

**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

**PEOPLE OF THE STATE OF CALIFORNIA**

**Plaintiff and Respondent,**

Case No. S211329

vs.

**DAWN QUANG TRAN,**

**Defendant and Appellant.**

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SUPREME COURT  
FILED

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Sixth Appellate District, Case No. HO36977  
Santa Clara Superior Court, Case No. 205026  
The Honorable Gilbert T. Brown, Judge

Frank A. McGuire Clerk  
Deputy

**APPELLANT'S SUPPLEMENTAL BRIEF ON THE MERITS**

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## INTRODUCTION

Appellant Dawn Quang Tran submits this Supplemental Appellant's Brief to address the Court's decision in *Hudec v. Superior Court* (2015) 60 Cal.App.4th 815 to broadly interpret Pen. Code § 1026.5 subd. (b)(7) as barring the prosecution from calling a not-guilty by reason of insanity ("NGI") committee as a witness at an extension hearing.

Section 1026.5(b)(7), which provides that "The person shall be entitled to the rights guaranteed under the federal and State constitutions for criminal proceedings", bestows all logical Constitutional rights guaranteed in a criminal proceeding to an NGI committee. The federal and State Constitutions guarantee a criminal defendant the right to a jury trial that he can waive only in open court. Granting that same right to an NGI committee in an extension hearing is not illogical or absurd. Based on the reasoning of this Court in *Hudec*, therefore, section 1026.5(b)(7) should be read as guaranteeing NGI committees the same right to a jury trial unless he or she personally makes a knowing and intelligent waiver of that right in open court.

## DISCUSSION

### I

#### **PEN. CODE § 1026.5 GUARANTEES APPELLANT THE RIGHT TO ADVISEMENT AND PERSONAL WAIVER OF A JURY TRIAL.**

In *Hudec* this Court examined what rights a person facing extension of an NGI commitment for a felony has under section 1026.5. Among the rights

specifically granted by the statute is the right to a jury trial. (§ 1026.5(b)(3), (4), (7).) The statute states: "The person shall be entitled to the rights guaranteed under the federal and State Constitutions for criminal proceedings. All proceedings shall be in accordance with applicable constitutional guarantees." (§1026.5, subd. (b)(7).)

The issue presented in *Hudec* was whether a person facing an extended commitment has the right to refuse to take the witness stand. Under the federal and State Constitutions a person does have that right in a criminal proceeding. The question then became whether that right logically applies to an NGI commitment extension hearing.

Legislative analysis broadly interpreted the statute to grant the person facing extended NGI commitment "full jury trial criminal rights." Assem. Off. of Research, 3rd reading analysis of Sen. Bill No. 1022 (1979-1980 Reg. Sess.) "All rights that apply in criminal trials apply for these hearings (right to counsel, discovery, unanimous jury verdicts, etc.)." (Assem. Com. on Crim. Justice, Analysis of Sen. Bill No. 1022 (1979-1980 Reg. Sees.), as amended July 3, 1979, p. 2.) (*People v. Hudec, supra*, 60 Cal.4th at p. 827.)

A series of appellate decisions, relied upon by the People in our case, read the statute more narrowly, including *People v. Powell* (2004) 114 Cal.App.4th 1153. In *Powell*, the Court of Appeals held an NGI extension hearing respondent did not have the right to be tried by a jury unless personally waived. *Powell's* narrow interpretation of section 1026.5 relied upon the conclusion in *People v.*

*Superior Court (Williams)* (1991) 233 Cal.App.3d 477 that section 1026.5(b)(7) "merely codifies the application of constitutional protections to extension hearings mandated by judicial decision." (*Powell, supra*, at p. 1158, quoting *Williams, supra*, 233 Cal.App.3d at p. 488.) However, this Court concluded that the Court of Appeals in *Powell* erred by relying on *Williams'* narrow interpretation of section 1026.5(b)(7) as merely codifying judicial decisions holding certain rights applicable, and to this extent, the Court disapproved *Powell* and *Williams*. (*People v. Hudec, supra*, 60 Cal.4th at p. 828, fn. 3.)

Section 1026.5(b)(7) must be read broadly. The section should be construed as bestowing on the NGI committee all logical rights guaranteed by the federal and State Constitutions for criminal proceedings, not just some of those rights, or only the due process rights conferred by judicial decisions in commitment proceedings. The Legislature intended to state a more expansive rule that NGI commitments call for rights otherwise applicable in criminal proceedings.

Where a right applicable in criminal proceedings cannot logically be provided in an NGI commitment hearing, the Court might infer that the Legislature did not mean for the statute to provide for it. An example of this type of absurdity is the right not to be tried while mentally incompetent.

No such absurdity is involved, however, in guaranteeing an NGI commitment respondent's right to be advised of and to personally waive a jury trial. The Legislature intended to grant those rights. It specifically mandated

that the trial court advise the committee of his or her right to a jury trial (§ 1026.5(b)(3)) and that "[t]he trial shall be by jury unless waived by both the person and the prosecuting attorney." (§ 1026.5(b)(4).) Those specific mandates dovetail perfectly with the broad provisions of section 1026.5(b)(7).

Under section 1026.5, subd. (b)(7) an NGI committee like Mr. Tran here has the same right to a jury trial as guaranteed by the federal and State Constitutions in criminal proceedings. (Cal. Const. art. I, § 16; U. S. Const. amends. VI, XIV; *People v. King* (1970) 1 Cal.3d 791, 795.) The State Constitution provides that a criminal defendant must knowingly waive jury in open court. (Cal. Const. art. I, § 16.) The defendant's silence or conduct will not be interpreted as consent to a waiver of the right to a jury trial. (*People v. Ames* (1975) 52 Cal.App.3d 389; *People v. Traugatt* (2010) 184 Cal.App.4th 492, 502 citing *People v. Holmes* (1960) 54 Cal.2d 422.) Any ambiguities in the record must be construed to preserve the defendant's right to a jury trial. (*People v. Redwine* (1958) 166 Cal.App.2d 371, 376.) And, there is a presumption against waiver of a fundamental constitutional right when the record is silent. (*Blair v. Pitchess* (1971) 5 Cal.3d 258, 274; *Johnson v. Zerbst* (1938) 304 U.S. 458, 464.)

As with the right to refuse to testify, the right to be advised of and personally waive a jury trial are rights that could apply in any type of proceedings. There is nothing illogical about granting those rights in an NGI extension hearing. And, unlike the double jeopardy protections analyzed in *Williams*, neither the right not to testify in *Hudec*, nor the jury trial rights at issue

here, takes its very meaning from the criminal context. There is no basis to find that the Legislature did not mean that the jury trial rights guaranteed in criminal proceedings be bestowed on appellant in section 1026.5(b)(7)'s broad grant.

In fact, the statute's specific mandates that an NGI committee be advised of the right to a jury trial (§ 1026.5(b)(3)) and that he or she personally waive that right (§ 1026.5(b)(4)) logically ensure the right to a jury trial unless he or she makes a knowing and intelligent personal waiver as guaranteed by section 1026.5(b)(7).

Those rights would benefit a committee like Mr. Tran. As the Court noted in *People v. Barrett* (2012) 54 Cal.4th 1081, there is no reason to assume that NGIs lack the ability to determine their own best interests or the capacity to function in a competent manner. Our case is different from *Powell*, where the record showed that Mr. Powell knew about his right to a jury trial since he demanded one. When the trial court refused his demand, he became belligerent and disruptive, and had to be removed. He was a paranoid schizophrenic who believed that people should be killed and sought his release so he could do so. On the day of trial he was medicated and experiencing mood swings.

Here, in fact, Mr. Tran was presumed competent at his first trial and no doubt about his competency was raised in any subsequent proceedings. Mr. Tran was taking his medication, which was doing a pretty good job of controlling his symptoms. In eight months, Dr. Khoury, the testifying doctor who treated him did not see any symptoms. Mr. Tran did well on the open ward. He expressed

remorse. His treating doctor said he should be commended for the efforts he had made.

According to Dr. Khoury, if Mr. Tran stayed on his medication, it would be hard to say he was a danger to the community. Mr. Tran promised that if he were released, he would continue to take his medication. Dr. Khoury said that Mr. Tran was moving towards conditional release, and the trial court felt that he was very close to conditional release.

These facts show that Mr. Tran, unlike the committee in *Powell*, was not incompetent, and could understand the court's advisement of his jury trial rights, and that he could make a knowing and intelligent waiver of his rights. Therefore, it would not be absurd or illogical to give him those jury trial rights that the Legislature intended to guarantee him.

The exercise of those rights could have made a difference in his extension hearing. This was a close case. Mr. Tran was competent. He was remorseful and compliant with treatment. He took his medication, and, acknowledging his condition, promised he would continue to medicate. There was a reasonable probability that a jury would have reached a different result.

## CONCLUSION

Section 1026.5, subs.(b)(3), (4), (7) grant Mr. Tran the right to advisement and personal waiver of a jury. The trial court violated his statutory jury trial rights by not advising Mr. Tran of his jury trial rights and by holding a bench trial without taking a personal waiver of jury on the record.

The order granting Respondent's petition and extending Mr. Tran's NGI commitment for another two years should be reversed.

DATED: 3/23/15



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**CERTIFICATE OF COUNSEL**

CS I certify that this Supplemental Appellant's Brief contains 1,564 words in  
Windows 7.

Dated: 3/23/15



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## PROOF OF SERVICE BY MAIL

I am employed in the county of Marin. I am over the age of eighteen years and not a party to the within action; my business address is P. O. Box 151317, San Rafael, CA 94901. On March 23, 2015, I served the attached Petition for Dismissal on the interested parties in said action by placing a true copy thereof enclosed in a sealed envelope with fully prepaid postage thereon in the United States Post office mail box at San Rafael, California, addressed as follows:

### See Attached Certificate of Service by Mail

Executed on March 23, 2015 at San Rafael, California. I, Carl A. Gonser, declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.



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