

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

REPLY BRIEF ON THE MERITS

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ARGUMENT

I.

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

Under Penal Code^{1/} 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. Respondent argued in its Opening Brief on the Merits (Opening Brief) that a state prison inmate who has been transferred to Atascadero State Hospital (ASH) for treatment pursuant to section 2684 remains a “person confined in a state prison” and is subject to prosecution and punishment under section 4501.5 for committing a battery against non-confined individuals at ASH. Appellant disputes this in his Answer Brief on the Merits (Answer Brief). As explained below, none of appellant’s contentions has merit.

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

A. The Department Of Corrections Maintains A Sufficient Degree Of Legal Custody Over A Section 2684 Transferee At ASH

In his Answer Brief, appellant contends that he is not subject to punishment under section 4501.5 for striking a nurse at ASH because he was a state prison inmate transferred to a state hospital for mental health treatment pursuant to section 2684, and thus was no longer “confined in a state prison.” (Answer Brief at pp. 4-21.) First, appellant argues that, since the Department of Mental Health has sole custody of an inmate transferred to a state hospital pursuant to section 2684, the Department of Corrections^{2/} does not have legal custody of a section 2684 transferee within the meaning of sections 4504(a) and 6082. (Answer Brief at pp. 5-9, 11.) To support his argument, appellant points to language in sections 2684 and 2685 indicating that, once an inmate is transferred to a state hospital pursuant to section 2684, the “superintendent of the state hospital has the exclusive authority to *control* when, if ever, the prisoner has been treated to such an extent that he or she will not benefit by further care and will be returned to prison.” (Answer Brief at pp. 8-9, emphasis in original.) Appellant also states that Welfare and Institutions Code section 4027^{3/} shows that “the Legislature intended to confer sole custodial rights

2. Effective July 1, 2005, there was a major reorganization of the California correctional systems, and the California Department of Corrections and Rehabilitation (CDCR) came into being. CDCR encompasses what was formerly referred to as the California Department of Corrections and the California Youth Authority, as well as other correctional components. (See CDCR website <<http://www.cdcr.ca.gov>> [as of October 12, 2005] [CDCR is “the Youth and Adult Correctional Agency and the departments and boards within the agency”]). Respondent will refer to the Department of Corrections as it existed at the time of appellant’s offense on February 13, 2003.

3. Welfare and Institutions Code section 4027 states in relevant part:
The State Department of Mental Health may adopt

and responsibilities to the Department of Mental Health” concerning section 2684 transferees. (Answer Brief at p. 11.) Moreover, appellant notes that, if “two state agencies [had] jurisdiction over the transferred prisoner at the same time,” that “would lead to [an] absurd consequence” because “each agency has its own set of rules and regulations.” (See Answer Brief at pp. 14-15.)

Respondent submits that a section 2684 transferee remains under the legal custody of the Department of Corrections while physically housed at ASH to receive mental health treatment. (See Opening Brief at pp. 10-12.) Although section 2684 states that the superintendent of the hospital opines whether a section 2684 transferee will no longer benefit from further treatment at the state hospital, the language of sections 2684 and 2685 indicates that a section 2684 transferee is generally expected to return to prison after receiving treatment. Since the section 2684 transferee is generally expected to return to prison, the Department of Corrections maintains a sufficient degree of legal custody over such an inmate for purposes of the application of section 4501.5, at a state hospital such as ASH.

Moreover,

[t]he Legislature has given the Director of the Department of Corrections broad authority for the discipline and classification of persons confined in state prisons. This authority includes the

regulations concerning patients’ rights and related procedures applicable to the inpatient treatment of mentally ill offenders receiving treatment pursuant to Sections . . . , and 2684 of the Penal Code,

mandate to promulgate regulations governing administration, classification and discipline.

(*In re Scott* (2003) 113 Cal.App.4th 38, 44, citations and quotation marks omitted; see also §§ 5054, 5068.) Given the complicated administrative duties concerning the classification and discipline of state prisoners, including those transferred pursuant to section 2684, the Department of Corrections clearly possesses expertise and administrative experience in this area. (See Opening Brief at pp. 17-22.) Given this expertise and experience, the agency's interpretation of section 2684 is entitled to deference. (Opening Brief at pp. 17-19.) Thus, in its administration of duties, the Department of Corrections exercises control over a section 2684 transferee. (See Cal. Code Regs., tit. 15, § 3369.1(c) [inmates housed in Department of Mental Health hospitals remain under jurisdiction of Department of Corrections and shall not be permitted to leave hospital grounds without specific authorization of Director of Department of Corrections].)

Contrary to appellant's argument (see Answer Brief at pp. 14-15), subjecting a section 2684 transferee to the rules of two state agencies is not unprecedented and, indeed, is a rational response to address the problems presented by mentally ill persons who are also charged with pending criminal charges. For example, in *In re Cathey* (1961) 55 Cal.2d 679, disapproved on other grounds in *In re Barnett* (2003) 31 Cal.4th 466, 478, fn. 8, an individual found insane pursuant to Welfare and Institutions Code section 1368 was committed to ASH but then transferred to a Department of Corrections facility under an interagency agreement between the Department of Corrections and the former Department of Mental Hygiene pursuant to Government Code section

11256.^{4/} (*In re Cathey, supra*, 55 Cal.2d at pp. 686-687.)^{5/} Under this interagency agreement, it was agreed that all such individuals confined in the Department of Corrections facility retained their status as ASH patients and remained subject to laws pertaining to ASH patients. It was also agreed under this interagency agreement that these patients were subject to the general rules of the Director of Corrections and the superintendent of the Department of Corrections facility. (*Id.* at p. 687.)

In addition, appellant argues that the fact that a section 2684 transferee receives credit for time at a state hospital has no bearing on whether the Department of Corrections retains legal custody over such an

4. Government Code section 11256 states:

Subject to approval of the Director of General Services, state agencies may furnish services, materials or equipment to, or perform work for, other state agencies upon such terms and conditions and for such considerations as they may determine and, subject to such approval, may enter into agreements for such purpose. The state agency furnishing or performing said work, services, materials or equipment shall include in its charges therefor such direct and indirect costs to the state in furnishing or performing said work, services, materials or equipment as may be approved by the Director of General Services, and such state agency shall compute said charges in a manner approved by the Director of Finance. [¶] The Director of General Services, upon such terms and conditions as he may prescribe, may except from his approval, or grant blanket approval for, the performance of any work, the furnishing of any services, materials or equipment, the entering into of any agreements, the computation of any charges, or the inclusion of any costs provided for herein.

5. At the time of Cathey's transfer from ASH to a Department of Corrections facility, the Legislature had not yet enacted former Welfare and Institutions Code section 6700.5, regarding the transfer of an individual from an institution under the jurisdiction of the former Department of Mental Hygiene to an institution under the jurisdiction of the Department of Corrections. (See *In re Cathey, supra*, 55 Cal.2d at pp. 692-693.)

inmate. (See Answer Brief at pp. 12-13.) However, section 2685 illustrates the fact that a section 2684 transferee is serving his prison sentence while he is temporarily spending time at a state hospital for mental health treatment and receiving credit towards that prison sentence for any time spent at the hospital.

B. A Section 2684 Transferee Is Only Temporarily Away From Prison While At ASH

Second, appellant argues that a section 2684 transferee is “not merely being ‘temporarily allowed’ outside of prison,” within the meaning of section 4504(b), but is instead “being transferred, and that transfer may be permanent.” (Answer Brief at pp. 9-11.) The language of sections 4504(b), 2684, and 2685 (see Opening Brief at pp. 8-10, 12), and section 3360(b) of title 15 of the California Code of Regulations, which describes the transfer of an inmate to the Department of Mental Health pursuant to section 2684 as “temporary” (see Opening Brief at pp. 17-20), demonstrates that a section 2684 transferee is only temporarily away from prison in order to receive mental health treatment at a state hospital. Moreover, a section 2684 transferee is temporarily away from prison because he cannot permanently remain at ASH as a section 2684 transferee.

According to a Department of Mental Health website concerning ASH, the “disposition alternatives” for a mentally ill prisoner who was transferred to ASH from the Department of Corrections for “psychiatric stabilization” are: “Parole, return to Corrections, continued hospitalization as a Mentally Disordered Offender or other civil commitment.” (See Department of Mental Health website

<<http://www.dmh.ca.gov/Statehospitals/Atascadero/LegalCommitments.asp>> [as of October 12, 2005].) The same website also indicates that Programs III and V at ASH “treat mentally ill inmates from the California Department of Corrections under the 2684 Penal Code per the Memorandum of Understanding between the Departments of Corrections and Mental Health,” and “[p]atients from these programs will be either paroled, returned to the Department of Corrections, or continue hospitalization as a Mentally Disordered Offender or under a civil commitment.” (See Department of Mental Health website <<http://www.dmh.ca.gov/Statehospitals/Atascadero/Treatment.asp>> [as of October 12, 2005].)

A section 2684 transferee is only temporarily away from prison because he will physically leave ASH either: (1) to return to state prison pursuant to section 2685, or (2) to go to a Department of Corrections “hub institution” in order to be paroled. (See Opening Brief at p. 21.) Even if a section 2684 transferee were to physically remain at ASH for further hospitalization as a Mentally Disordered Offender (MDO) (see § 2960 et seq.) or under civil commitment as a Sexually Violent Predator (SVP) (see Welf. & Inst. Code, § 6600 et seq.), he will not remain at ASH as a section 2684 transferee. He will have to be determined to be either an MDO^{6/} or SVP^{7/} pursuant to statutory requirements. Thus, a section

6. The “MDO Law requires certain mentally disordered prisoners who have committed specifically identified violent crimes to submit to continued mental health treatment after their release on parole. [Citations.]” (*People v. Superior Court (Myers)* 50 Cal.App.4th 826, 830-831.)

A determination that a defendant requires treatment as an MDO rests on six criteria, set out in section 2962: the defendant (1) has a severe mental disorder; (2) used force or violence in committing the underlying offense; (3) had a disorder which

caused or was an aggravating factor in committing the offense; (4) the disorder is not in remission or capable of being kept in remission absent treatment; (5) the prisoner was treated for the disorder for at least 90 days in the year before being paroled; and (6) because of the disorder, the prisoner poses a serious threat of physical harm to other people.

(*People v. Clark* (2000) 82 Cal.App.4th 1072, 1075-1076.)

7. In *People v. Buffington* (1999) 74 Cal.App.4th 1149, the court explained the procedures regarding the SVP Act:

The process for determining whether a convicted sex offender is an SVP . . . takes place in several stages, both administrative and judicial. [¶] Administratively, the Department of Corrections initially conducts a screening pursuant to a structured screening instrument developed in conjunction with the Department of Mental Health. If that screening shows the inmate is likely to be an SVP, he is referred to the Department of Mental Health for a full evaluation as to whether he meets the criteria set out in [Welfare and Institutions Code] section 6600. [¶] The [full] evaluation performed by the Department of Mental Health must be conducted by at least two practicing psychiatrists or psychologists in accordance with a standardized assessment protocol. The standardized assessment protocol . . . require[s] assessment of diagnosable mental disorders, as well as various factors known to be associated with the risk of reoffense among sex offenders . . . [such as] criminal and psychosexual history, type, degree, and duration of sexual deviance, and severity of mental disorder. [¶] Two evaluators must agree that the inmate *is* mentally disordered and dangerous within the meaning of [Welfare and Institutions Code] section 6600 in order for proceedings to go forward under the [SVPA]. In such cases, the Department of Mental Health transmits a request for a petition for commitment to the county in which the alleged SVP was last convicted, providing copies of the psychiatric evaluations and any other supporting documentation. If the county's designated counsel concurs with the recommendation, a petition for commitment shall be filed in the superior court. . . . [¶] The filing of the petition triggers the judicial round of proceedings under the SVPA. These proceedings start with a probable cause hearing; if that hurdle is cleared, the proceedings end with a full-blown trial as to whether the requirements for classification as an SVP have been established beyond a reasonable doubt.

2684 transferee cannot remain at ASH permanently as a section 2684 transferee.

C. Appellant's Equal Protection Claim Is Waived And, In Any Event, Fails

Third, appellant raises an equal protection violation claim. (Answer Brief at pp. 11-12.) Initially, respondent submits that this Court should decline to address appellant's equal protection claim because it is raised for the first time in Appellant's Answer Brief on the Merits. (See *Hubbart v. Superior Court* (1999) 19 Cal.4th 1138, 1170, fn. 31 [Supreme Court declined to address defendant's equal protection claims which were raised for first time in supplemental brief in Supreme Court].) Appellant never raised this equal protection claim in the trial court. (See RT 3-13 ; CT 1-64.) Nor did he raise this equal protection claim in his Opening Brief or Reply Brief before the California Court of Appeal, and thus, the Court of Appeal did not address any equal protection issues in its opinion and modified opinion. Appellant also did not raise this equal protection claim in his Answer to respondent's Petition for Review.

In any event, appellant's equal protection claim fails. The principles governing claims of equal protection violations are well-established.

The concept of the equal protection of the laws compels recognition of the proposition that persons similarly situated with respect to the legitimate purpose of the law receive like treatment.

The first prerequisite to a meritorious claim under the equal

(*Id.* at p. 1160, citations and quotation marks omitted, emphasis in original.)

protection clause is a showing that the state has adopted a classification that affects two or more similarly situated groups in an unequal manner. This initial inquiry is not whether persons are similarly situated for all purposes, but whether they are similarly situated for purposes of the law challenged.

(*Cooley v. Superior Court* (2002) 29 Cal.4th 228, 253, citations and quotation marks omitted; see also *People v. Buffington, supra*, 74 Cal.App.4th at p. 1155.)

Appellant compares section 2684 transferees to other individuals “who are directly committed to state hospitals by court order and who are *not* subject to section 4501.5,” such as a defendant found not guilty by reason of insanity pursuant to section 1026, a person found mentally incompetent to stand trial pursuant to section 1368, a prisoner under a death sentence who is found to be insane under section 3700, an MDO under section 2960, and an SVP under Welfare and Institutions Code section 6601. (See Answer Brief at pp. 11-12, emphasis in original.) However, a section 2684 transferee is not “similarly situated” to any of the other individuals listed by appellant. A section 2684 transferee has already been convicted and is serving a prison sentence when he is transferred to a state hospital for mental health treatment. Thus, even while at a state hospital such as ASH, a section 2684 transferee is serving his prison sentence and being punished.

On the other hand, a person found not guilty by reason of insanity, a person found mentally incompetent to stand trial, an MDO, and an SVP are not being punished at all. “The commitment of a defendant to a state hospital after a Penal Code section 1026 insanity determination is in lieu of criminal punishment and is for the purpose of treatment, not

punishment.” (*People v. Superior Court (Williams)* (1991) 233 Cal.App.3d 477, 485, citing *In re Moye* (1978) 22 Cal.3d 457, 466.) “In a proceeding under section 1368 a defendant is not charged with a criminal act and is not subject to criminal proceedings or punishment if he is found insane. It is a special proceeding rather than a criminal action.” (*People v. Fields* (1965) 62 Cal.2d 538, 540, citations omitted.) “The purpose of the MDO statutory scheme is to provide mental health treatment for those offenders who are suffering from presently severe mental illness, not to punish them for their past offenses.” (*People v. Superior Court (Myers)* (1996) 50 Cal.App.4th 826, 837.) A defendant’s commitment as an SVP is not punishment, and the SVP Act is not penal in nature. (See *Cooley v. Superior Court, supra*, 29 Cal.4th at p. 250; *Hubbart v. Superior Court, supra*, 19 Cal.4th at p. 1166; see also Welf. & Inst. Code § 6250 [“those persons shall be treated, not as criminals, but as sick persons”].) In addition, regarding appellant’s comparison to a death penalty inmate found to be insane, “persons convicted under the death penalty law are manifestly not similarly situated to persons convicted under the Determinate Sentencing Act. . . .” (See *People v. Marshall* (1990) 50 Cal.3d 907, 945, quoting *People v. Williams* (1988) 45 Cal.3d 1268, 1330.) There is also no equal protection violation because a section 2684 transferee who receives mental health treatment at ASH is not similarly situated with a death penalty inmate found to be insane.^{8/}

8. Contrary to appellant’s suggestion (Answer Brief at p. 12), inmates sentenced to death who are later determined to be insane are *not* committed to the Department of Mental Health. Rather, they are confined “to a medical facility of the Department of Corrections and there kept in safe confinement until his reason is restored.” (§ 3703.)

D. Sound Public Policy Supports The Interpretation That A Section 2684 Transferee Is Subject To Prosecution Under Section 4501.5; The Relevant Department Of Corrections Regulations Should Be Given Judicial Deference

Fourth, appellant argues that the purpose of section 4501.5 is to promote prison safety and that it “is illogical that the goal of *prison* safety will be promoted by making the statute [section 4501.5] applicable to one subgroup of persons [section 2684 transferees] confined in state hospitals.” (See Answer Brief at pp. 17-18, emphasis in original.) Respondent reiterates that sound public policy supports the interpretation that a section 2684 transferee to ASH may be prosecuted under section 4501.5. (See Opening Brief at pp. 15-17.) Since the purpose of section 4501.5 is to promote safety for those who have regular contact with prisoners, this section should be interpreted to protect ASH employees who regularly have contact with Department of Corrections inmates, such as section 2684 transferees.

In addition, appellant argues that a comparison to Welfare and Institutions Code section 7301 “neither requires nor tends toward” respondent’s conclusion that a section 2684 transferee should not be exempt from punishment under section 4501.5. (See Answer Brief at pp. 15-17; Opening Brief at pp. 13-15.) However, there remains no express exemption for section 2684 transferees from prosecution under section 4501.5. Moreover, it can be reasonably inferred that the Legislature would have included such an express exemption in order to avoid any possible confusion regarding whether a section 2684 transferee can be punished under section 4501.5.

Finally, appellant argues that the relevant Department of Corrections regulations should not be accorded judicial deference. (Answer Brief at pp. 18-21.) These regulations support the interpretation that a prisoner transferred to ASH pursuant to section 2684 is subject to prosecution under section 4501.5 because he is only temporarily away from prison and remains under the jurisdiction of the Department of Corrections. Respondent reiterates that these relevant Department of Corrections regulations should be given appropriate deference because the regulations' interpretation of the relevant statutes is based on the department's expertise and administrative experience regarding such matters as classification and discipline of inmates. (See *In re Scott*, *supra*, 113 Cal.App.4th at p. 44; see also Opening Brief at pp. 17-22.)

CONCLUSION

For the foregoing reasons, as well as those discussed in respondent's Opening Brief on the Merits, respondent respectfully requests that this Court reverse the judgment of the Court of Appeal and affirm appellant's conviction for violating section 4501.5.

Dated: September 10, 2007

Respectfully submitted,

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TABLE OF CONTENTS

	Page
ARGUMENT	1
I. A STATE PRISON INMATE TRANSFERRED TO ASH PURSUANT TO SECTION 2684 IS SUBJECT TO PROSECUTION UNDER SECTION 4501.5	1
A. The Department Of Corrections Maintains A Sufficient Degree Of Legal Custody Over A Section 2684 Transferee At ASH	2
B. A Section 2684 Transferee Is Only Temporarily Away From Prison While At ASH	6
C. Appellant’s Equal Protection Claim Is Waived And, In Any Event, Fails	9
D. Sound Public Policy Supports The Interpretation That A Section 2684 Transferee Is Subject To Prosecution Under Section 4501.5; The Relevant Department Of Corrections Regulations Should Be Given Judicial Deference	12
CONCLUSION	14

TABLE OF AUTHORITIES

	Page
Cases	
<i>Cooley v. Superior Court</i> (2002) 29 Cal.4th 228	10, 11
<i>Hubbart v. Superior Court</i> (1999) 19 Cal.4th 1138	9, 11
<i>In re Barnett</i> (2003) 31 Cal.4th 466	4
<i>In re Cathey</i> (1961) 55 Cal.2d 679	4, 5
<i>In re Moye</i> (1978) 22 Cal.3d 457	11
<i>In re Scott</i> (2003) 113 Cal.App.4th 38	4, 13
<i>People v. Buffington</i> (1999) 74 Cal.App.4th 1149	8-10
<i>People v. Clark</i> (2000) 82 Cal.App.4th 1072	8
<i>People v. Fields</i> (1965) 62 Cal.2d 538	11
<i>People v. Marshall</i> (1990) 50 Cal.3d 907	11
<i>People v. Superior Court (Myers)</i> 50 Cal.App.4th 826	8, 11
<i>People v. Superior Court (Williams)</i> (1991) 233 Cal.App.3d 477	11

TABLE OF AUTHORITIES (continued)

	Page
<i>People v. Williams</i> (1988) 45 Cal.3d 1268	11
 Statutes	
Gov. Code, § 11256	5
Pen. Code, § 1026	10, 11
Pen. Code, § 1368	10
Pen. Code, § 2684	1-13
Pen. Code, § 2685	2, 3, 6, 7
Pen. Code, § 2960	7, 10
Pen. Code, § 3700	10
Pen. Code, § 3703	12
Pen. Code, § 4501.5	1-3, 12-14

TABLE OF AUTHORITIES (continued)

	Page
Pen. Code, § 4504	2, 6
Pen. Code, § 5054	4
Pen. Code, § 5068	4
Pen. Code, § 6082	2
Welf. & Inst. Code, § 4027	2, 3
Welf. & Inst. Code, § 6250	11
Welf. & Inst. Code, § 6600	7
Welf. & Inst. Code, § 6601	10
Welf. & Inst. Code, § 6700.5	5
Welf. & Inst. Code, § 7301	12