

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

S131052

v.

JOEY R. WATSON,

Defendant and Appellant.

Second Appellate District, Division Six, No. B172763
San Luis Obispo County Superior Court No. F340614
The Honorable Barry T. LaBarbera, Judge

OPENING BRIEF ON THE MERITS

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ISSUE PRESENTED

Whether a prisoner who has been transferred to Atascadero State Hospital (ASH) for treatment pursuant to Penal Code ^{1/} section 2684 is no longer subject to enhanced punishment under section 4501.5 when he commits a battery against employees or other non-confined individuals at the hospital.

INTRODUCTION

The Legislature has provided for enhanced punishment for battery when committed by a “person confined in a state prison” against a non-confined person (§ 4501.5). Section 4504 explains that a person is “confined in a state prison” if: (1) he is confined in a prison or institution listed in section 5003 (see § 4504(a)); or (2) he is “temporarily” outside a prison’s walls or bounds for specified purposes or for any other permitted purpose (see § 4504(b)). Under sections 2684 and 2685, a mentally ill prisoner may be transferred to ASH to receive treatment until further treatment is no longer beneficial, at which time the prisoner is returned to state prison.

1. All further statutory references will be to the Penal Code, unless otherwise indicated.

Appellant, who was transferred to ASH pursuant to section 2684 (see CT 4-5, 8, 11-13; RT 9), hit a nurse at ASH and was convicted of violating section 4501.5. The Court of Appeal reversed the judgment and held that it was legally impossible for appellant to have violated section 4501.5 because he was not “confined in a state prison.”

STATEMENT OF THE CASE

Prior to February 13, 2003, appellant had been serving a previously imposed state prison sentence. On February 13, 2003, appellant was transferred from a state prison to ASH pursuant to section 2684 for treatment. (See CT 4-5, 8, 11-13; see also RT 9.) That day, in the admissions suite at ASH, nurse Brent Hopkins and psychiatric technician Suprinski directed appellant to shower. Appellant threw his shorts on the shower floor, flexed his arms and hands, and gnashed his teeth. After appellant took a shower, he was told to get dressed. Appellant lunged towards Hopkins and hit him in the face two or three times. Hospital staff responded, and appellant was restrained after a brief struggle. Hopkins was taken to the urgent care room and treated with ibuprofen for the pain in his neck and shoulder. (CCT 1.) On March 11, 2003, appellant was interviewed. During the interview, appellant said, “I have only one thing to say, it was over the State issued shoes.” Appellant then left the interview room. (CCT 1.)²

Appellant pleaded no contest to committing battery by a “person confined in a state prison” on a non-confined person, in violation of section 4501.5, for striking nurse Hopkins at ASH. He also admitted one prior serious or violent felony conviction (§§ 667(d) & (e), 1170.12(b) & (c)). Appellant was sentenced to four years in state prison. (CT 51, 54, 57-58; RT 3-10, 12;

2. Since appellant pleaded no contest, the factual summary is taken from appellant’s probation report. (See Confidential Clerk’s Transcript (CCT) 1-4.)

see also CCT 1-4.)

The Court of Appeal reversed the judgment, holding that it was legally impossible for appellant to have violated section 4501.5 because he was not “confined in a state prison.”^{3/} First, the Court of Appeal found that ASH was not a “state prison” within the meaning of section 4504(a) [person is confined in a “state prison” if that person is confined in a listed prison or institution] because ASH is not included among the prisons and institutions listed in section 5003 [list of prisons and institutions under jurisdiction of Department of Corrections]. (Opn. at p. 4.) Second, relying on its own decision in *People v. Superior Court (Ortiz)* (2004) 115 Cal.App.4th 995, the Court of Appeal concluded that a prisoner transferred to ASH pursuant to section 2684 [transferring mentally ill prisoner to state hospital for treatment] was not outside of the prison walls “temporarily” and thus was no longer “confined in

3. The Court of Appeal found that appellant’s claim, that he could not be convicted of violating section 4501.5 because he was not “confined in a state prison,” was cognizable on appeal because it involved a legal impossibility. The court relied on *People v. Soriano* (1992) 4 Cal.App.4th 781, 783-784 [legally impossible for defendant to attempt to file a “forged instrument” (§ 115) because both parties agreed that death certificate was not an “instrument”], and *People v. Jerome* (1984) 160 Cal.App.3d 1087, 1092-1095 [legally impossible for defendant to commit oral copulation with person under 14 years of age (§ 288a(c)) because prosecution conceded that victim was 15 years old], which opined that a trial court’s acceptance of a negotiated plea containing a legally impossible admission constitutes an excess of the court’s jurisdiction and, thus, the validity of such a plea is a cognizable issue on appeal if the procedural requirements of section 1237.5 (regarding the filing of a certificate of probable cause) are met. (See Opn. at pp. 3-4.) Respondent does not concede that appellant’s claim involves a legal impossibility and, unlike in the prosecution in *Soriano* and *Jerome*, does not concede that a prison inmate who was transferred to ASH pursuant to section 2684 is not “confined in a state prison.” Appellant’s claim is essentially an attack on the sufficiency of the evidence, which is not cognizable on appeal after a no contest plea. However, review was sought and granted only on the issue of whether a prison inmate, who has been transferred to ASH for treatment pursuant to section 2684, is no longer subject to enhanced punishment under section 4501.5 when he commits a battery against employees or other non-confined individuals at ASH.

a state prison” within the meaning of section 4504(b) [person is “confined in” a prison although temporarily outside prison’s walls or bounds for allowable purpose]. (Opn. at pp. 5-7.)

Following respondent’s petition for rehearing, the Court of Appeal acknowledged two Department of Corrections regulations that “conflict” with the court’s interpretation of sections 2684 and 4504(b). (See Order Modifying Opn. at p. 1.) The court stated that “[t]hese regulations indicate that the Department of Corrections views inmates transferred to ASH pursuant to section 2684 as being [only] ‘temporarily outside the walls or bounds of the prison’ within the meaning of section 4504, subdivision (b).” (Order Modifying Opn. at p. 2.) However, the Court of Appeal concluded that judicial deference to these regulations was unwarranted because the Department of Corrections “has no special expertise or technical knowledge giving it a comparative interpretative advantage over the courts” and the “Department of Correction’s interpretation is incorrect in light of the unambiguous language of the statute[s].” (Order Modifying Opn. at p. 2, citations and internal quotation marks omitted.) Thus, the Court of Appeal modified the opinion and denied respondent’s petition for rehearing. (Order Modifying Opn. at p. 2.)

ARGUMENT

A STATE PRISON INMATE TRANSFERRED TO ASH PURSUANT TO SECTION 2684 IS SUBJECT TO PROSECUTION UNDER SECTION 4501.5

Under section 4501.5, a “person confined in a state prison,” who commits a battery against a non-confined person, is subject to enhanced punishment for the battery. For several reasons, a state prison inmate who has been transferred to ASH for treatment pursuant to section 2684 remains a “person confined in a state prison” and is subject to enhanced punishment under section 4501.5 when he commits a battery against non-confined individuals at ASH. First, the plain meaning of the relevant statutes supports the interpretation that a state prison inmate transferred to ASH for mental health treatment pursuant to section 2684 is only temporarily away from prison for a permitted purpose and remains a “person confined in a state prison” in the legal custody of the Department of Corrections. Second, relevant Department of Corrections regulations support the interpretation that a state prison inmate transferred to ASH pursuant to section 2684 is a “person confined in a state prison.” Third, it is sound public policy to promote the safety and well-being of ASH employees, and a finding that a section 2684 transferee to ASH can be prosecuted under section 4501.5 furthers such a policy. Finally, any ambiguity in the relevant statutes should be construed in accordance with this sound public policy.

A. Relevant Law Regarding Statutory Interpretation

The relevant law regarding statutory interpretation is well-established: In construing any statute, [appellate courts] ascertain the intent of the enacting legislative body so that we may adopt the construction that best effectuates the purpose of the law. We begin by examining the words themselves because the statutory language is generally the most reliable

indicator of legislative intent. The words of the statute should be given their ordinary and usual meaning and should be construed in their statutory context. If the statutory language is unambiguous, we presume the Legislature meant what it said, and the plain meaning of the statute governs.

(*People v. Toney* (2004) 32 Cal.4th 228, 232, citations and quotation marks omitted.)

However, the language of a statute may not always be clear and unambiguous. In such cases, further examination may be needed.

[W]hen the language [of a statute] 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.) “[T]he court may consider the impact of an interpretation on public policy, for [w]here uncertainty exists consideration should be given to the consequences that will flow from a particular interpretation.” (*People v. Smith* (2004) 32 Cal.4th 792, 798, citations and internal quotation marks omitted.) “[W]here statutory ambiguity exists,” “the interpretation that leads to a more reasonable result” must be adopted. (*People v. Canty* (2004) 32 Cal.4th 1266, 1277.) “We must also avoid a construction that would produce absurd consequences, which we presume the Legislature did not intend.” (*People v. Mendoza* (2000) 23 Cal.4th 896, 908, citations omitted.)

Although a criminal statute that is truly susceptible of more than one reasonable construction is ordinarily construed in a manner more favorable to the defendant,

th[is] rule of lenity applies only if the court can do no more than guess

what the legislative body intended; there must be an egregious ambiguity and uncertainty to justify invoking the rule The rule of statutory interpretation that ambiguous penal statutes are construed in favor of defendants is inapplicable unless two reasonable interpretations of the same provision stand in relative equipoise, i.e., that resolution of the statute’s ambiguities in a convincing manner is impracticable. [¶] Thus, although true ambiguities are resolved in a defendant’s favor, an appellate court should not strain to interpret a penal statute in defendant’s favor if it can fairly discern a contrary legislative intent. (*People v. Canty, supra*, 32 Cal.4th at p. 1277, citations and quotation marks omitted.)

B. The Plain Meaning Of The Relevant Statutes Supports The Interpretation That A Section 2684 Transferee Is Subject To Prosecution Under Section 4501.5

In addition to section 4501.5, the statutes defining persons subject to prosecution under section 4501.5 are sections 4504, 5003, 6082, 2684, and 2685. The plain meaning of these statutes supports the interpretation that a prisoner transferred to ASH pursuant to section 2684 is a person confined in a state prison and therefore is subject to prosecution and enhanced punishment for battery under section 4501.5. Specifically, a transferee to ASH pursuant to section 2684 is a person “confined in a state prison” under section 4501.5 because he is only “temporarily” away from prison for an allowable purpose within the meaning of section 4504(b) and thus remains subject to the Department of Corrections as shown by section 2685, which indicates that the transferee’s time at the hospital is counted as part of his sentence.

Section 4501.5, provides:

Every person *confined in a state prison* of this state who commits a battery upon the person of any individual who is not himself a person

confined therein shall be guilty of a felony and shall be imprisoned in the state prison for two, three, or four years, to be served consecutively. (Italics added.)

For purposes of section 4501.5, section 4504(a) and (b) specify two ways that a person can be deemed “confined in” a state prison. First, section 4504(b) indicates that a person can be deemed confined in a prison although temporarily away from the prison. Section 4504(b) states:

A person is deemed “confined in” a prison although, at the time of the offense, he is temporarily outside its walls or bounds for the purpose of serving on a work detail or for the purpose of confinement in a local correctional institution pending trial *or for any other purpose for which a prisoner may be allowed temporarily outside the walls or bounds of the prison*, but a prisoner who has been released on parole is not deemed “confined in” a prison for purposes of this chapter.

(Italics added.) Thus, section 4504(b) provides that one way a person is deemed “confined in” a state prison is if he is temporarily outside the prison’s walls or bounds for specifically listed purposes (such as serving on a work detail or being confined in a local correctional institution pending trial) or for any other permitted purpose.

A state prison inmate who is transferred to ASH under section 2684 is only temporarily away from prison for the permitted purpose of receiving mental health treatment at ASH. Pursuant to section 2684(a), a state prison inmate may be temporarily transferred to facilities like ASH upon the determination of the Director of Corrections that treatment would further the prisoner’s rehabilitation.^{4/} This procedure was used in appellant’s case. (See

4. Section 2684(a) provides in relevant part:

If, in the opinion of the Director of Corrections, the rehabilitation of any mentally ill, mentally deficient, or insane person confined in a state prison may be expedited by treatment at any one of the state hospitals under the jurisdiction of the State

CT 4-5, 8, 11-13; see also RT 9.)

Once a state prison inmate has been transferred to a state hospital, the prisoner remains there until, in the opinion of the superintendent, the prisoner “has been treated to such an extent that such person will not benefit by further care and treatment in the state hospital.” (§ 2685; see also § 2684(a).) The superintendent “shall immediately notify the Director of Corrections” when it reaches this conclusion and the Director of Corrections “shall immediately send for, take and receive the prisoner back into prison.” (§ 2685.) Sections 2684 and 2685 show that the prisoner is only temporarily away from prison because he is generally expected to return to prison after receiving treatment. Not only is the section 2684 transferee temporarily away from prison, but such a transferee also remains subject to the Department of Corrections since section 2685 specifies that the “time passed at the state hospital shall count as part of the prisoner’s sentence.”

The ordinary meaning of these statutes supports the reasonable construction that the transfer of an inmate to ASH pursuant to section 2684 is temporary within the meaning of section 4504(b), and that the Department of Corrections retains power over a section 2684 transferee. To be prosecuted and convicted under section 4501.5, a person must commit a battery while “confined in a state prison.” (§ 4501.5.) A person may be “confined in” a prison even though, at the time of the battery, he is temporarily outside the

Department of Mental Health or the State Department of Developmental Services, the Director of Corrections . . . shall certify that fact to the director of the appropriate department who shall evaluate the prisoner to determine if he or she would benefit from care and treatment in a state hospital. If the director of the appropriate department so determines, the superintendent of the hospital shall receive the prisoner and keep him or her until in the opinion of the superintendent the person has been treated to the extent that he or she will not benefit from further care and treatment in the state hospital.

prison's walls or bounds in specific, enumerated circumstances or "for any other purpose for which a prisoner may be allowed temporarily outside the walls or bounds of the prison." (See § 4504(b).) Thus, the relevant statutory language demonstrates a clear legislative intent that prisoners confined in state prisons be subject to increased penalties for battery, even when they are temporarily outside of the prison walls for any purpose.

In addition to section 4504(b), regarding a person who is temporarily away from prison, section 4504(a) indicates that a person can be deemed "confined in a 'state prison'" if he is confined in a prison or institution under the jurisdiction of the Department of Corrections that is listed in section 5003. Section 4504(a) states:

A person is deemed confined in a "state prison" if he is confined in any of the prisons and institutions specified in Section 5003 [5] by order

5. Section 5003, provides, in relevant part:
The department [of corrections] has jurisdiction over the following prisons and institutions:
- (a) The California State Prison at San Quentin.
 - (b) The California State Prison at Folsom.
 - (c) The California Institution for Men.
 - (d) The California Institution for Women.
 - (e) The Deuel Vocational Institution.
 - (f) The California Medical Facility.
 - (g) The Correctional Training Facility.
 - (h) The California Men's Colony.
 - (i) The California Correctional Institution at Tehachapi.
 - (j) The California Rehabilitation Center.
 - (k) The California Correctional Center at Susanville.
 - (l) The Sierra Correctional Center.
 - (m) The Richard J. Donovan Correctional Facility at Rock Mountain.
 - (n) Mule Creek State Prison.
 - (o) Northern California Women's Facility.
 - (p) Pelican Bay State Prison.
 - (q) Avenal State Prison.
 - (r) California State Prison--King's County at Corcoran.
 - (s) Chuckawalla Valley State Prison.

made pursuant to law

Although ASH is not listed among the institutions enumerated in section 5003 in that the Department of Corrections does not have jurisdiction over ASH, section 6082 provides that “prisons,” as that term is used in section 4500 et seq., refers “to all facilities, camps, *hospitals* and institutions for the confinement, *treatment*, employment, training and discipline of persons *in the legal custody of the Department of Corrections.*” (Italics added.) Section 6082 supports the interpretation that an inmate transferred to ASH is under the legal custody of the Department of Corrections because it indicates that the term “prisons,” as used in section 4500 et seq. (including sections 4501.5 and 4504 which concern being confined in a prison), does not exclusively refer to actual state prisons but also refers to hospitals (such as ASH) that provide treatment for individuals who are in the legal custody of the Department of Corrections.

The Court of Appeal interpreted sections 4504, 6082 and 2684 to provide that an inmate’s transfer to ASH pursuant to section 2684 was not temporary since it could be permanent. The Court of Appeal also concluded that the Department of Corrections has no power to control an inmate after he has been transferred to ASH pursuant to section 2684. (Opn. at p. 6; Order Modifying Opn. at p. 2.) The Court of Appeal’s interpretation of these statutes was based on its decision in *People v. Superior Court (Ortiz)*, *supra*, 115 Cal.App.4th at pp. 1000-1001, which found that section 2684 transferees to ASH were no longer under the custody of the Department of Corrections. However, as explained above, the plain meaning of the relevant statutes does not support the Court of Appeal’s interpretation. The plain meaning of the

(t) Those other institutions and prison facilities as the Department of Corrections or the Director of Corrections may be authorized by law to establish, including, but not limited to, prisons in Madera, Kern, Imperial, and Los Angeles Counties.

relevant statutes supports the interpretation that a section 2684 transferee remains subject to prosecution under section 4501.5 because such a transferee is only temporarily away from the prison for a permitted purpose, within the meaning of section 4504(b), and remains in the legal custody of the Department of Corrections as shown by section 2685, indicating that time spent at the state hospital counts towards the transferee's prison sentence. Although the Court of Appeal also concluded that ASH was not a "state prison" within the meaning of section 4504(a) because ASH was not listed in section 5003 (see Opn. at p. 4), section 6082 states that a prison can also refer to a hospital which provides treatment for people in the legal custody of the Department of Corrections and thus supports the interpretation that a section 2684 transferee to ASH remains under the legal custody of the Department of Corrections. Therefore, the Court of Appeal's interpretation of section 4501.5 is unsupported by the plain meaning of the relevant statutes and should not be adopted by this Court.^{6/}

C. Even If The Language Of The Statutes Is Not Plain, The Best Evidence Is That The Legislature Intended That A Section 2684 Transferee Should Not Be Exempt From Enhanced Punishment For Battery Under Section 4501.5

Even assuming that the plain meaning of the relevant statutes is not clear, it can be reasonably inferred that the Legislature would have expressly exempted section 2684 transferees from prosecution under section 4501.5 if it had intended such a result. In contrast to section 2684, Welfare and Institutions Code section 7301^{7/} expressly states that a person transferred from an institution

6. Counsel for respondent has found no relevant legislative history for sections 4501.5, 4504, or 2684, specifically regarding whether a section 2684 transferee should be subject to prosecution under section 4501.5.

7. Welfare and Institutions Code section 7301 states:

Whenever, in the opinion of the Director of Mental Health and with the approval of the Director of Corrections, any person

under the jurisdiction of the Department of Mental Health to an institution under the jurisdiction of the Department of Corrections “shall not be subject to the provisions of Section 4500, 4501, 4501.5, 4502, 4530, or 4531 of the Penal Code.” (See *People v. Lopez* (1969) 1 Cal.App.3d 672, 682 [holding that exemption under former Welf. and Inst. Code § 6700.5 (now Welf. & Inst. Code § 7301) applies only to persons originally confined under the jurisdiction of Department of Mental Hygiene and later transferred to Department of Corrections pursuant to administrative actions, not to defendant who was initially confined in state prison under court commitment as sexual psychopath]; see also *In re Lopez* (1970) 3 Cal.3d 147, 148-149.)

Unlike Welfare and Institutions Code section 7301, Penal Code sections

who has been committed to a state hospital pursuant to provisions of the Penal Code or who has been placed in a state hospital temporarily for observation pursuant to, or who has been committed to a state hospital pursuant to Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of this code needs care and treatment under conditions of custodial security which can be better provided within the Department of Corrections, such person may be transferred for such purposes from an institution under the jurisdiction of the State Department of Mental Health to an institution under the jurisdiction of the Department of Corrections. [¶] Persons so transferred shall not be subject to the provisions of Section 4500, 4501, 4501.5, 4502, 4530, or 4531 of the Penal Code. However, they shall be subject to the general rules of the Director of Corrections and of the facility where they are confined and any correctional employee dealing with such persons during the course of an escape or attempted escape, a fight or a riot, shall have the same rights, privileges and immunities as if the person transferred had been committed to the Director of Corrections. [¶] Whenever a person is transferred to an institution under the jurisdiction of the Department of Corrections pursuant to this section, any report, opinion, or certificate required or authorized to be filed with the court which committed such person to a state hospital, or ordered such person placed therein, shall be prepared and filed with the court by the head of the institution in which the person is actually confined or by the designee of such head.

2684 and 2685 do not expressly exempt section 2684 transferees from prosecution under section 4501.5. If the Legislature had intended for section 2684 transferees to be exempt from prosecution under section 4501.5, the Legislature could have expressly added such language in sections 2684 and 2685. However, the Legislature did not do so. (See *People v. Pacific Gaming Technologies* (2000) 82 Cal.App.4th 699, 706 [“Had the Legislature intended such a qualification, it could have and would have done so.”]; *San Luis Coastal Unified School District v. City of Morro Bay* (2000) 81 Cal.App.4th 1044, 1049 [“Had the Legislature intended to exclude local distribution systems, we assume it would have said so.”]; *Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 833 [“Had the Legislature intended to provide a grace period for the beneficiary, as it did for the trustee, it would have done so.”]; *Thaler v. Household Finance Corporation* (2000) 80 Cal.App.4th 1093, 1103 [“If the Legislature had intended to carve out an exception for homeowners’ assessments, it could have and would have expressly stated so in its enactment”].) In the absence of such express language, it can be reasonably inferred that the Legislature did not intend to carve out an exception for section 2684 transferees to be exempt from prosecution under section 4501.5.

D. Sound Public Policy Supports The Interpretation That A Section 2684 Transferee To ASH May Be Prosecuted Under Section 4501.5

The ability to prosecute a section 2684 transferee under section 4501.5 furthers the sound public policy of promoting the safety and well-being of ASH employees who are charged with the care of state prison inmates. On the other hand, the Court of Appeal’s holding that a section 2684 transferee to ASH cannot be prosecuted under section 4501.5 will have a significant and deleterious impact on the safety of ASH employees and produce negative public policy ramifications.

Violence in state hospitals towards healthcare workers, particularly

psychiatric nursing staff, is a serious and documented problem. A study written by two ASH researchers found that nursing staff injury rates at public sector hospitals, from violence alone, were higher than the injury rates in industries that are traditionally considered high risk, such as mining, lumber, heavy construction, and manufacturing. The ASH researchers used data from five public sector hospitals, including ASH. (See Love and Hunter, “Violence In Public Sector Psychiatric Hospitals: Benchmarking Nursing Staff Injury Rates,” *Journal of Psychosocial Nursing and Mental Health Services* (1996, Vol. 34, No. 5) pp. 30-34.)

Applying section 4501.5 to state prison inmates transferred to state hospitals pursuant to section 2684 affords state mental health workers the same protection as other non-confined individuals who encounter state prisoners. Section 4501.5 provides a strong deterrent against section 2684 transferees attacking ASH employees and endangering their safety. The punishment for violating section 4501.5 is imprisonment in the state prison “for two, three, or four years, to be served consecutively.” By contrast, other available charges against an inmate who attacks an employee at ASH provide less lengthy punishment. For example, the maximum punishment for committing a battery, in violation of section 242, is a six-month county jail sentence and a \$2,000 fine. (See § 243(a).) Even if an ASH employee could qualify as a “peace officer” within the meaning of section 243(b) (see *People v. Superior Court (Ortiz)*, *supra*, 115 Cal.App.4th at p. 1000), the maximum punishment for committing such a battery against a peace officer is a one-year county jail term and a \$2,000 fine. (See § 243(b).)

Not only is the punishment for violating section 4501.5 substantially greater than the punishment for battery under section 243(a) and (b), but it must also be served consecutive to an existing state prison sentence. By contrast, if a section 2684 transferee is convicted under section 243(a) or (b), a sentencing court generally has the discretion to impose a consecutive or concurrent term

of punishment. (See § 669.)

The Court of Appeal's interpretation of section 4501.5 endangers the safety of ASH employees by removing an effective deterrent. Under the Court of Appeal's holding, a section 2684 transferee who attacks an ASH employee will be punished for his actions as if his victim were not working inside a prison or dealing with inmates. This would subject ASH employees to attacks by inmates transferred to ASH pursuant to section 2684 without providing these ASH employees the same deterrent protection and safeguards that benefit other individuals who regularly have contact with Department of Corrections inmates. Without the threat of prosecution under section 4501.5, inmates transferred to ASH pursuant to section 2684 have a reduced incentive to refrain from engaging in aggressive and dangerous behavior towards ASH employees. The Court of Appeal's holding would remove the strong deterrent provided by section 4501.5 and significantly affect the safety of ASH employees.

E. Relevant Department Of Corrections Regulations Support The Interpretation That A Section 2684 Transferee To ASH Is Subject To Prosecution Under Section 4501.5

As the Court of Appeal acknowledged, its interpretation of section 4501.5 conflicts with relevant Department of Corrections regulations. (See Order Modifying Opn. at p. 2.) The relevant Department of Corrections regulations support the interpretation that a prisoner transferred to ASH pursuant to section 2684 is subject to prosecution under section 4501.5. As addressed above, a state prison inmate who is transferred to ASH pursuant to section 2684 remains a person "confined in a state prison" within the meaning of section 4501.5 because he is only "temporarily" away from prison for a permitted purpose under section 4504(b) and is still subject to the Department of Corrections since his time at the hospital is counted as part of his sentence pursuant to section 2685.

Section 3360(b) of title 15 of the California Code of Regulations describes the transfer of an inmate to the Department of Mental Health pursuant to section 2684 as “temporary” and supports the interpretation that a section 2684 is only temporarily away from prison for a permitted purpose. Moreover, title 15, sections 3000 and 3369.1(c) of the California Code of Regulations indicate that inmates housed in Department of Mental Health hospitals remain under the jurisdiction of the Department of Corrections and thus support the interpretation that a section 2684 transferee remains subject to the Department of Corrections. These relevant Department of Corrections regulations should have been given appropriate deference by the Court of Appeal.

An agency interpretation of the meaning and legal effect of a statute is entitled to consideration and respect by the courts; however, unlike quasi-legislative regulations adopted by an agency to which the Legislature has confided the power to “make law,” and which, if authorized by the enabling legislation, bind this and other courts as firmly as statutes themselves, the binding power of an agency’s *interpretation* of a statute or regulation is contextual: Its power to persuade is both circumstantial and dependent on the presence or absence of factors that support the merit of the interpretation. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7, emphasis in original.)

Whether judicial deference to an agency’s interpretation is appropriate and, if so, its extent - the “weight” it should be given - is thus fundamentally *situational*. A court assessing the value of an interpretation must consider a complex of factors material to the substantive legal issue before it, the particular agency offering the interpretation, and the comparative weight the factors ought in reason to command. (*Yamaha Corp. of America v. State Bd. of Equalization, supra*, 19 Cal.4th at p.

12, emphasis in original.) “[F]actors relevant to a court’s assessment of the weight due an agency’s interpretation [are] [t]hose ‘indicating that the agency has a comparative interpretive advantage over the courts,’ and those ‘indicating that the interpretation in question is probably correct.’ [Citations.]” (*Ibid.*; see also *Bonnell v. Medical Bd. of California* (2003) 31 Cal.4th 1255, 1264-1265)

Moreover, an agency’s views are entitled to judicial deference when such views are the product of expertise and administrative experience. (*Dowhal v. SmithKline Beecham Consumer Healthcare* (2004) 32 Cal.4th 910, 929-930; see also *Communities for a Better Environment v. State Water Resources Control Bd.* (2003) 109 Cal.App.4th 1089, 1103-1104 [court’s deference to administrative agency’s interpretation is based on agency’s expertise]; *County of Santa Barbara v. Connell* (1999) 72 Cal.App.4th 175, 185 [“Generally, courts give great weight and respect to the administrative agency’s interpretation of a statute governing its powers and responsibilities.”].)

In short, courts must “independently judge the text of the statute, taking into account and respecting the agency’s interpretation of its meaning” (*Yamaha Corp. of America v. State Bd. of Equalization, supra*, 19 Cal.4th at p. 7.) “Where the meaning and legal effect of a statute is the issue, an agency’s interpretation is one among several tools available to the court.” (*Ibid.*)

Here, the Court of Appeal should have accorded more weight to the Department of Corrections’ administrative interpretation of the relevant statutes because the Department of Corrections’ interpretation was not clearly erroneous, and even assuming that the plain meaning of the statutes is not clear, the language of the statutes supports the Department of Corrections’ reasonable interpretation. Moreover, the Court of Appeal should have given deference to the Department of Corrections’ interpretation of the relevant statutes because the Department of Corrections’ interpretation was based on its expertise and administrative experience.

If an inmate transferred to ASH pursuant to section 2684 is

“temporarily” away from prison within the meaning of section 4504(b), then that inmate can be prosecuted under section 4501.5 because he is “confined in a state prison.” Section 3360(b) of title 15 of the California Code of Regulations describes the transfer of an inmate to the Department of Mental Health pursuant to section 2684 as “temporary.” (See *Department of Developmental Services v. Ladd* (1990) 224 Cal.App.3d 128, 140, quoting Cal. Code Regs., tit. 15, § 3360(b).)

Section 3360 of the regulations states in relevant part:

(a) The department will provide a broad range of mental health services to inmates and parolees by assessing the needs of its population and developing specialized programs of mental health care, to the extent resources are available for this purpose. Necessary and appropriate mental health services will be provided to inmates and parolees, and adequate staff and facilities will be maintained for the delivery of such services.

(b) When an inmate is found to require mental health care not available within these resources, but which is available in the Department of Mental Health, the case will be referred to the director for consideration of *temporary transfer to that department pursuant to Penal Code section 2684*.

(Emphasis added.) The description of the transfer as “temporary” in the relevant regulations shows that, in the administrative experience of the Department of Corrections, transfers pursuant to section 2684 are not permanent as the Court of Appeal speculated. The Department’s opinion, as stated in the regulation, that an inmate transferred to ASH pursuant to section 2684 is temporarily away from prison should receive deference from this Court.

Moreover, title 15, section 3369.1(c) of the California Code of Regulations states in relevant part that “[i]nmates . . . housed in Department of Mental Health hospitals remain under the *jurisdiction of the department* and

shall not be permitted to leave the hospital grounds without the specific authorization of the *director*.” (Emphasis added.) Title 15, section 3000, provides “definitions of terms as used in these regulations” and states, in relevant part, that “Department means the department of corrections” and that “Director means the director of the department of corrections.” Thus, the regulations demonstrate that an inmate transferred to ASH pursuant to section 2684 remains in the legal custody of the Department of Corrections.

The foundation of the regulations upon administrative experience is further evidenced by the Department of Corrections’ operations manual. In pertinent portions of its Department Operations Manual (DOM), which is accessible on the Department of Corrections’ website, the Department of Corrections outlines the procedures to be taken regarding section 2684 transferees. (See Department of Corrections’ Department Operations Manual, Chapter 6, Article 7 <http://www.corr.ca.gov/RegulationsPolicies/PDF/DOM/00_dept_ops_maunal.pdf> [as of June 19, 2005].) For instance, DOM 62030.11 of Chapter 6, Article 7 follows the language of section 3369.1(c) of the California Code of Regulations and provides that “Inmates at State hospitals are ‘in custody’ and shall not leave the hospital grounds without the authorization of The Director. . . .”

Additionally, DOM 62030.7 of Chapter 6, Article 7 states that a “hub institution” within the Department of Corrections shall maintain the records for an inmate housed in a Department of Mental Health facility. (See Department of Corrections’ Department Operations Manual, Chapter 6, Article 7 <http://www.corr.ca.gov/RegulationsPolicies/PDF/DOM/00_dept_ops_maunal.pdf> [as of June 19, 2005].) The California Medical Facility serves as the hub institution for inmates placed in Department of Mental Health facilities in Northern California, and the California Men’s Colony serves as the hub institution for inmates placed in Department of Mental Health facilities in Southern California. The hub institution is also responsible for all contacts

with the designated Department of Mental Health facility to, among other things, process an inmate's parole or discharge. Moreover, DOM 62030.13 of Chapter 6, Article 7 indicates that: "When it is the opinion of the hospital's administrator that an inmate has been treated to the extent that the inmate will not benefit by further care and treatment in the State hospital, the administrator shall" "[i]nitiate a request to the hub facility for return of the prisoner to the Department" pursuant to section 2685. These manual provisions evidence the administrative realities and experiences surrounding the transfer of state prison inmates pursuant to section 2684.

The Department of Corrections' Operation Manual shows the Department of Corrections' technical knowledge and expertise as to the characterization of an inmate's transfer to the Department of Mental Health for mental health services. Thus, the Court of Appeal erred in not according deference to the Department of Corrections' administrative expertise and experience in this area. Therefore, pertinent Department of Corrections regulations support the interpretation that a section 2684 transferee to ASH is still subject to prosecution under section 4501.5.

CONCLUSION

For the foregoing reasons, respondent respectfully requests that the Court of Appeal's judgment be reversed and that appellant's conviction be affirmed.

Dated: September 10, 2007

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CERTIFICATE OF COMPLIANCE

I certify that the attached OPENING BRIEF ON THE MERITS uses a 13 point Times New Roman font and contains 6381 words.

Dated: September 10, 2007

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