>3</sup> He and another individual turned in the same letter.

<sup>4</sup> Historically step 12 involves parole and postrelease services, but as of January, the state no longer offers parole services.

actively engaged in the program and participated in all the groups. The individual's insight into their situation is important.

Although he has done it in the past, Kirkwood would not generally recommend an individual be released prior to completion of the program. The reason he would not make such a recommendation is stages seven through nine — the relapse prevention stages — are the most important in the program. He said he would have “tremendous concern” for the safety of the individual and the community if the individual has not completed those steps. That having been said, the doctor did not evaluate Joshua R. for purposes of determining whether he qualifies for continued detention under section 1800.

### *The Defense's Case*

Joshua R. presented the testimony of a number of mental health professionals. As he does not contest the sufficiency of the evidence in support of the court's order extending his detention, it suffices to state he presented expert testimony to the effect that he would not be a danger, or would pose a low risk of danger if released.

## II

### DISCUSSION

#### *A. Section 1802 Does Not Require Dismissal*

Division 2.5, chapter 1, article 6 of the Welfare and Institutions Code (§§ 1800 through 1803) sets forth the statutory scheme for the extended detention of individuals previously committed to the Division of Juvenile Justice. When the Division of Juvenile Facilities finds the discharge of a ward who has been committed to the Division of Juvenile Justice “would be physically dangerous to the public because of the person's mental or physical deficiency, disorder, or abnormality that causes the person to have serious difficulty controlling his or her dangerous behavior, the division, through its Chief Deputy Secretary for Juvenile Justice, shall request the prosecuting attorney to

petition the committing court for an order directing that the person remain subject to the control of the division beyond that time. The petition shall be filed at least 90 days before the time of discharge otherwise required. The petition shall be accompanied by a written statement of the facts upon which the division bases its opinion that discharge from control of the division at the time stated would be physically dangerous to the public, . . .” (§ 1800, subd. (a).) Upon the filing of a section 1800 petition, the superior court determines whether the face of the petition supports a finding of probable cause to believe the individual meets the statutory requirements. If, after this paper review, the court finds the petition supports probable cause, the court then orders a probable cause hearing at which the individual may, with the aid of counsel, cross-examine “experts or other witnesses upon whose information, opinion, or testimony the petition is based.” (§ 1801, subd. (a).)

This probable cause hearing is to be held within 10 days of the paper review of the petition, unless the individual waives time for the hearing. (§ 1801, subd. (a).) After hearing the evidence presented at the probable cause hearing, the court determines “whether there is probable cause to believe that discharge of the person would be physically dangerous to the public because of his or her mental or physical deficiency, disorder, or abnormality which causes the person to have serious difficulty controlling his or her dangerous behavior.” (§ 1801, subd. (b).) If the court finds probable cause, it orders a trial in the matter. (*Ibid.*) The trial is by jury, absent a waiver by the individual. The individual has the right to have his or her jury trial within 30 days of the order finding probable cause. (§ 1801.5.) Before a court may order an extension of the individual’s detention, the trier of fact must find beyond a reasonable doubt the individual meets the statutory requirements. (*Ibid.*)

The amended petition in this matter was filed in August 2005. The probable cause hearing was not held until January 19, 2010, as a result of numerous continuances stipulated to or sought by Joshua R. The court found the petition was

supported by probable cause, but the trial did not commence until March 7, 2011. Joshua R. repeatedly waived time to continue the trial date.

Section 1802 permits biannual applications to extend the detention of an individual deemed dangerous based on his or her mental or physical deficiency, disorder, or abnormality. *“When an order for continued detention is made as provided in Section 1801, the control of the authority over the person shall continue, subject to the provisions of this chapter, but, unless the person is previously discharged as provided in Section 1766, the authority shall, within two years after the date of that order in the case of persons committed by the juvenile court, or within two years after the date of that order in the case of persons committed after conviction in criminal proceedings, file a new application for continued detention in accordance with the provisions of Section 1800 if continued detention is deemed necessary.* These applications may be repeated at intervals as often as in the opinion of the authority may be necessary for the protection of the public, except that the department shall have the power, in order to protect other persons in the custody of the department to transfer the custody of any person over 21 years of age to the Director of Corrections for placement in the appropriate institution. [¶] Each person shall be discharged from the control of the authority at the termination of the period stated in this section unless the authority has filed a new application and the court has made a new order for continued detention as provided above in this section.” (§ 1802, italics added.) Joshua R. contends the above-italicized language requires reversal of his order of extended detention. He asserts section 1802 requires a trial within two years of the paper review of the adequacy of the petition. He maintains that as a result of the initial probable cause determination, the court “implicitly” extended his detention.

“We independently review questions of statutory construction. [Citation.]” (*Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, \_\_ [2012 Cal. LEXIS 3981, at p. \*7].) The goal is to “ascertain the intent of the Legislature so as to effectuate

the purpose of the law. [Citations.]” (*Dubois v. Workers’ Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 387.)

“[T]he extended detention scheme in section 1800 et seq. provides for the civil commitment of individuals under the control of the [Division of Juvenile Justice].” (*In re Howard N.* (2005) 35 Cal.4th 117, 126.) Other than section 1802’s express reference to an order for continued detention, no other section makes reference to when the court is to make such an order, but the statutory scheme makes evident such an order is to be made only once the requisite finding has been made beyond a reasonable doubt. That the Legislature could not possibly have intended the superior court’s initial finding of probable cause to act as an extension of the individual’s detention is evidenced by the time limits set forth in the scheme. These time limits anticipate the trial will be conducted *prior* to the expiration of the individual’s scheduled release, unless the individual waives time.

Section 1800 requires a petition to extend the individual’s detention is to be filed “at least 90 days before the time of discharge otherwise required.” Once the petition is filed, the court is to then review whether the face of the petition supports probable cause. (§ 1801, subd. (a).) If such a finding is made, the individual is entitled to a probable cause hearing within 10 days. If probable cause is again found after that hearing, the individual is entitled to a trial within 30 days. (§ 1801.5.) It is thus plain to see the statutory scheme anticipates the individual will, absent a time waiver, have a trial on the petition to extend his or her commitment prior to the date the individual would otherwise be discharged. That being the case, and considering the express language in section 1802, it is indisputable the extended detention to which section 1802 refers is an order made after it has been found beyond a reasonable doubt the individual meets the statutory requirements for an extended detention, not to the trial court’s initial probable cause determination. Additionally, the fact that section 1802 expressly sets forth an order of extension is to be made after the trier of fact has determined the individual meets the

statutory requirements makes inescapable the conclusion that the two-year period of time referred to in the same statute is the extension ordered after trial. “If the trier of fact finds the defendant satisfies the statutory criteria, he may be committed for up to two years. (§ 1802.)” (*In re Howard N.*, *supra*, 35 Cal.4th at p. 126.) Accordingly, we hold section 1802 does not entitle Joshua R. to a dismissal of the petition when, after numerous time waivers, his trial was not held within two years of the initial probable cause determination.

*B. An Order Extending an Individual’s Detention Does Not Require the Testimony of a Witness From the Division of Juvenile Justice.*

Joshua R. also contends the trial court’s judgment must be reversed because, by the time of trial, the Division of Juvenile Facilities determined he was not dangerous. He asserts that by the time of trial doctors who work for the Division of Juvenile Justice, Drs. Krys Hunter, Michelle Cox, Teri Clipps, and Inga Talbert (the author of the addendum filed in support of the amended petition) were of the opinion he did not meet the statutory criteria, and the prosecution did not present any evidence the Division of Juvenile Facilities believed he needed to remain in custody. His argument boils down to this: The prosecution must not only prove beyond a reasonable doubt he meets the statutory criteria for an extended detention, it must also present evidence the Division of Juvenile Justice continues to believe he meets the criteria.

The statutory scheme requires the Division of Juvenile Facilities to determine whether the individual “would be physically dangerous to the public because of the person’s mental or physical deficiency, disorder, or abnormality” if discharged at the time otherwise required by law. (§ 1800.) If it finds the individual would pose a danger to the public, it then requests the district attorney to file a petition seeking an extended detention. (*Ibid.*) The petition “shall be accompanied by a written statement of the facts upon which the division bases its opinion that discharge from control of the

division at the time stated would be physically dangerous to the public, . . .” (*Ibid.*) Nowhere in the statutory scheme is the district attorney required to carry his or her burden at trial by presenting the testimony an expert from the Division of Juvenile Facilities. We will not read such a requirement into the statutes.

In *People v. Scott* (2002) 100 Cal.App.4th 1060, a similar argument was rejected in the context of a petition to commit Scott as a sexually violent predator (SVP). There, Scott contended that as the SVP Act required two evaluators (psychiatrists or psychologists) to concur that an alleged SVP meets the statutory criteria before a petition to commit the individual as an SVP may be filed, then proof beyond a reasonable doubt must necessarily require at a minimum the testimony of two psychiatrists or psychologists in support of a finding the individual is an SVP. (*Id.* at pp. 1062-1063.) The court found “Scott’s reasoning is flawed. The Legislature has imposed procedural safeguards to prevent meritless petitions from reaching trial. ‘[T]he requirement for evaluations is not one affecting disposition of the merits; rather, it is a collateral procedural condition plainly designed to ensure that SVP proceedings are initiated only when there is a substantial factual basis for doing so.’ [Citation.] ‘After the petition is filed, rather than demonstrating the existence of the two evaluations, the People are required to show the more essential fact that the alleged SVP is a person likely to engage in sexually violent predatory criminal behavior. [Citation.]’ [Citation.]” (*Id.* at p. 1063.)

So too here. The statutory scheme requires a petition seeking extension of a detention to be supported by documentation justifying an evidentiary hearing. (§ 1800 [“[t]he petition shall be accompanied by a written statement of the facts upon which the division bases its opinion that discharged . . . would be physically dangerous to the public”].) Once the court considers all the evidence presented by both sides at the probable cause hearing, and determines probable cause exists to believe the individual meets the statutory criteria, a trial is held. Determining whether the statutory criteria are proven beyond a reasonable doubt is the function of the trier of fact at trial. If the

evidence at trial establishes *beyond a reasonable doubt* the individual qualifies for continued detention, there is no plausible reason for requiring *additional* evidence in the form of testimony from a witness from the Division of Juvenile Justice. Nor does the statute require it.

The psychologist or psychiatrist who submitted an opinion in support of the filing of a section 1800 petition fulfilled his or her statutory purpose. Joshua R. cites no authority for the proposition that an expert from the Division of Juvenile Justice must testify at trial in support of the petition or the petition must be dismissed, and we have found none. Accordingly, we hold the prosecution is not required to produce the testimony of an expert from the Division of Juvenile Justice at trial under pain of dismissal.

### III

#### DISPOSTION

The judgment is affirmed.

MOORE, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

BEDSWORTH, J.