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

THE PEOPLE,

Plaintiff and Respondent,

v.

LARRY JOSEPH HAZELAAR,

Defendant and Appellant.

H038032

(Santa Cruz County

Super. Ct. No. F20559)

Defendant Larry Joseph Hazelaar appeals from an order adjudging him incompetent to stand trial. Defendant contends: (1) he was deprived of his federal and state due process rights because he did not have a fair competency trial, and (2) he was entitled to conduct credit while incarcerated in jail prior to being committed to state hospital. We find no error and affirm.

I. Procedural and Factual Background

Defendant was charged by information with one count of stalking (Pen. Code, § 646.9, subd. (a)),¹ three counts of contempt of court (§ 166, subd. (c)(1)), and two counts of making an annoying telephone call (§ 653m, subd. (a)).

¹ All further statutory references are to the Penal Code.

After defense counsel declared a doubt as to defendant's mental competency in April 2011, the trial court suspended proceedings pursuant to section 1368 and appointed Dr. Thomas Reidy to examine defendant.

Dr. Reidy's report, dated May 5, 2011, provided some background information on defendant, who was then 69 years old. Dr. Reidy stated that defendant's obsessive delusional relationship with a local attorney's daughter had led to the present charges. According to the police reports, defendant approached and peeked into her house, sent correspondence to her, and made annoying telephone calls. When confronted about his conduct, defendant reacted with "agitated, demanding, and threatening behavior," and denied that there was a restraining order against him. According to Dr. Reidy, defendant had an "extremely lengthy criminal history dating back to adolescence," which he either refused to discuss or greatly minimized. Dr. Reidy also noted that defendant had two prior psychiatric hospitalizations, though defendant indicated that he had only been hospitalized once and that it was "a mistake" and "very minor in nature." Defendant had been evaluated numerous times at the jail and outpatient mental health, and had been described as paranoid and had displayed "hypervocal speech, flight of ideas, and delusions, but no hallucinations or major psychotic symptoms."

In evaluating his present mental status, Dr. Reidy found defendant "very difficult to interview because of his guarded demeanor, mistrust, questioning attitudes, and threats to see [Dr. Reidy] in court." According to Dr. Reidy, "[o]vert psychosis became apparent during the competency examination when [defendant] displayed delusional thinking and disorganized thoughts but he [could] present a façade of organized thinking until challenged." He further concluded that "defendant's behavior suggest[ed] a pattern of stalking and obsessional harassment within the context of personality disorder involving antisocial, paranoid, and narcissistic features."

Dr. Reidy administered the MacArthur Competence Assessment Tool – Criminal Adjudication and concluded that defendant was not competent to stand trial. He stated:

“The defendant’s response to the competency portion of the assessment suggests that he has significant difficulties with reasoning and appreciation of his circumstances. Most importantly, however, exam results suggest he is unable to cooperate in a rational manner with his attorney to defend against the charges. It is likely that he will be quite difficult to treat because of his denial of any form of mental illness, his high degree of evasiveness, and hostility toward authority. [¶] There is substantial likelihood that this individual will require psychiatric medication to be restored to competency. He currently does not display the capacity to make decisions regarding psychiatric medication due to denial of mental illness. Medication is appropriate for the psychotic symptoms present and the potential benefits, including restoration to competency, outweigh any potential side effects.”

After receiving Dr. Reidy’s report, the trial court declared a doubt as to defendant’s competency, suspended criminal proceedings, and appointed Dr. Gregory Katz to examine defendant.

Dr. Katz’s report, dated June 1, 2011, stated that he had considered information from law enforcement records and consultations with defense counsel and mental health staff at the jail. When Dr. Katz attempted to interview defendant, he became “increasingly belligerent” and refused to talk to him. Dr. Katz concluded: “[Defendant] has a history of ‘stalking’ and ‘peeping’, as well as violating restraining orders. Jail staff indicates they have never seen him act ‘psychotic’, but there has been evidence of illogical thinking, erratic behavior and grossly impaired judgment. He has evidenced uncooperativeness with his attorney and unrealistic and ill-advised behavior related to his own defense. He does not evidence a logical or realistic approach to his charges, nor is he currently able to cooperate rationally with his attorney in his own defense. Based on the available information, it is the examiner’s opinion [defendant] is not currently competent to stand trial. He does not evidence rational thought processes necessary to refuse psychotropic medications.”

After the trial court received Dr. Katz's report, the case was set for a jury trial. Following several continuances, defense counsel waived jury trial.

On February 14, 2012, a court trial was held. The reports by Drs. Reidy and Katz were admitted into evidence. After defense counsel submitted the matter, the trial court found defendant to be incompetent to stand trial. About two weeks later, the trial court ordered defendant placed at Atascadero State Hospital until his competency was restored, or the expiration of three years, less credit for 359 days. Defendant then filed a timely notice of appeal.

II. Discussion

A. Court Trial

Defendant contends that the proceedings were fundamentally unfair because he did not have a trial at which the medical reports could be tested by cross-examination.

“[T]he Due Process Clause of the Fourteenth Amendment prohibits the criminal prosecution of a defendant who is not competent to stand trial.’ [Citation.] ‘In a competency hearing, the “emphasis is on [the defendant’s] capacity to consult with counsel and to comprehend the proceedings”’ [Citation.] Section 1367 implements this requirement, providing: ‘A person cannot be tried or adjudged to punishment while that person is mentally incompetent. A defendant is mentally incompetent for purposes of this chapter if, as a result of mental disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner.’ [Citation.]” (*People v. Reynolds* (2011) 196 Cal.App.4th 801, 806 (*Reynolds*).

Defense counsel may waive a jury trial on the question of the defendant's competency over his or her objection, since the right to a jury trial is statutory. (*People v. Lawley* (2002) 27 Cal.4th 102, 131.) Defense counsel may also waive the right to cross-examination of witnesses and to present oral testimony. (*People v. Masterson* (1994) 8

Cal.4th 965, 972.) Moreover, “when counsel believes his client may be incompetent, and the trial court, pursuant to section 1368, has declared a doubt of defendant’s competence, defendant is not deprived of effective assistance if defense counsel overrides defendant’s desire to present only evidence and argument of competence. [Citations.]” (*People v. Stanley* (1995) 10 Cal.4th 764, 804-805.)

Defendant argues that there was no actual stipulation to try the competency issue on the written reports. He also contends that Dr. Reidy’s report indicated bias, and thus he suggests that defense counsel should have cross-examined him about his comment that defendant was “currently on his third attorney,” the lack of records from Atascadero State Hospital regarding defendant’s prior hospitalization, and defendant’s need for antipsychotic drugs. However, defense counsel was willing to submit the matter on the existing record. Given that defense counsel was authorized to control the proceedings on behalf of the client, there was no error.

B. Conduct Credit

Defendant next contends that the trial court erred in calculating the maximum term of his incompetency commitment, because it failed to award conduct credit for the time that he spent in county jail prior to his commitment to the state hospital.

When a defendant is adjudged incompetent as a result of a mental disorder to stand trial on a felony charge, he may be committed to a state hospital for no more than three years or the maximum term of the most serious offense, whichever is shorter. (§§ 1367, subd. (b), 1370, subds. (a), (c).) “The three-year period under section 1370, subdivisions (a) and (c), applies to the aggregate of all commitments for treatment of incompetency regarding the same charges. [Citation.]” (*Reynolds, supra*, 196 Cal.App.4th at p. 806.) If, at the end of the three-year period of commitment, the medical staff determines that “there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future,” the defendant shall be returned to the court for additional

proceedings. (§ 1370, subds. (b), (c).) If the defendant is “gravely disabled,” the trial court shall order the initiation of conservatorship proceedings. (*People v. Karriker* (2007) 149 Cal.App.4th 763, 774-777, 781; § 1370, subd. (c)(2).) As an alternative, the trial court may dismiss any charges against the defendant and release him or her, “without prejudice to the initiation of any proceedings that may be appropriate under the Lanterman-Petris-Short Act.” (§ 1370, subd. (e).)

Here, the trial court found that defendant’s maximum term for the most serious offense was three years and ordered that defendant be committed to the state hospital. The trial court also awarded 359 days of custody credit from the date of defendant’s arrest on March 3, 2011 until February 29, 2012, when he was committed to the state hospital.

A defendant, who is confined in county jail, may be eligible for conduct credit from the date of arrest to the date on which he begins serving his sentence under a judgment of conviction. (§ 4019, subd. (a)(1).)² This statute does not apply to the present case, because defendant has not been convicted and begun serving a sentence.

However, relying on *In re Banks* (1979) 88 Cal.App.3d 864 (*Banks*), defendant argues that equal protection guaranties apply. As defendant acknowledges, the issue in *Banks* was the defendant’s entitlement to custody, not conduct, credit. Though a defendant is entitled to custody credit toward his term of imprisonment for each day spent in custody prior to the imposition of sentence pursuant to section 2900.5, *Banks* recognized that no statute expressly provided for custody credit in calculating the maximum duration of an incompetency commitment for time spent in jail prior to

² Section 4019 states, in relevant part, that “[w]hen a prisoner is confined in or committed to a county jail, industrial farm, or road camp, or any city jail, industrial farm, or road camp, including all days of custody from the date of arrest to the date on which the serving of the sentence commences, under a judgment of imprisonment, or a fine and imprisonment until the fine is paid in a criminal action or proceeding,” he or she may be entitled to conduct credit. (§ 4019, subds. (a)(1), (b).)

commitment to a state hospital. (*Banks*, at p. 867.) However, *Banks* concluded that the “[d]enial of credit for precommitment confinement results in discrimination on the basis of wealth in violation of state and federal equal protection guaranties because indigent defendants who are unable to obtain release on bail will serve precommitment jail time and so will be confined longer than wealthier defendants who are released on bail prior to their incompetency commitments. [Citations.]” (*Ibid.*) *Banks* reasoned: “For purposes of equal protection, we can perceive no logical distinction between the application of credit against an actual sentence and the application of credit against a sentence term used to measure the maximum permissible duration of an incompetency commitment. In either case, the denial of credit necessarily results in longer confinement for indigents unable to post bail bonds. This discriminatory treatment is constitutionally forbidden.” (*Banks*, at p. 869, fn. omitted.) Thus, a defendant is entitled to custody credit for the period of incarceration prior to commitment toward the three-year maximum for an incompetency commitment. (*Id.* at p. 869.) However, the rationale of *Banks* does not apply to the issue of conduct credit. The denial of this type of credit does not result in longer confinements in state hospitals for individuals, such as defendant, who remain incarcerated and cannot post bond. Any disparity between these two groups of individuals is eliminated once a defendant receives custody credit for precommitment confinement.

Defendant next argues that the Legislature clearly “intended that persons committed to a state hospital under Penal Code section 1370 shall not be confined in a hospital with criminal charges pending for longer than they would have spent if convicted and sentenced on the most serious charge.”

When interpreting a statute, this court must “ascertain and effectuate legislative intent. [Citations.] To determine legislative intent, we turn first, to the words of the statute, giving them their usual and ordinary meaning. [Citations.] When the language of a statute is clear, we need go no further. However, when the language is susceptible of

more than one reasonable interpretation, we look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part. [Citations.]” (*People v. Flores* (2003) 30 Cal.4th 1059, 1063.)

Section 1370, subdivision (c)(1) provides: “At the end of three years from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged . . . , whichever is shorter, a defendant who has not recovered mental competence shall be returned to the committing court.” In setting the maximum term of commitment to a treatment facility, the Legislature did not refer to either custody or conduct credit.

Relying on subdivision (a)(3) of section 1370, defendant argues that conduct credit is deducted from the maximum term of commitment “so that the defendant is not detained for a longer time than he could have spent in jail or prison if convicted.” Subdivision (a)(3) requires the court to provide various documents, including “[a] computation or statement setting forth the amount of *credit for time served*, if any, to be deducted from the maximum term of commitment,” to the treatment facility at the time of the defendant’s commitment. (§ 1370, subd. (a)(3)(C), italics added.) However, this subdivision does not define the type of credit to be awarded. Given the severity of these individuals’ illnesses, the more reasonable interpretation of “credit for time served” is credit for time actually spent in custody.

Our interpretation is supported by *People v. Waterman* (1986) 42 Cal.3d 565 in which the California Supreme Court rejected a defendant’s equal protection claim that he was entitled to earn conduct credit for the presentence time spent in a state hospital following a finding of incompetency since offenders committed for narcotics addiction received such credit. (*Id.* at p. 571.) Though *Waterman* is factually distinguishable from the present case, its rationale is applicable. *Waterman* reasoned that “the Legislature may decide that important therapeutic goals are not served by a conduct-credit system

[¶] . . . The purpose of confinement is to restore the mental ability to stand trial. . . . [This] goal would be hindered if mere institutional good behavior and participation automatically reduced the therapy period. [Citation.]” (*Id.* at p. 570.) *Waterman* further noted that “persons so ill that they cannot understand or assist trial proceedings may often be so disoriented that they are incapable of responding to credit incentives. Moreover, the law subjects certain dangerous persons to extended commitments under the LPS Act at the conclusion of their maximum initial commitments for incompetence, if they remain incompetent and are found dangerous. [Citations.] Allowance of hospital conduct credits to these dangerous incompetents might force premature resort to the extended-commitment procedures. [Citation.]” (*Id.* at p. 570, fn. 3.) Similarly, here, the deduction of conduct credit from the maximum term of commitment would also thwart the purpose of “restoration of a specific mental state without which the criminal process cannot proceed.” (*Id.* at p. 569.) Accordingly, we reject defendant’s claim.

III. Disposition

The order is affirmed.

Mihara, J.

WE CONCUR:

Premo, Acting P. J.

Grover, J.