

IN THE SUPREME COURT FOR THE STATE OF CALIFORNIA

PATRICK LOWELL JACKSON,)

Docket No.: S235549

Petitioner,)

Ct. App. No. E064010

v.)

Super.Ct.No.
INF1500950

THE SUPERIOR COURT OF THE STATE OF)
CALIFORNIA, COUNTY OF RIVERSIDE,)

**SUPREME COURT
FILED**

Respondent.)

OCT 31 2016

THE PEOPLE OF THE STATE OF)
CALIFORNIA, AND.)

Jorge Navarrete Clerk

Real Party in Interest.)

Deputy



PETITIONER'S OPENING BRIEF ON THE MERITS

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Penal Code² section 1370, recognizing that a criminal defendant committed as mentally incompetent must be released when his commitment term expires unless a separate and independent legal basis exists for his continued confinement.³ Over the past year or so, however, apparent confusion has arisen in the lower courts.⁴ Hopefully, the decision in this case will alleviate said confusion.⁵

² Subsequent statutory references are to the Penal Code unless otherwise indicated.

³ See, e.g. *People v. Waterman* (1986) 42 Cal.3d 565, 568 [A defendant must be returned to court after maximum period of confinement as an incompetent, and if he is not made the subject of a conservatorship, “the court must release him from confinement”]; *People v. Karriker* (2007) 149 Cal.App.4th 763, 788 [“Penal Code section 1370 explicitly contemplates that some defendants charged with felonies will be released if they are not restored to competency within the allowable time period.”]; *In re Newmann* (1976) 65 Cal.App.3d 57, 64 [pending criminal charges no longer afford a valid basis for involuntary confinement once the court has found no substantial likelihood that the defendant will become competent to stand trial on the charges in the foreseeable future. In such cases, “[t]he defendant must be released, or an alternative basis for confinement must be established”].)

⁴ Last November, this Court ordered depublication of a decision from the First District Court of Appeal which construed Penal Code section 1368 so as to permit renewed competency proceedings against one who had been “returned to court” under section 1370, subdivision (c), subparagraph (1) at the end of the maximum term of commitment. (*Calloway v. Superior Court of Contra Costa County*, formerly published at 239 Cal.App.4th 253, review denied and ordered not to be officially published (Nov. 10, 2015; S222841). A few months later, the Attorney General asked this court to grant review of another published case interpreting section 1370, *People v. Quiroz* (2016) 244 Cal.App.4th 1371, rehearing denied (Mar. 15, 2016), review denied (May 25, 2016) [a trial court abuses its discretion by initiating new competency proceedings against one who has been “returned to court” under section 1370, at the expiration of his term of commitment.] The instant case demonstrates yet a third appellate court’s confusion about what is to be done with a section 1370, subdivision (c) returnee, when no legal basis exists to continue his confinement.

⁵ Petitioner’s claim was arguably rendered moot on May 25, 2016, when he was committed under Welfare and Institutions section 6500 and thereafter transported from county jail to Porterville Developmental Center. But the criminal case remains active, and, based on the Court of Appeals decision, Petitioner faces the

QUESTIONS PRESENTED

When a mentally incompetent criminal defendant is “returned to the committing court” under Penal Code section 1370, subdivision (c), subparagraph (1), without having been civilly committed through any alternative procedure, what are the trial court’s “options” with respect to admitting the defendant to bail and conducting proceedings on the underlying criminal charges, even when re-filed by a superseding indictment?

STANDARD OF REVIEW

No material facts are disputed. This case presents an issue of statutory interpretation, and the standard of review is de novo. (*California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 699.)

STATEMENT OF RELEVANT FACTS⁶

In case INF061963, filed in May, 2008, Petitioner was charged with sexual crimes alleged to have been committed against a 16 year-old male at a casino in Riverside County. (Exh. C⁷, pp. 25-27.) These same charge were re-filed by a

risk of being admitted to bail once again at the end of his current one-year commitment. For this reason and because the issue is “of great public import”, this court should, in its discretion, decide the question presented. (*In re Walters* (1975) 15 Cal.3d 738, 744; *In re William M.* (1970) 3 Cal.3d 16, 23; *In re Naito* (1985) 185 Cal.App.3d 1656, 1658-59; *In re Lee* (1978) 87 Cal.App.3d 753, 756; *Beilenson v. Superior Court* (1996) 44 Cal.App.4th 944, 949.)

⁶ Not all of these facts were recounted in the Court of Appeal’s published decision, but all were established by the record below and were reiterated in the petition for rehearing, denied on June 6, 2016.

⁷ Exhibit references are to the Exhibits in Support of the Petition for Writ of Mandate, unless otherwise specified.

superseding indictment, returned in May, 2015. (Exh. C, pp. 34-36.)

On March 29, 2012, after having been found incompetent to stand trial, Petitioner was committed to Patton State Hospital for a period not to exceed three years. (Exh. I, p. 149.) On September 23, 2014, the court received a section 1370, subdivision (b) report from the director of Patton State Hospital, recommending that conservatorship proceedings be initiated due to the absence of a substantial likelihood that Petitioner would be competent to stand trial before his commitment term expired. (Exh. I, p. 147.) Thereafter, a Lanterman-Petris-Short ("LPS") conservatorship investigation was initiated pursuant to Welfare and Institutions Code section 5350. (Exh. I, p. 147; Exh. K, p. 177, 188, 190.) Petitioner's three-year term of commitment expired on March 29, 2015, three years from the date of the commitment order. (§ 1370, subd. (c)(1).)

Before Petitioner's competency commitment expired, the Riverside County Public Guardian initiated an LPS conservatorship proceeding, and Petitioner was made the subject of a temporary conservatorship. (Exh. 4 to Real Party's Response to Petition, pp. 63-69.) But on May 7, after Petitioner's competency commitment had expired, the Public Guardian abandoned the conservatorship proceeding, because Petitioner is not a resident of Riverside County. (Exh. K, pp. 177-178, pp. 199-200; Exh. 4 to Real Party's Response, p. 64.)

Notwithstanding the foregoing, on May 14, 2015, the Riverside District Attorney's office asked the superior court to order that Petitioner remain confined

at Patton State Hospital in the criminal case, because the People had not yet impaneled a criminal grand jury in order to seek an indictment, a prerequisite to a petition for a “Murphy” conservatorship.. (Exh. K, pp. 175-176; Welf. & Inst. Code, § 5300.) The court found that Petitioner had “timed out” on his competency commitment and denied this request. (Exh. K, p. 182.) The following day, the District Attorney filed a motion for an order compelling the Public Guardian to re-initiate LPS conservatorship proceedings. The motion was denied. (Exh. I, p. 134.) On May 18, 2015, the court finally ordered that Petitioner be released from custody.

On May 22, 2015, the Riverside District Attorney filed a superseding indictment, with the same criminal charges as those alleged by Complaint in the existing case, INF061963. The case was assigned a new case number, INF1500950, and the court issued a warrant was for Petitioner’s arrest. Petitioner was arrested and admitted to bail in the amount of one million dollars on June 2, 2015. (Exh. A, Exh. 1 to Return, p. 5.) Petitioner’s counsel thereafter lodged a formal objection to his rearrest and admission to bail. After the court declined to reconsider its bail order, a petition for a writ of mandate was filed in the Fourth District Court of Appeal, Division Two, asking that the bail order in the criminal case be vacated and that Petitioner be ordered released in the criminal proceeding. On May 24, 2016, the Court denied the petition, finding that Petitioner had failed to establish facts necessary to show that he was entitled to the relief requested.

ARGUMENT

I.

WHEN A MENTALLY INCOMPETENT CRIMINAL DEFENDANT HAS BEEN COMMITTED FOR THE MAXIMUM TIME ALLOWABLE UNDER SECTION 1370, HE MUST BE RELEASED UNLESS INDEPENDENT LEGAL GROUNDS AUTHORIZE HIS CONTINUED CONFINEMENT

California's statutory scheme governing pre-trial involuntary commitment of criminal defendants who lack the mental capacity to be brought to trial is grounded in the due process clause of the state and federal constitutions.

In 1972, the United States Supreme Court held that, at a minimum, "due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed," and, that a person who is charged with a criminal offense and is involuntarily committed on account of his incapacity to proceed to trial, "cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future." (*Jackson v. Indiana* (1972) 406 U.S. 715, 737.) In 1973, in *In re Davis* (1973) 8 Cal.3d 798, 806-807, this Court adopted the reasonableness rule of *Jackson v. Indiana* and recommended guidelines for confinement, commitment, restoration, and eventual release or recommitment "under alternative commitment procedures" of mentally incompetent defendants prosecuted in California courts. These guidelines were codified and enacted by the Legislature the following year, with the adoption of

Assembly Bill No. 1529, which codified the holdings of *Jackson* and *Davis* by amending California's civil commitment scheme and specifying that the maximum reasonable period of involuntary commitment of any incompetent criminal defendant in the State of California is three years. (*Hale v. Superior Court* (1975) 15 Cal.3d 221, 225-226, citing Stats. 1974, ch. 1511, §4; *In re Polk* (1999) 71 Cal.App.4th 1230, 1235 ["The three-year limit was added to section 1370 in 1974 ... the purpose of the legislation was to bring the procedure for the commitment of mentally incompetent defendants in accord with the decision of the California Supreme Court in *In re Davis*."]; §1370, subd. (c)(1); Parker, *California's New Scheme for the Commitment of Individuals Found Incompetent to Stand Trial* (1975) 6 Pacific L.J., p. 489.)⁸ The statute provides that at the end of the three year period, unless the defendant has been committed under alternative commitment procedures, he or she must be released. (Parker, *California's New Scheme for the Commitment of Individuals Found Incompetent to Stand Trial*, *supra*, at p. 489.)

⁸ The author of this article, Marjory Winston Parker, testified before the Senate Judiciary Committee in support of Assembly Bill 1529 and wrote this article while employed as a Deputy Attorney General for the State of California. The Attorney General's Office assisted Assemblyman Frank Murphy, the Bill's author, in drafting the legislation and worked closely with the Assemblyman and his staff over an eighteen month period, with contributions from Laurence S. Smith, who was then Public Defender of Los Angeles County, and Karen Pederson, then the Consultant to the Senate Committee on the Judiciary. (Parker, *California's New Scheme For The Commitment Of Individuals Found Incompetent To Stand Trial*,

California's competency commitment scheme is designed to insure that an incompetent criminal defendant remains involuntary confined for no longer than is reasonably necessary for him to achieve the capacity to stand trial. For instance, section 1370, subdivision (b) requires the director of the state hospital or facility at which the defendant is confined for treatment to send periodic reports to the committing court regarding the defendant's progress toward achieving mental competency. If the director reports that there is no substantial likelihood that the defendant will regain competence in the foreseeable future, the court must, within ten days, order the defendant returned to the court "for proceedings pursuant to paragraph (2) of subdivision (c)[of section 1370]." (§1370, subd. (b)(1)(A).)⁹

If the defendant does not achieve mental competency before his term of commitment expires, at the end of the proscribed time period he must be "returned to the committing court." (§1370, subd. (c)(1).) At that point in time, if it appears to the court that the defendant is gravely disabled, as defined in Welfare and Institutions Code section 5008, subdivision (h)(1)(B), the court must order that an LPS conservatorship investigation be initiated by the appropriate government agency. (§1370, subd. (c)(2).) If the defendant reaches the expiration of his maximum term of commitment without being made the subject of alternative

supra, p. 484.)

⁹ Similarly, if the medical director determines that the defendant has regained mental competence, this fact must be certified to the court and the defendant must be returned to the court no later than ten days following the filing of the certificate of restoration. (§1372, subd. (a)(3)(C).)

commitment proceedings, he must be released.

II.

**THE REFILING OF A SUPERSEDING INDICTMENT HAS
NO LEGAL EFFECT ON THE COURT'S "OPTIONS,"
SINCE CRIMINAL PROCEEDINGS ON THE UNDERLYING
CHARGES REMAIN SUSPENDED INDEFINITELY AFTER
THE DEFENDANT'S COMPETENCY COMMITMENT TERM
HAS EXPIRED**

Here, the lower court justified Petitioner's post-commitment re-arrest and re-incarceration based on the District Attorney's re-filing, by indictment, the same criminal charges.

While it is true that the indictment in case No. INF1500950 stems from the same alleged conduct as the complaint in case No. INF061963, petitioner has offered no reason why the People could not prosecute him on charges related to his conduct on May 3, 2008, under a new case number if he were currently competent to stand trial. If the prosecution in case No. INF1500950 may continue, and the record and the briefing before us present no bar to that occurrence, we are aware of no reason why petitioner could not be confined in jail awaiting trial on those charges absent another incompetency finding.

(Jackson v. Superior Court (2016) 247 Cal.App.4th 767, 772, reh'g denied (June 6, 2016), rev'w granted (Aug. 24, 2016). The lower court attributed significance to the absence of evidence in the record that the defendant had been found still and/or again incompetent after the indictment was returned.

As we noted ante, the record contains no evidence that petitioner has actually been declared incompetent to stand trial in case No. INF1500950, and it contains no other proof that the incompetency the court found to exist in case No. INF061963 still continues. Without substantiating this fact, petitioner has failed to show that his current confinement is due to nothing

other than a present incapacity to stand trial. In a similar vein, he has not shown that he has been “committed” at all in case No. INF1500950.

(*Jackson v. Superior Court, supra*, at p. 772.) Based on the foregoing, the Court concluded that, while the “commitment” of Petitioner in the new case would be prohibited under section 1370, his continued “confinement” and admission to bail on the criminal charges was authorized unless and until section 1368 proceedings were conducted anew and he was again found incompetent to stand trial.¹⁰ Upon examination, the flaws in the Court’s reasoning are obvious.

Involuntary civil commitment of a criminal defendant who lacks the mental capacity to stand trial must be viewed, preliminarily, in the broader context of state court criminal proceedings. Generally, the initiation of a criminal case, whether by complaint or indictment, charging a defendant with crimes punishable by incarceration or imprisonment vests in the superior court personal and subject matter jurisdiction over the defendant. A court with such jurisdiction has the

¹⁰ In a similar vein, the Court of Appeal faulted Petitioner for failing to present evidence that a finding had been made in the new case, INF1500950, regarding “whether there is a substantial probability that [petitioner] will attain ... capacity [to stand trial] in the foreseeable future” (*Jackson v. Superior Court, supra*, at p. 772, quoting *Jackson v. Indiana* (1972) 406 U.S. 715, 738.)¹⁰ This observation ignores the existence of the evidence establishing that this finding was made in September, 2014, in case INF061963 (Exhibit I to Petition, p. 147.) It also reflects the Court’s utter confusion about which provision of section 1370 compels Petitioner’s release. While release of a defendant *prior to the expiration of the maximum allowable term of commitment*, under section 1370, subdivision (b) requires a finding that no substantial probability exists that the defendant will attain the capacity to stand trial in the foreseeable future, Petitioner’s release is compelled by subdivision (c) of section 1370, and no such finding is required.

statutory authority to compel the presence of the defendant in future proceedings, to release the defendant on his own recognizance, and, under certain circumstances, to admit the defendant to bail (§1268) pending resolution of the charges. Unless otherwise provided by statute, the superior court's jurisdiction over the defendant in a criminal case, including its ability to admit the defendant to bail, terminates when the defendant is discharged, either by judge or by jury, or when the defendant is convicted and judgment is imposed.

The commitment procedures of section 1367, et seq., only come into play in the context of a criminal proceeding and only when it becomes necessary to take a detour in the criminal proceedings due to the defendant's inability, as a result of a mental illness or developmental disability, "to understand the nature of the proceedings or to assist counsel in the conduct of a defense in a rational manner." (§1367, subd. (a).) Although such a person may not be prosecuted, tried, or convicted, he or she can be committed for the purpose of attaining competency to stand trial. The procedures and guidelines governing such commitments are delineated in sections 1367 through 1376.

Once a defendant has become the subject of competency commitment proceedings, criminal proceedings must be suspended. (§1368, subd. (c).) The court retains jurisdiction over the defendant, but not under the provisions of the Penal Code applicable to criminal proceedings (except as provided in section

1368.1); rather, the court's jurisdiction is delineated by the provisions of the Penal Code governing the competency proceedings. This is so, because the criminal proceedings will remain suspended unless and until the defendant attains the mental capacity to stand trial or reaches the maximum term of commitment under section 1370, subdivision (c), subparagraph (1) without having been committed under alternative commitment procedures. At this point, the court's power with regard to the defendant is extremely limited – it has only one option – it must order that the defendant be released from confinement.

The District Attorney has the authority to dismiss an action, before the commencement of a preliminary hearing, in favor of an indictment based upon the same subject matter as charged in the original complaint. (§1387.) The filing of a superseding indictment may result in the matter being assigned a new case number, but when criminal proceedings as to those charges was previously suspended under section 1368, subdivision (c), the return of the indictment does not authorize the court to admit the defendant to bail or to conduct any criminal proceedings as to the underlying charges.¹¹ And where, as here, the indictment is returned after the

¹¹ The purpose served by the return of a superseding indictment, charging crimes underlying a section 1368 proceeding is to satisfy the statutory requirements for initiating a conservatorship under Welfare and Institutions Code section 5008, subdivision (h)(1)(B) in situations where criminal proceedings were suspended before an Information was filed due to the defendant's incapacity to stand trial. Nothing in California's competency statutes prohibits the filing of an indictment for such a purpose. And, such a petition may give rise to a separate and independent legal basis for confining a person in a secured facility. But admission of the defendant to bail and conducting proceedings in the criminal matter is

expiration of the maximum term of commitment and release of the defendant under section 1370, subdivision (c), the superior court lacks the authority to take any action with regard to the indictment, including admitting the defendant to bail and including conducting section 1368 proceedings anew.

CONCLUSION

With its 1974 amendments to section 1370, the Legislature made clear its intention that mentally incompetent persons subject to state court criminal proceedings in California may be committed for no longer than is reasonably necessary to determine if they can attain the capacity to stand trial; at most, three years. (§1370, subd. (c)(1).) The intention of the Legislature was to require the release of any incompetent defendant whose commitment has expired unless alternate legal grounds for confining him existed. The filing of a superseding criminal indictment does not provide such grounds. The decision of the Court of Appeal should be reversed.

Dated: October 27, 2016

Respectfully submitted,

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by:



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prohibited.

PROOF OF SERVICE BY MAIL

(C.C.P. 1013a and 2015.5)

Jackson v. Superior Court

Docket Number: S235549 (E064010; INF1500950)

I am a citizen of the United States and a resident of the county of Riverside, State of California. I am over the age of 18 years and not a party to the within action. I am employed by the Law Offices of the Public Defender and am familiar with the business practice at the Office for collection and processing of correspondence for mailing with the Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Law Offices of the Public Defender is deposited with the United States Postal Service, with postage fully paid, that same day in the ordinary course of business.

On the date of execution of this document, I served the foregoing Petition for Review; Attachment A by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Law Offices of the Public Defender, 4200 Orange St., Riverside, CA, 92501, addressed as follows:

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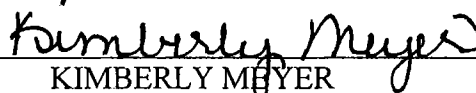
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Patrick L. Jackson
(*through counsel*)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 10/27/16, at Riverside, California.


KIMBERLY MEYER