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

THE PEOPLE,

Plaintiff and Respondent,

v.

UWE HELMUT PETERS,

Defendant and Appellant.

H037454

(Santa Clara County
Super. Ct. No. C1197816)

After pleading no contest to attempted first degree burglary and admitting the truth of two prior strike allegations, defendant Uwe Helmut Peters was found by the court to have been legally insane at the time of the commission of the charged offense. Defendant thereafter requested leave to file a “quasi-Romero motion”—one styled after a request prior to imposition of sentence that the court exercise its discretion to dismiss the prior strike allegations in the furtherance of justice authorized by *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*). The court denied the request, concluding that there was no authority for the filing of such a quasi-Romero motion. It committed defendant to the Department of Mental Health for a term of 25 years to life.

Defendant contends that the court erred in denying him leave to file a request to have the court exercise its discretion to strike one or more of the strike

allegations in connection with determining the maximum term of the commitment. We conclude there was no error and will affirm the judgment.

FACTS¹

At approximately 4:40 in the morning of January 16, 2011, Jeff Peters was awakened at his home by the sound of “someone trying to break down [his] front door.” Peters immediately directed his wife to call 911 while he (a California Highway Patrol officer) retrieved his service weapon. Peters testified that there were “[l]oud thuds and the whole house was shaking.” While Peters was waiting in the hallway to confront the person if he or she broke down the door, he heard his brother, defendant, repeatedly say, “ ‘Uwe here.’ ” Defendant then very loudly said: “ ‘Dad called and said that you are dead and my nephews are dead. What did that Susie Palusi fucking floozy . . . do to you?’ ” Defendant ceased pounding on the front door and went to the side of Peters’s house. Defendant was arrested by the police a few minutes later. At the time the police arrived, Peters’s wife, Lorraine, observed defendant lying in the gutter of the driveway. There was a fire extinguisher on the Peterses’ front driveway that had not been there the night before.

PROCEDURAL BACKGROUND

Defendant was charged by amended information filed August 18, 2011, with one count of attempted first degree burglary (Pen. Code, §§ 664-459, 460, subd. (a)).² It was also alleged that defendant had been convicted previously of

¹ Our summary of facts is taken from the transcript of the preliminary hearing.

² All further statutory references are to the Penal Code unless otherwise stated.

two violent or serious felonies (§ 667, subd. (a)) that also constituted strikes (§§ 667, subds. (b)-(i)/1170.12), namely, assault with a deadly weapon (§ 245, subd. (a)(1)), and first degree burglary (§§ 459-460.1). The amended information contained further allegations that defendant had been previously convicted of a felony for which he had served a prison term and for a period of five years thereafter had not remained free of both prison custody and the commission of an offense resulting in a felony conviction (§ 667.5, subd. (b)).

Defendant entered a plea of no contest to the attempted first degree burglary charge and admitted the two strike allegations and the prison prior allegation. The court found defendant guilty based upon his no contest plea and dismissed the prior serious felony allegations (§ 667, subd. (a)) upon the People's request. The plea was entered into with the understanding that the matter of whether defendant was legally insane at the time of the commission of the offense would be decided by the court on the basis of reports submitted by experts, the preliminary hearing transcript, and police reports. (See *People v. Crosswhite* (2002) 101 Cal.App.4th 494, 498 [defendant, after guilty plea with understanding that court trial would follow on question of sanity, found not guilty by reason of insanity on basis of expert reports].)

On September 15, 2011, the court, after submission of reports from three psychologists, found defendant to have been legally insane at the time of the commission of the charged offense. On October 6, 2011, after hearing argument on defendant's request to file a "quasi-Romero motion," the court denied the request and committed defendant to the California Department of Mental Health for a term of 25 years to life pursuant to section 1026.5, subdivision (a)(1)

(§ 1026.5(a)(1)).³ Defendant filed a timely notice of appeal from the judgment, indicating that the appeal was “based on the sentence or other matters occurring after the plea that do not affect the validity of the plea” and specifically noting that he was challenging the denial of his request to file a quasi-*Romero* motion.⁴

DISCUSSION

I. *Denial of Request to File Quasi-Romero Motion*

Under section 1026, subdivision (a), if a defendant pleads not guilty by reason of insanity and the factfinder concludes that defendant is guilty of having committed the offense and thereafter concludes that he or she was insane when it was committed, the court (unless it finds the defendant to be fully recovered) must “direct that the defendant be confined in a state hospital for the care and treatment of the mentally disordered or any other appropriate public or private treatment facility approved by the community program director,” or order the defendant placed on outpatient status. In its commitment order, the court must specify “the maximum term of commitment,” and the defendant’s confinement may not exceed that term, except for any extensions as provided in subdivision (b) of section 1026.5. (§ 1026.5(a)(1).) Further, that section defines “the maximum term of commitment” to be “the longest term of imprisonment which could have been imposed for the offense or offenses of which the person was convicted [subject to custody credits], including the upper term of the base offense and any additional

³ The reporter’s transcript reflects the term of the commitment as “26 years to life.” But the clerk’s minutes, as corrected on November 23, 2011, show the term of commitment as 25 years to life, and defendant and the Attorney General concur that this was the court’s order.

⁴ Defendant indicated in the notice of appeal: “Defendant appeals from the placement order made pursuant to P.C. section 1026(b) on October 6, 2011. Specifically, the court denied the defense request to hold a *Romero*-type hearing to determine the maximum period of commitment pursuant to P.C. § 1026.5.”

terms for enhancements and consecutive sentences which could have been imposed . . .” (§ 1026.5(a)(1).) Thus, one committed under section 1026.5 after being found not guilty by reason of insanity “may not be in civil custody longer than the maximum state prison term to which [he or she] could have been sentenced for the underlying offense.” (*People v. McKee* (2010) 47 Cal.4th 1172, 1207; see also *People v. Wilder* (1995) 33 Cal.App.4th 90, 98.)

Defendant contends that the court erred in denying his request to file a quasi-*Romero* motion before it made its commitment order. He argues that the court is empowered generally under section 1385⁵ to dismiss an action, as well as to strike an enhancement (*People v. Thomas* (1992) 4 Cal.4th 206, 210), and that under *Romero, supra*, 13 Cal.4th at pages 529 to 530, this power includes striking in the interests of justice a prior serious or violent felony allegation under the Three Strikes law (i.e., a “strike”). Defendant asserts that section 1026.5(a)(1) does not expressly prohibit the court from striking a prior strike in connection with the making of its commitment order, and such an order bears a direct relationship to the Determinate Sentencing Law because the term of the commitment is based upon the maximum punishment that could have been imposed for the offense. Therefore (he argues), the court is authorized to strike one or more prior strike allegations in reaching its conclusion as to the “maximum term of commitment” as provided in section 1026.5(a)(1). We reject defendant’s position as constituting an unwarranted interpretation of section 1026.5.

⁵ “The judge or magistrate may, either of his or her own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed. The reasons for the dismissal must be set forth in an order entered upon the minutes. No dismissal shall be made for any cause which would be ground of demurrer to the accusatory pleading.” (§ 1385, subd. (a).)

By its terms, section 1026.5(a)(1) specifies that the maximum term of commitment shall be “the longest term of imprisonment which could have been imposed for the offense or offenses of which the person was convicted, included the upper term of the base offense and any additional terms for enhancements and consecutive sentences which could have been imposed . . .” The statute does not provide that the court should engage in speculation as to what a sentencing court *might* do were it faced with imposing a sentence after conviction for the charged offense. Rather, it requires that the court simply make a routine determination of the maximum prison sentence possible for conviction of the offense and any enhancements, without regard to any mitigating factors that might come into play were the court actually imposing a sentence after conviction. This is a straightforward means of determining the maximum term of commitment after a criminal defendant is found not guilty by reason of insanity. And the fact that under the statute, the court must select the upper term of the base offense in arriving at “the longest term of imprisonment” offers further support for our conclusion that the court, in making its commitment order under section 1026.5(a)(1), does not engage in the type of analysis of the individual circumstances of the case as it would were it called upon to impose a sentence. “The commitment of a defendant to a state hospital after a Penal Code section 1026 insanity determination is in lieu of criminal punishment and is for the purpose of treatment, not punishment. [Citation.]” (*People v. Superior Court (Williams)* (1991) 233 Cal.App.3d 477, 485, citing *In re Moye* (1978) 22 Cal.3d 457, 466; see also *People v. Powell* (2004) 114 Cal.App.4th 1153 [in civil proceedings extending treatment of persons found not guilty by reason of insanity under section 1026.5, jury does not impose criminal punishment].)

As our high court has explained, “Our role in construing a statute is to ascertain the intent of the Legislature in order to effectuate the purpose of the law.

[Citation.] Because the statutory language is generally the most reliable indicator of that intent, we look first at the words themselves, giving them their usual and ordinary meaning and construing them in context. [Citation.] If the plain language of the statute is clear and unambiguous, our inquiry ends, and we need not embark on judicial construction. [Citations.] If the statutory language contains no ambiguity, the Legislature is presumed to have meant what it said, and the plain meaning of the statute governs. [Citations.]” (*People v. Johnson* (2002) 28 Cal.4th 240, 244.) Here, the language of section 1026.5(a)(1) is plain: It defines the maximum term of commitment as the longest term of imprisonment that could have been imposed by a sentencing court for the offense, together with any enhancements, had the committee been convicted. This unambiguous definition does not render the statute reasonably susceptible to defendant’s claim that the court, prior to making its commitment order, may consider mitigating circumstances that might warrant the striking of a strike allegation in the furtherance of justice under *Romero, supra*, 13 Cal.4th 497, were it to have been acting as a sentencing court. Stated simply, section 1026.5(a)(1) requires the court to fix the maximum term of the commitment by reference to the maximum prison sentence that *could be* imposed had the committee been convicted, not the prison sentence that *might have been* so imposed by a sentencing court upon conviction of the offense.

Defendant also argues briefly that his right to make a quasi-*Romero* motion prior to the court’s commitment order is of constitutional dimension. He contends that federal and state due process considerations dictate that “an NGI [not guilty by reason of insanity] defendant is entitled to the same right to a hearing that he would’ve been entitled to if he been [*sic*] found guilty. [Citation.]”

Defendant cites no apposite authority for the proposition that persons adjudged not guilty by reason of insanity are entitled to the same hearing rights as

persons found guilty of the same charged offense.⁶ Moreover, defendant's claim of "the same right to a hearing" suggests that a committee who has been found not guilty by reason of insanity and is therefore subject to a commitment order to treat his or her illness is entitled to a sentencing hearing that one found guilty of the offense would be entitled to receive. There is no legal basis for this assertion, and, as we have noted, *ante*, the unambiguous language of the statute does not support defendant's view. We therefore reject defendant's constitutional claim.⁷

DISPOSITION

The judgment is affirmed.

⁶ Defendant cites *Jones v. United States* (1983) 463 U.S. 354, 368-369, in support of his contention. There, the Supreme Court, *inter alia*, rejected the committee's due process argument that a person adjudged not guilty by reason of insanity could not be confined to a mental hospital for a period in excess of the period he or she could have been incarcerated if convicted. (*Id.* at pp. 368-369.) Stressing the differences between persons convicted of offenses and those found not guilty by reason of insanity, the high court held: "Different considerations underlie commitment of an insanity acquittee. As he was not convicted, he may not be punished. His confinement rests on his continuing illness and dangerousness. . . . There simply is no necessary correlation between severity of the offense and length of time necessary for recovery. The length of the acquittee's hypothetical criminal sentence therefore is irrelevant to the purposes of his commitment." (*Id.* at p. 369, fns. omitted.)

⁷ To the extent defendant's argument suggests that the denial of his request to file a quasi-*Romero* motion is a denial of equal protection, we reject the assertion because (1) it is forfeited based upon defendant's failure to assert it (*People v. Weaver* (2001) 26 Cal.4th 876, 987); and (2) it lacks merit because, in light of the difference between the sentencing of persons convicted of crimes, i.e., punishment, and the commitment of persons found not guilty of the commission of crimes by reason of insanity, i.e., treatment of the committee (*People v. Superior Court (Williams)*, *supra*, 233 Cal.App.3d at p. 485), the two classes of persons are not similarly situated, a prerequisite of an equal protection claim. (*People v. Hofsheier* (2006) 37 Cal.4th 1185, 1199.)

Duffy, J.*

WE CONCUR:

Rushing, P.J.

Premo, J.

* Retired Associate Justice of the Court of Appeal, Sixth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.