S272129

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

MARIO RODRIGUEZ Petitioner-Defendant v. SUPERIOR COURT OF SANTA CLARA COUNTY, Respondent.	Case No. S_____ Sixth District Case No. H049016 Santa Clara County Case Nos. C1650275 and C1647395
PEOPLE OF THE STATE OF CALIFORNIA, Real Party in Interest	

PETITION FOR REVIEW FROM DENIAL OF PETITION FOR WRIT OF MANDATE OR EQUITABLE RELIEF

From the Published Opinion Affirming the Denial of the Motion to Dismiss by the Superior Court for Santa Clara County, The Honorable Eric S. Geffon, Presiding

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NEXT HEARING: January 10, 2022

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TO: THE HONORABLE CHIEF JUSTICE, TANI CANTIL-SAKAUYE, AND THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

QUESTIONS PRESENTED FOR REVIEW

(1) Does Restoration of Competency Require Judicial Approval within the Maximum Period for Commitment to Comply With Penal Code Sections 1370 and 1372, Due Process, Equal Protection, and Effective Assistance of Counsel?

(2) Can the Department of State Hospitals ("DSH") Terminate the Commitment Period Without Judicial Approval When the Legislature has Required Court Orders for Commitment, Restoration, Bail, Choice of Medication, Conservatorship, Dismissal of Charges, and Referral of Jurisdiction Within Two Years of Commitment?

(3) Does the Commitment Period Aggregate after Filing of DSH's Notice of Certification, but While Treatment is Administered by Medication, Counseling, or Other Court Services Necessary for Judicial Finding of Restored to Competency?

(4) Can the Commitment Period Protect Fundamental Rights When Counsel for the Committed Cannot Insist on a Speedy Finding of Restored to Competency in Absence of Judicial Enforcement of the Maximum Statutory Limitation on Such Special Proceedings?

REASONS FOR GRANTING REVIEW

The Sixth District Court of Appeal "disagree[d] with the trial court's conclusion regarding the calculation of Rodriguez's commitment period, and decide[d] that Rodriguez's commitment ended when his certification of restoration was filed." (Opinion, at p. 2 [Attachment A].) That interpretation of Penal Code sections 1370 and 1372 "cannot be reconciled with the recent conclusions of the Court of Appeal in [*People v. Carr* (*"Carr II"*) (2021) 59 Cal App.5th 1136]."[1] (Opinion, at p. 11.) The irreconcilable differences between *Carr II* and *Rodriguez*, let alone *Medina v. Superior Court* (2021) 65 Cal.App.5th 1197, warrant review to bring uniformity to the law. (Rules of Court, Rule 8.500, subd. (b)(1).[2]

In the aggregate, Rodriguez calculated his commitment as 789 days (approximately 26 months) before hearing on the motion to dismiss held two months outside of the two-year period. (Petition Exhibit 5, at p. 41.) Carr was committed for 39 months by the time he moved for release three-months after lapse of the then applicable three-year commitment period. (*Carr II, supra,* 59 Cal.App.5th at pp. 1140-1141.) Medina was committed for 18 months by his first motion

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[1] Further statutory references are to the Penal Code unless noted otherwise.

[2] The matter is proceeding in Department 26, the Honorable Julia Alloggiamento, whose clerk can be reached at (408) 808-7050.

to dismiss, and 28 months by his last motion. (*Medina*, *supra,* 65 Cal.App.5th at p. 1210-1212.) Each petitioner suffered from delay beyond statutory limitation, but the First, Fourth, and Sixth District Courts of Appeal reached different conclusions based upon application of the same commitment period:

"[T]here is no legislative intention that the time period, within which a defendant reasonably avails himself of the opportunity to challenge the certification, would then be held against him for purposes of extending his maximum commitment period." (*Carr II,* at p. 1147.)	"The court may decline to apply any periods of time from May 10 to October 22, 2019 during which the second competency hearing was continued by request of Medina." (*Medina, supra,* at p. 1230.)	"Rodriguez's maximum commitment period under section 1370(c)(1) has not yet run, it may hold a hearing under section 1372, and it need not dismiss the criminal cases." (Opinion, at p. 2.)

Notably, Carr was granted a restoration hearing within the commitment period, where he prevailed. (*Carr II, supra,* 59 Cal.App.5th at p. 1141.) Medina obtained hearings to challenge commitment without transportation, as well as calculation of the commitment period. (*Medina*, *supra,* 65 Cal.App.5th at p. 1230.) But Rodriguez was not granted a hearing to contest the certificate within the maximum commitment period. (See, *infra,* Argument I.) So the petitioners cannot be factually distinguished based on delays. Rodriguez' inability to proceed to hearing reveals the "faulty premise that a certification of competency, not a court finding, terminates the

statutory commitment period." (*Carr II, supra,* 59 Cal App.5th at p. 1142.)

The Sixth District avoided these issues by holding that the commitment period "terminat[es] upon the filing of the certificate of restoration." (Opinion, at p. 11.) "Terminate" is not in sections 1370 and 1372, so the shorthand "terminate upon filing by DSH" cannot be inserted because "[a] court 'may not rewrite a statute, either by inserting or omitting language, to make it conform to a presumed intent that is not expressed." (*Id.* at p. 13, citations omitted.) Respectfully, the certificate does not terminate the commitment period without court finding of restored to competency because DSH is not "an expert witness and the certificate is not testimonial opinion." (*People v. Rells* (2000) 22 Cal.4th 860, 868.)

The commitment period runs upon court order, so order after stipulation, concession, or contested hearing must issue within the two-year period for jurisdiction authorized by sections 1370, subd. (c)(1); and 1372, subds. (c) and (d). (See, *infra,* Argument III.) Limiting the commitment period to DSH certificate by way of section 1370 cannot be reconciled "with the explicit references to a court hearing and determination of competency in section 1372, subdivision (c)." (*Carr II, supra,* 59 Cal.App.5th at p. 1145.) The "duration of commitment may not exceed 'the reasonable period of time necessary to determine whether there is a substantial probability that [the defendant] will attain that capacity in the foreseeable future.'" (*Jackson v. Superior Court* (2017) 4 Cal.5th 96, 100, quoting *In re Davis* (1973) 8 Cal.3d 798, 804.) So commitment includes determination of restoration within the maximum period set by the

Legislature, which is also the constitutionally reasonable limit on restoration of competency proceedings. (*Carr II, supra,* 59 Cal.App.5th at p. 1145.)

Here then, review is necessary to address the "purposes of calculating [the] maximum commitment time.'" (*Carr II, supra,* 59 Cal.App.5th at p. 1142.) The issues of statewide importance concern the 1,500 or so persons committed to DSH facilities as "IST - PC 1370," 1,500 or so wait-listed for beds, and unknown numbers of purportedly restored to competency awaiting judicial order on any given day.[3] Restoration hearing within two years of commitment protects them against "unfairness and possible harm that results from prolonged or indefinite commitment and the state's interest in bringing a defendant to trial with minimal delay." (*Carr v. Superior Court* ("*Carr I*") (2017) 11 Cal.App.5th 264, 270.)

STAY REQUESTED

The underlying matter is scheduled for hearing on January 10, 2022. Petitioner must seek review of the issues presented in the meantime. (See, e.g., *People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, 305 [granting stay for review], superseded by statute on other grounds as stated in *In re M.S.* (2019) 32 Cal.App.5th 1177, 1191.) Otherwise, more than two years without restoration order may not aggregate against the commitment period in violation of statutory and constitutional rights. (See Opinion, at p. 28.)

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[3] Department of State Hospitals (May 14, 2021) May Revision Proposals and Estimates, *State Hospital Populations*, § A3(a), at pp. 24, 28 available at: https://www.dsh.ca.gov/About_Us/docs/2021-22_May_Revision_ Estimate.pdf [last accessed November 25, 2021].)

STATEMENT OF THE CASE AND PROCEDURAL FACTS

In Case No. C1647395, petitioner is charged with criminal threats in violation of section 422. (Petition Exhibit 1.) In Case No. C1650275, petitioner is charged with assault with a deadly weapon, oral copulation by force, rape, criminal threats, and corporal injury to a spouse in violation of sections 245(a)(1), 288a, 261(a)(2), 422, and 273.5(a). (Petition Exhibit 2.) On December 16, 2016, he was held to answer in both cases following preliminary hearing.

On May 24, 2018, petitioner was committed as incompetent. (Compare Petition Exhibits 6, at p. 56; with 5, at p. 41.) The certificate of restoration was filed on September 7, 2018 and approved on September 20, 2018. (*Ibid.*) The first commitment lasted 119 days.

After a second doubt was declared, petitioner was committed as incompetent again on May 16, 2019. (Compare Petition Exhibits 6, at p. 56 with 5, at p. 41.) The second certificate of restoration was filed on January 9, 2020. (*Ibid.*) No judicial approval has issued for 935 days since the second commitment.

Counsel was substituted for petitioner on January 24, 2020. (Petition Exhibit 10, at p. 102.) DSH records were delivered on March 13, 2020. (Opposition Exhibit 18, at p. 50.) Counsel obtained Santa Clara County "VMC records" in July 2020. (Opposition Exhibit 20, at p. 56.)

The matter was set for "trial re: restoration" on August 24, 2020 (Opposition Exhibit 20, at p. 56.) Time estimate was two days. (*Ibid.*) At readiness, the District Attorney requested continuance. (Opposition Exhibit 22, at p. 62.)

The continuance resulted in a sixth-month delay during which hearings were continued before notice to petitioner's counsel. (Petition Exhibit 10, at 102.) On January 19, 2021, the First District issued its opinion in *Carr II*. On or about March 1, 2021, the superior court advanced the next hearing in petitioner's case. (*Ibid.*)

The extreme delay culminated in petitioner's placement on suicide watch the weekend before the hearing on March 16, 2021. (Petition Exhibit 6, at p. 62.)

Counsel filed motions to dismiss due to violation of the two-year commitment period. (Petition Exhibits 3-5.) Counsel argued that as to "the question of how to count days, *Carr* [*II*] is absolutely clear and the statute is clear." (Petition Exhibit 6, at p. 60.) The prosecution argued: "Where the defendant has been found competent at the hearing, time is tolled back to that certificate of competency." (*Id.* at p. 57.) The Superior Court found:

> In *Carr [III]*, the hospital issues a certificate of restoration, basically, the declaration from the doctor at the hospital that this defendant is now restored.
>
> It's clear that that does not end the competency proceedings. The case has to come back for a hearing in front of a judge and the judge has to determine -- because we're not going to cede the judicial power, the judge has to determine if that defendant is, in fact, restored to competence. If the defendant is not restored to competence, as was the defendant in *Carr [III]*, then I think it makes all the sense in the world that every day up to that point counts as the time where the defendant is not competent, because the court is saying, 'I disagree with that certificate. That certificate was incorrect. The defendant is not restored,' which means the six months between the restoration certificate and the restoration hearing, that time is being timed where this defendant has

> been incompetent to stand trial, it should be counted against the maximum term.
>
> But if a restoration hearing happens and the court believes that actually the restoration certificate is correct and the defendant is restored, then I think it's fair to use the date of the restoration certificate as establishing the date on which the defendant was restored to competency.

(*Id.* at p. 72.) The matters were continued. (*Id.* at p. 76.)

On April 16, 2021, petitioner filed a petition for writ of mandate or other equitable relief with the Sixth District Court of Appeal. (Case No. H049016.) He requested a stay of lower court proceedings. (*Ibid.*) That stay was granted on April 28, 2021. (*Ibid.*)

On May 18, 2021, an informal opposition was submitted by respondent. (Case No. H049016.) On June 1, 2021, petitioner submitted an informal reply. (*Ibid.*) On July 20, 2021, the Court of Appeal granted an order to show cause. (*Ibid.*)

On August 4, 2021, respondent filed a return to the order to show cause. (Case No. H049016.) On August 19, 2021, petitioner filed the denial to the return. (*Ibid.*) On October 14, 2021, oral argument was held at petitioner's request. (*Ibid.*)

On October 20, 2021, the Court issued its published opinion, which was initially final seven days from filing. (Attachment A.) On October 21, 2021, petitioner moved to extend finality. (Case No. H049016.) On October 26, 2021, the motion was granted and the opinion modified to delete the final sentence of the opinion shortening time for finality. (Attachment A.)

On November 9, 2021, petitioner filed a petition for rehearing, motion for judicial notice, and motion to stay proceedings pending

remittitur. (Case No. H049016.) On November 15, 2021, the Court of Appeal denied the motions and the petition. (Attachments B and C.) Petitioner timely submits this petition for review.

ARGUMENTS FOR GRANTING REVIEW

I. THE MAXIMUM COMMITMENT PERIOD FOR RESTORATION OF COMPETENCY PROCEEDINGS MUST BE STRICTLY ENFORCED BY JUDICIAL ORDER TO PROTECT STATUTORY AND CONSTITUTIONAL RIGHTS AS SPECIALLY AUTHORIZED BY THE LEGISLATURE.

The Sixth District found that "on different facts, due process considerations may compel a different result." (Opinion, at p. 24.) But omitted were critical facts demonstrating that petitioner could not contest the certificate of restoration within the two-year commitment period as required by due process. Today, without any spontaneous or retroactive tolling nor termination of the statutory period, petitioner has been committed without order of restored to competency for an aggregate of 1,054 days. The delay could have been avoided by applying the "'commitment period' solely by reference to the dates of the trial court's orders on competence." (*Id.* at p. 11 n. 9.)

For instance, the continuance of trial in August 2020 prevented finding of not restored to competency within the commitment period. The superior court's inability to offer a hearing prevented challenge to DSH's certificate between September 2020 and March 2021. The Santa Clara County Superior Court has tentatively set the next hearing for January 2022. But all along, delays were not excused by the emergency COVID-19 orders because the Pandemic has burdened

the mentally-ill the most. (See generally, National Institute of Mental Health (April 9, 2021) *One Year In: Covid-19 and Mental Health,* available at https://www.nimh.nih. gov/about/director/ messages/2021/one-year -in-covid-19-and-mental-health [last accessed December 1, 2021].)

The Sixth District thereby erred in finding that "the duration of the commitment period and lack of jurisdiction to hold a restoration hearing after the commitment period lapses do not turn on the particular reasons for failing to hold such a hearing, including the COVID-19 pandemic." (Opinion, at p. 11 n. 9.) Petitioner's inability to proceed to hearing within two years of aggregated commitment exposes the "unfairness and possible harm that result[s] from prolonged or indefinite commitments." (*Carr II*, *supra,* 59 Cal.App.5th at pp. 1146-1147, citing *In re Polk* (1999) 71 Cal.App.4th 1230, 1235-1236.) The delay calls into question "due process under the United States Constitution." (*Medina, supra,* 65 Cal.App.5th at p. 1217.) The facts of this case thereby undermine the finding that "*Carr II* is not dispositive, [so as to] decline to adopt its reasoning." (Opinion, at p. 23.)

The rights presented, on behalf of petitioner and the most vulnerable in custody, must be strictly enforced in hospitals, prisons, and jails that "have long been associated with inordinately high transmission probabilities for infectious diseases." (*In re Von Staich* (2020) 56 Cal.App.5th 53, 59.) During the persisting COVID-19 Pandemic,[4] delay due to "[l]ack of funds, staff or facilities cannot

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[4] See Department of Health and Human Services and Centers for Disease Control and Prevention (June 11, 2021) *Genomic*

justify the State's failure to provide [the committed] with [the] treatment necessary for rehabilitation." (*Ohlinger v. Watson* (9th Cir. 1980) 652 F.2d 775, 779.) Review is imperative for uniform interpretation of the commitment period in line with the "rule of reasonableness" prescribed by "the constitutional principles which control [such] case[s]." (*Davis*, *supra,* 8 Cal.3d. at p. 805.)

II. UNIFORM APPLICATION OF THE COMMITMENT PERIOD REQUIRES REVIEW TO DEFINE THE RIGHTS AND PROCEDURES PROTECTING THOSE LACKING AUTONOMY OVER FUNDAMENTAL RIGHTS WHILE COMMITTED AS NOT RESTORED TO COMPETENCY.

A. The Courts of Appeal Disagree as to the Definition of the Commitment Period.

A defendant certified as competent and returned to court pursuant to section 1372 remains committed for purposes of calculating the maximum statutory period. (*Carr II, supra,* 59 Cal.App.5th at p. 1144; and *Medina, supra*, 65 Cal.App.5th at p. 1225.). By so finding, the First and Fourth Districts consistently employed "gap-filling" to apply the maximum statutory limit in section 1370 to the hearing required by 1372, like this Court did with section 1369. (See *Rells, supra,* 22 Cal. 4th at p. 868.) To the contrary, the Sixth District sliced the period between certificate (§

Surveillance for SARS-CoV-2 Variants Circulating in the United States, December 2020-May 2021, Morbidity and Mortality Weekly Report MMWR, V. 70, No. 23; and Department of Health and Human Services and Centers for Disease Control and Prevention (November 26, 2021) *CDC Statement on B.1.1.529 (Omnicron variant*) available at: https://www.cdc.gov/media/releases/2021/s1126-B11-529-omicron.html [last accessed November 28, 2021].)

1370) and hearing (§ 1372):

"The period between the March 2016 certificate of competency and the June 2018 ruling that Carr was incompetent 'did indeed count as part of the 'commitment' for purposes of calculating Petitioner's maximum commitment time.'" (*Carr II,* at p. 1142.)	"[A]ll days spent in custody in jail or prison, or spent in treatment, from the date of the commitment order (November 22, 2017) to the date the hearing is completed must be applied toward the maximum commitment period." (*Medina,* at p. 1230.)	"[W]e conclude the period when the defendant is returned to court after having been certified as competent but before the trial court makes its own determination of competency does not count toward the two-year maximum commitment period referenced in section 1370(c)(1)." (Opinion, at p. 24.)

Unlike the Sixth District, the First and Fourth Districts anchored the statutory scheme with the promise of a hearing within two years leading to court order coinciding with restored, or not, to competency. (*Carr II, supra,* 59 Cal.App.5th at pp. 1146-1147.) That interpretation of sections 1370 and 1372 complies "with the mandate of *[Davis, supra,* 8 Cal. 3d 798]." (*People v. Mixon* (1990) 225 Cal. App. 3d 1471, 1480.) Review to so enforce the commitment period harmonizes the "comprehensive and orderly process for evaluating defendants who are incompetent to stand trial." (*Carr II, supra,* 59 Cal.App.5th at pp. 1142-1143.)

B. The Courts of Appeal Assign Different Procedural Function to the Certificate of Restoration.

Statutorily, the Legislature has not awarded the power to terminate the commitment period to DSH. (See §§ 1370 and 1372.) Constitutionally, *Jackson*, *Davis,* and *Jackson* limit "commitment for

the purpose of determining or restoring competence to no more than [two] years." (*Medina, supra,* 65 Cal.App.5th at p. 1228, citing *Jackson, supra,* 4 Cal.5th at p. 106.) So the First and Fourth Districts correctly interplayed sections 1370 and 1372 to protect against constitutional violations, while the Sixth District terminated "commitment" by certificate without court order:

"[T]he statutory language and the case law . . . clearly indicate that the certificate of competency serves only to initiate proceedings by which the court will hear and decide the question of the defendant's competency." (*Carr II*, at p. 1144.)	"The filing of the certificate of restoration does not establish competence but initiates court proceedings to determine whether the defendant's competency has been restored." (*Medina,* at p. 1207.)	"[T]he legal force and effect of the restoration certificate for a defendant who has been treated at a commitment facility includes the fixing of the end date for calculation of the commitment treatment period under section 1370(c)(1)." (Opinion, at p. 23.)

The filing of the certificate does not render the "custodial commitment [] transmuted." (Opinion, at p. 27.) Today, petitioner remains committed to the jail in the absence of restoration order. The special jurisdiction impugning his personal rights cannot transmute without that order after hearing via section 1372, subdivisions (c) and (d). His commitment beyond two years without special jurisdiction implicates "indefinite commitments." (*Medina, supra,* 65 Cal.App.5th at p. 1228; see also *People v. Quiroz* (2016) 244 Cal.App.4th 1371.) So petitioner will suffer "a due process violation if [t]his time in custody is not counted toward the maximum

commitment period." (*Medina, supra,* 65 Cal.App.5th at p. 1230.)

Carr II thereby demonstrates how the Sixth District erroneously discounted time "not count[ing] toward the two-year commitment maximum under section 1370(c)(1)." (Opinion, at p. 28.) Carr was also certified as restored to competency, but he prevailed at the hearing held within the commitment period. (*Carr II, supra*, 59 Cal.App.5th at p. 1141.) The maximum period eclipsed even though his case was stayed for a year pending writ review in *Carr I*. (*Ibid*.)

If presented the same facts, the Sixth District would have discounted all the time that Carr spent in custody after the certificate was filed. (Opinion, at p. 23.) To the contrary, the case law "uniformly considers the certificate of competency to be the event that triggers court proceedings to determine whether the defendant has regained competency." (*Carr II, supra*, 59 Cal.App.5th at p. 1146, citations omitted.) There is no basis to find that "efforts to oppose the certification contributed to his commitment exceeding the [two]-year maximum." (*Ibid*.)

Nor is *Medina* limited to the committed who are "denied treatment to restore competence or [those] not transported to and from the treatment facility in a timely manner." (Opinion, at p. 24, citing *Medina, supra*, 65 Cal.App.5th at p. 1203.) The essential point of *Medina* - which cited *Carr II* positively - was that no restoration of competency order issued within the maximum commitment period. (See *Medina, supra,* 65 Cal.App.5th at p. 1225, citing *Carr I, supra*, 11 Cal.App.5th at p. 272.) Nor could one issue without hearing pursuant to section 1372. (*Medina, supra,* 65 Cal.App.5th at p. 1225.)

Medina thereby undermines the Sixth District's points of "disagree[ment] with the *Carr II* court's rejection of the significance of the certification of restoration with respect to calculation of the two-year commitment period under section 1370(c)(1)." (Opinion, at p. 23.) Petitioner similarly could not obtain a hearing within two years of the commitment order. Review ensures that similar delays result in dismissal of "the charges pursuant to section 1385 and/or the due process clause of the United States Constitution." (*Medina, supra,* 65 Cal.App.5th at p. 1230.)

C. The Courts of Appeal Cannot Agree on the Significance of the Restoration of Competency Hearing.

The Sixth District "disagree[d] with *Carr II* that the section 1372, subdivision (d) language referencing court approval is dispositive." (Opinion, at p. 23.) Rejected was the maximum limit on a "judicial determination of restoration of competency," but unexplained was "how to reconcile their construction of the statutes with the explicit references to a court hearing and determination of competency in section 1372, subdivision (c)." (*Carr II*, *supra,* 59 Cal.App.5th at p. 1145.) "Nor, if the commitment terminates when a health official files a certification of competence, would any plausible purpose be served in requiring the court to approve the certification as expressly contemplated in section 1372, subdivision (d)." (*Ibid.*) The committed cannot be so held without hearing, as correctly found by the First and Fourth Districts, while the Sixth District authorized hearings at some undefined future point in time:

"[T]he statute and case law support the conclusion that not only did the Legislature intend that a defendant be afforded a hearing under § 1372, but it also intended that such a defendant would not be held beyond his maximum commitment period." (*Carr II,* at p. 1147.)	"Once a defendant has served the maximum term of commitment, due process requires that he or she be released." (*Medina,* at p. 1228.)	"Section 1372 does not explicitly state any time frame within which the restoration hearing must be held and does not reference section 1370(c)(1)'s two-year maximum for an incompetency commitment." (Opinion, at p. 20.)

Interpreting sections 1370 and 1372 to authorize hearings outside the maximum commitment period fails to promote the "compelling intention of the statute that protects the IST defendant from being held beyond his [two]-year maximum commitment period." (*Carr II*, *supra,* 59 Cal.App.5th at p. 1147.) Nor can the DSH's termination of the commitment period "be squared with the statutory scheme that makes clear it is the trial court, not a state health official, that determines whether the defendant has been restored to competence." (*Id.* at p. 1145.) Review brings uniformity to the "determination that the defendant remained incompetent does indeed count as part of the 'commitment' for purposes of calculating [the defendant's] maximum commitment time." (*Id.* at p. 1142.)

D. The Courts of Appeal Conflict as to Whether the Commitment Period Requires Treatment at a "Mental Institution."

The Sixth District found that the maximum commitment period "'applies to the total period actually spent in commitment *at a*

mental institution.'" (Opinion, at p. 18, quoting *People v. G.H.* (2014) 230 Cal.App.4th 1548, 1558, italics added.) *G.H.* was equally quoted in *Medina,* but omitted from *Rodriguez* were the next sentences as written by the Fourth District:

> Medina argues the maximum commitment period of three years has run because all days since the date on which he was ordered committed, and not just days actually spent in a facility, must count toward the maximum confinement period of three years. We agree.

(*Medina, supra,* 65 Cal.App.5th at p. 1229.)

As *Medina* demonstrates, the pre-commitment reasoning of *G.H.* limited to credits incurred at "mental institutions" does not apply to modern day commitment settings or credit scheme. The post-commitment period defines when a hearing must occur, as correctly addressed by the First District Court of Appeal on *Carr II*, but the Sixth District focused on "treatment:"

"[T]he statutory language and the case law 'clearly intend that a judge is required to act on the certificate before the defendant is found to have recovered competence, or whether he remains incompetent.'" (*Carr II*, at p. 1142.)	"All time that Medina has spent in custody since the November 2017 commitment order, whether in jail or in prison, must be counted toward the three-year maximum confinement period." (*Medina,* at p. 1229.)	"[The Legislature] intended the two-year period to cover only the time the defendant actually receives treatment to restore his or her competence, not to the entire period before the trial court's approval of the certification of restoration to competence." (Opinion, at p. 25.)

"Treatment" does not appear in sections 1370, subdivision (c)(1), or 1372, subdivisions (c) or (d). Nor was the commitment period so preconditioned by the Legislature when it reduced time for commitment from three to two years due to delays in *treatment* caused by DSH. (See, e.g., *People v. Brewer* (2015) 235 Cal.App.4th 122.) Wisely, the Legislature made the commitment period start and end on court order within a defined maximum time frame. (See, *infra,* Argument III.A.)

Also, the commitment period is not limited to treatment at a mental institution because "treatment facility" includes county jails. (See § 1369.1) Several types of facilities can provide "approved medication to defendants who are found to be IST and unable to provide informed consent due to a mental disorder." (Senate Committee on Public Safety Analysis of SB 317 (April 25, 2021) at p. 4.) Plus, SB 317 passed to "ensure[] incompetent defendants are eligible for the same time served credit for good conduct as their competent counterparts, while receiving treatment in any treatment facility or as an outpatient, *not just a county jail treatment*." (*Id.* at p. 6, emphasis added.)

So irrelevant are "*precommitment* custody credits." (Opinion, at p. 26, quoting *People v. Reynolds* (2011) 196 Cal.App.4th 801, 809, emphasis added.) The cases cited by the Sixth District have "[n]othing in th[e] reasoning or conclusion suggest[ing] that a certificate of competency terminates the commitment." (*Carr II, supra,* 59 Cal.App.5th at p. 1146.) Petitioner has been held in excess of the *post-commitment* period following "the date of commitment . . . ." (§ 1370, subd. (c)(1).) Review ensures that petitioner has not

"been in custody *or* treatment for longer than the maximum commitment period." (*Medina*, *supra,* 65 Cal.App.5th at p. 1203, emphasis added.)

E. Restoration Order Within Two Years of Commitment Resolves Conflicts in the Law, and Alleviates Delays Burdening the Committed, as Authorized By the Legislature and Promised by the Constitutions.

"The Penal Code vests the trial court with the responsibility to determine whether a criminal defendant found incompetent to stand trial and committed for treatment and competency training has been restored to competency." (*Carr II, supra,* 59 Cal App.5th at p. 1140.) The legislative history of sections 1370 and 1372 proves that control of the commitment period has shifted to the judiciary, while limitations have been imposed on the DSH. (See, *infra,* Argument III.A.) To undue this shift in the balance of powers, impermissibly "tinker[s] with the legislative scheme [by] add[ing] . . . language to its provisions to make it say what it does not say." (*In re Taitano* (2017) 13 Cal.App.5th 233, 256.)

In *Taitano, supra*, 13 Cal.App.5th 233, the defendant was returned by DSH as unlikely to be restored over a year before the end of his commitment. Neither the filing of the 1370, subdivision (b) report nor Mr. Taitano's return to custody terminated his commitment without court order for release or alternative commitments. (*Id.* at p. 246.) *Taitano* thereby supports the holding of *Carr II*, *supra,* 59 Cal.App.5th 1136 that return from DSH does not end commitment. (*Taitano, supra*, 13 Cal.App.5th at p. 248.)

Same as to *Quiroz, supra*, 244 Cal.App.4th at p. 1380, which demonstrates the courts cannot hold a hearing that "exceed[] its

jurisdiction." *Polk, supra,* 71 Cal.App.4th at p. 1238 makes clear that the commitment period is marked by the orders that "aggregate all commitments on the same charges." And, *Rells, supra*, 22 Cal.4th at p. 868 recognized that the certificate is limited to returning the defendant to court, not termination of the commitment period "separately and independently of any role that either official or certificate may subsequently play."

Granting DSH the power to terminate the commitment period goes beyond its "auxiliary role in the proper functioning of the criminal justice system." (*People v. Hooper* (2019) 40 Cal.App.5th 685, 693.) Indeed, "DSH resembles a party far more than it resembles one 'not directly involved' in an action." (*Ibid.*) Nor should the commitment period be allocated to DSH because of its "repeated violation of orders designed to ensure compliance with IST defendants' constitutional and statutory rights." (*People v. Kareem A.* (2020) 46 Cal.App.5th 58, 75.)

Instead, as this Court has recognized, commitment involves *custody*, not just *treatment at a mental institution*. (See *Jackson, supra,* 4 Cal.5th at p. 107 ["[T]here is no statutory provision that explicitly establishes the maximum time a defendant can be held in custody under these circumstances . . . ."].) The "defendant may be further committed for *evaluation or treatment* only for the balance of the time remaining under section 1370(c), if any." (*Ibid,* citing *Polk, supra,* 71 Cal.App.4th at p. 1232.) Review to enforce this balance is necessary to statutorily and constitutionally determine whether the committed are likely "to gain competence and, if so, [to order] treatment to that end." (*Jackson, supra,* 4 Cal.5th at pp.

100–101.)

III. REVIEW IS REQUIRED FOR UNIFORM APPLICATION OF THE COMMITMENT PERIOD BY RESTORATION ORDER, NOT IF THE DEPARTMENT OF STATE HOSPITALS TRANSPORTS AND "TREATS" THE COMMITTED.

A. More than 100 Years of Legislative History Have Shifted Judicial Control Over the Commitment Period Away from State Hospital Control Over the Committed.

As enacted in 1872, sections 1367-1372 provided for no judicial oversight when the Superintendent of the State Hospital determined "sanity" was regained (save in capital cases awaiting execution via sections 3700-3704). (*In re Phyle* (1947) 30 Cal.2d 838, 844; *People v. Lindley* (1945) 26 Cal.2d 780, 788-789.) The "Certificate of the Superintendent" required the County Sheriff to return the committed for criminal proceedings. (*Phyle, supra,* 30 Cal.2d at pp. 843-844.) The Superintendent terminated commitment via powers "vested exclusively in the officers of the asylum." (*People v. Ashley* (1963) 59 Cal.2d 339, 359.) The Sixth District's interpretation of modern day sections 1370 and 1372 builds this anachronism back into the law contrary to 100 years of legislative and constitutional progress.

In 1974, Assembly Bill No. 1529 amended section 1372 to provide for a bail hearing upon termination of commitment, although the Superintendent was still vested with the exclusive authority to terminate commitments. (Stats. 1974, ch. 1511, § 8 [AB 1529]; see also Stats. 1974, Ch 1423 [SB 2249].) Section 1370 included the "no substantial likelihood" provision and three-year limit on commitments in subdivisions (b)(1)(A) and (c)(1). Only one type of restoration of competency hearing was authorized after 18-months of

commitment under what is now section 1370, subdivision (b)(4) (as enacted in 1974, subdivision (b)(2)).

In 1980, the Legislature added subdivision (a) to section 1372 so that the State Hospital, or other treatment facility, could certify "that the defendant has regained his mental competence." (See Stats. 1980, ch. 547, § 14.) When such defendants were returned, a hearing was contemplated under section 1372, subdivision (d). But the law did not authorize termination of the commitment period by DSH certificate as interposed by the Sixth District some 31-years later.

The 1998 amendments made the statute gender-neutral. (Stats. 1998, c.932, § 40.) The 2014 amendments added revocation proceedings. (Stats. 2014, c.759, § 3.) SB 1187 shortened the commitment period amongst a host of other changes focused on reducing the committed population by promoting mental health treatment. (Committee Report, at pp. 1-4.) Effective July 2021, omnibus AB 133 recognized expansion of custodial treatment options. (See Senate Floor Analysis for AB 133 (July 15, 2021), at pp. 1-2.)

In October 2021, the Legislature mandated section 4019 credits for the committed in a "treatment facility" via SB 317. In doing so, the Legislature recognized that the certificate of restoration only authorizes that "the defendant be returned to court." (Senate Floor Analysis of SB 317 (September 7, 2021), at p. 3, citation omitted.) The Legislature thereby accepted *Carr II's* prior interpretation of the limited role of the certificate of restoration issued some eight months prior to SB 317. (See generally, *Midlantic Nat'l Bank v. New Jersey Dep't of Envt'l Protection* (1986) 474 U.S. 494, 501, citation omitted.)

To speed up the restoration process, the Legislature has

expanded the definition of "treatment facility" via AB 133 and SB 317. The commitment period was also reduced without bestowing upon DSH the power to "terminate" commitments altogether. (See Senate Floor Analyses of SB 1187 (August 28, 2018) and Assembly Floor Analysis of SB 1187 (August 23, 2018).) The statutes must be interpreted without tolling, termination, or continuance of the commitment period, unlike in other special proceedings where such provisions are provided by law. (See, e.g., *Conservatorship of MM* (2019) 39 Cal.App. 5th 496, 500, § 1600.5 (MDSO), § 1026.5 (NGI), and § 2972 (MDO).)

Nor does cabining the analysis to SB 1187 evince "the legislative history of recent amendments to section 1370." (Opinion, at p. 25.) Complete analysis requires consideration of more than 100 years of legislative history through the bills passed in 2021 (AB 133 and SB 317). The laws were carefully crafted to require court order within the commitment period to "protect defendants' due process and equal protection rights not to be committed solely because of incompetence for longer than is reasonable." (*Jackson, supra,* 4 Cal.5th at p. 105; and *Davis, supra,* 8 Cal.3d. at p. 805.)

The Sixth District's contrary interpretation of sections 1370 and 1372 opens a "Pandora's box" of questions, like what is "the period within which the [parties] could request [a hearing]?" (*Taitano, supra,* 13 Cal.App.5th at p. 256.) No such questions are needed because the Legislature has strictly regulated restoration of competency proceedings to protect fundamental rights as authorized by Code of Civil Procedure section 23. (*Baqleh v. Superior Court* (2002) 100 Cal.App.4th 478, 490.) The special proceedings are limited

by "the terms and conditions of the statute under which it was authorized, and . . . [t]he statutory procedure must be *strictly followed*.'" (*Palm Property Investments, LLC v. Yadegar* (2011) 194 Cal.App.4th 1419, 1425, citations omitted and emphasis added.) Review to require restoration orders within the maximum commitment period is "conferred by law; that is, by the constitution or by statute." (*Harrington v. Superior Court* (1924) 195 Cal. 185, 188.)

B. The Certificate of Restoration Cannot End the Commitment Period When the Filing Does not Restore Competency to Assert Fundamental Rights.

The Sixth District failed to define "treatment," but did find that "the statute does not include a mechanism for the provision of treatment to alleviate incompetence after the certification is filed." (Opinion, at p. 24.) Overlooked was the potential for continuing counseling, court and defense services, and involuntary medication without mechanism for recession besides judicial order. (§ 1370, subd. (a)(2)(B)(ii).) So, the special jurisdiction underlying the commitment period cannot end based on informal notice by DSH, or treatment, but rather order of restored to competency coinciding with the end of treatment and potential for bail. (§§ 1370, subd. (c)(1) and 1372, subd. (d).)

Moreover, if treatment marks the commitment period, the Sixth District overlooked the superior court finding that petitioner "does not have the capacity to consent to treatment with antipsychotic medication and orders the involuntary administration of antipsychotic medication." (Opposition Exhibit 12, at p. 32.) That order was effective for *one year* upon entry in June 2019 (§ 1370,

subd. (a)(2)(B)(ii)), and can be extended until the commitment order is rescinded. (§ 1370, subd. (a)(1)(7)(A).) So there is "information in the record demonstrating that [petitioner was] still receiving treatment for the purpose of restoring his competence." (Opinion, at p. 23.) And, DSH can request his return to the mental institution until to maintain competency for the restoration order. (§ 1372, subd. (e).)

Also, omitted from consideration was the notice of certificate of restoration. (See Opposition Exhibit 13 [incomplete certificate].) Therein, the certifying doctor stated: "It is important that [petitioner] remain on his medication for his own personal benefit and to enable him to be certified under Section 1372 of the Penal Code." (Attachment A to Motion for Judicial Notice [Filed November 9, 2021].) DSH's deference to court order of restoration demonstrates "that the filing of a certificate of competency did not terminate the defendant's commitment so as to prevent the [two]-year maximum commitment term from accruing." (Opinion, at p. 22, quoting *Carr II,* 59 Cal.App.5th at p. 1140.)

Ultimately, DSH cannot adjudicate rights in accordance with "due process concerns [that] apply when someone is being held in confinement prior to transportation to such hospital or other facility." (*In re Williams* (2014) 228 Cal.App.4th 989, 1013.) Judicial order within the commitment period alone respects the administration of treatment "designed to cause a personality change that, 'if unwanted, interferes with a person's self-autonomy, and can impair his or her ability to function in particular contexts.'" (*United States v. Ruiz-Gaxiola* (9th Cir. 2010) 623 F.3d 684, 691, citation omitted.) Review ensures that DSH's certificate "serves only to initiate proceedings by

which the court will hear and decide the question of the defendant's competency." (*Carr II, supra*, 59 Cal.App.5th at p. 1144.)

C. Commitment Begins Upon Court Order, Not Transportation to State Hospital, So the Order Restoring Fundamental Rights, or Finding Not Restored to Competency, is Required within the Maximum Time Set by the Legislature.

As the District Attorney agreed, commitment does not start with treatment at a mental institution, but rather court order. (Opinion at p. 20, fn. 14.) The failure to provide treatment after commitment violates due process. (See *Stiavetti, supra,* 65 Cal.App.5th 691; see also *In re Mille* (2010) 182 Cal.App.4th 635, 650.) Logically then, due process is also violated without restoration order within the maximum statutory time frame for commitment. (*Carr II, supra,* 59 Cal App.5th at p. 1143, citing *Rells, supra,* 22 Cal.4th at p. 868.) Otherwise, DSH can continue to violate nearly every "order set by the Court, and [s]ection 1370, by a considerable margin." (*People v. Aguirre* (2021) 64 Cal.App.5th 652, 659.)

With no limitation period, the committed will languish, even if "the treatment facility concludes there is *no* substantial likelihood that the defendant will regain competence, the defendant is returned to the trial court." (Opinion, at p. 15, quoting *Jackson, supra*, 4 Cal.5th at p. 101, citing [§ 1370], subd. (b)(1)(A), italics added in Opinion.) Indeed, a certificate of "no substantial likelihood" still requires court order pursuant to subdivision (c)(2), during which the prosecution may try to litigate the issues via the new "off-ramp" provision. (§ 1370, subd. (a)(1)(G).) All the while, the committed lack autonomy over fundamental rights, like those supposedly restored to

competency but unable to challenge the certificate until there is "convene[d] a competency hearing [after] the state hospital certifies the defendant has regained competence." (*Quiroz*, *supra,* 244 Cal.App.4th at p. 1380, citing § 1372, subd. (c); and *People v. Sakarias* (2000) 22 Cal.4th 596, 617.)

The issues presented are thereby critical to restoration of competency as necessary to avoid later reversal of judgment. (See *People v. Wycoff* (2021) 12 Cal.5th 58, 85 [reversing death sentence and convictions due to erroneous competency decision].) Continuances beyond the two-year commitment period also pose unique risks to the health of the committed. (See generally, *Or. Advocacy Center v. Mink* (9th Cir. 2003) 322 F.3d 1101, 1120 ["Incapacitated criminal defendants have a high risk of suicide, and the longer they are deprived of treatment, the greater the likelihood they will decompensate and suffer unduly."].) Indeed, after lapse of the commitment period, petitioner was "*placed on at least a 24-hour hold and placed on suicide watch*." (Petition Exhibit 6, at p. 62, emphasis added.)

To avoid such calamities, sections 1370, subdivision (c)(1), and 1372, subdivisions (c) and (d) must be interpreted to "realistically place[] an outside limit on what is statutorily and constitutionally permissible." (*In re Loveton* (2016) 244 Cal.App.4th 1025, 1047.) Nothing in section 1370, subdivision (c)(1) states that the filing of the certificate of restoration terminates commitment without court approval pursuant to section 1372, subdivisions (c) or (d), when such an order is required for running of the period in the first instance. Review corrects the lapse of the commitment period without "hearing

whereupon the court determined whether or not the defendant was competent." (*Carr II, supra*, 59 Cal.App.5th at p. 1142.)

IV. THE VIOLATION OF DUE PROCESS, EQUAL PROTECTION, AND EFFECTIVE ASSISTANCE OF COUNSEL REQUIRES REVIEW TO CORRECT THE RETROACTIVE TERMINATION OF THE COMMITMENT PERIOD WITHOUT FAIR WARNING.

The Sixth District remanded for the superior court to "hold a hearing under section 1372, and it need not dismiss the criminal cases." (Opinion, at p. 2.) The remedy purportedly "promote[s] the defendant's speedy restoration to mental competence." (Opinion, at p. 23, citing § 1370, subd. (a)(1)(B)(I).) But there can be no *speedy finding* of competency without the right to demand such an order within a maximum period to avoid "the time an incompetent defendant spends in jail [that] is unnecessary and implicates not only due process, but also counts toward a finding of prolonged incarceration under the state constitutional speedy trial guarantee." (*Craft v. Superior Court* (2006) 140 Cal.App.4th 1533, 1545.)

Thus, separate from the statutory question of commitment is the constitutional question of the nonarbitrary, orderly operation of sections 1370 and 1372. (See *Fetterly v. Paskett* (9th Cir. 1993) 997 F.2d 1295, 1300.) Proscriptions on cruel and unusual punishment are also implicated by petitioner's inability to challenge the commitment order preventing return of the personal exercise of his rights. (*Medina, supra,* 65 Cal.App.5th at p. 1229.) Plus, learning that the commitment period lapsed by retroactive application some 19 months before the Sixth District's opinion violates fair warning. (See *Bouie v. City of Columbia* (1964) 378 U.S. 347, 353, citation omitted

[recognizing when an error may not be "cured retrospectively by a ruling either of the trial court or the appellate court, though it might be cured for the future by an authoritative judicial gloss"].)

Furthermore, equal protection was implicated even if "a defendant like [petitioner], who has been certified as having regained mental competence by a designated official, is [held] not similarly situated to a defendant who has not been so certified before attaining the two-year maximum prescribed by section 1370(c)(1)." (Opinion, at p. 28, citation omitted.) Petitioner, Carr, and Medina were all committed in excess of statutory limitations. But petitioner could not proceed to hearing within the maximum statutory period.

Moreover, without the right to a timely hearing, counsel cannot effectively assess their client's fluid mental state and assert their rights. (See *People v. Johnson* (2018) 21 Cal.App.5th 267, 277; and *Drope v. Missouri* (1975) 383 U.S. 162, 180.) Counsel are thereby impaired in proving their client's incompetency "to make legal decisions in collaboration with defense counsel and to participate in other activities' such [his] 'ability to plea bargain, waive a jury trial, and to testify.'" (The Journal of the American Academy of Psychiatry and the Law (2007 Supplement) *Practice Guideline for Forensic Psychiatric Evaluation of Competence to Stand Trial*, Vol. 35, No. 4, at p. 46, citations omitted.) Thus, effective assistance of counsel is compromised by end of the commitment period, without promise of timely hearing within maximum statutory time limit after the "certification of restoration was filed." (Opinion, at p. 2.)

To remedy the lack of fair warning, and ensure effective assistance of counsel, the commitment period must include the time

to hearing following the filing of the certificate of restoration. When necessary dismissal or conservatorship are appropriate based on the accrual of more than two years based on "all commitments on the same charges." (*Polk, supra,* 71 Cal.App.4th at p. 1238.) Nothing less remedies the statutory and constitutional violations presented here pursuant to sections 1370 and 1372, Article I of the California Constitution, and the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution. (*Jackson, supra,* 4 Cal.5th at p. 107 ["[A] defendant can be held only for a reasonable time pending a new competency hearing."].)

SUMMATION

For the foregoing reasons, petitioner respectfully requests that the Court grant review.

DATED: December 6, 2021

Respectfully Submitted,

/s/ B.C. McComas

BRIAN C. McCOMAS

CERTIFICATE OF COMPLIANCE

Pursuant to the California Rules of Court, Rules 8.504(e)(1), I hereby certify that the attached memorandum for points and authorities is written in Century725 BT in 13 point font and contains 7,594 words.

DATED: December 6, 2021

Respectfully Submitted,
/s/ B.C. McComas
BRIAN C. McCOMAS

ATTACHMENT A

Filed 10/26/21 (unmodified opn. attached)

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

MARIO RODRIGUEZ, Petitioner, v. THE SUPERIOR COURT OF SANTA CLARA COUNTY, Respondent; THE PEOPLE, Real Party in Interest.	H049016 (Santa Clara County Super. Ct. Nos. C1647395, C1650275) ORDER MODIFYING OPINION AND GRANTING MOTION TO RESET THE CURRENT FINALITY DATE [CHANGE IN JUDGMENT]

THE COURT:

Rodriguez's motion to reset the current date of finality is granted.

It is ordered that the opinion filed on October 20, 2021, be modified as follows:

On page 28, in the disposition paragraph, delete the last sentence of the paragraph and the citation that follows that sentence.

This modification changes the judgment. (See Cal. Rules of Court, rule 8.490(b)(2)(C) ["If an order modifying a decision changes the appellate judgment, the 30 days [for finality] . . . runs from the filing date of the modification order"].)

_____
Greenwood, P.J.

_____
Grover, J.

_____
Danner, J.

Filed 10/20/21 (unmodified opinion)

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

MARIO RODRIGUEZ, Petitioner, v. THE SUPERIOR COURT OF SANTA CLARA COUNTY, Respondent; THE PEOPLE, Real Party in Interest.	H049016 (Santa Clara County Super. Ct. Nos. C1647395, C1650275)

Petitioner Mario Rodriguez seeks extraordinary writ relief from a trial court order overruling his objection to an impending competency restoration hearing under Penal Code section 1372[1] and denying his motion to dismiss two pending criminal cases. As he does in this court, Rodriguez claimed in the trial court that, although a certification of his mental competency had been filed, he had reached the two-year maximum period for an incompetency commitment under section 1370, subdivision (c)(1) (section 1370(c)(1)) before a judicial hearing on the certification had been held and, thus, the trial court lacks authority to hold such a hearing.

[1] Unspecified statutory references are to the Penal Code.

The trial court rejected Rodriguez's objection and motion, concluding it could calculate Rodriguez's commitment period after it determined at the hearing whether he had regained competence. The court decided that if it were to find that Rodriguez had regained competence, then the commitment period would end as of the certification date. On the other hand, if it were to find that Rodriguez had not regained competence, then his commitment period would be calculated to the date of the court's finding.

For the reasons explained below, we disagree with the trial court's conclusion regarding the calculation of Rodriguez's commitment period and decide that Rodriguez's commitment ended when his certification of restoration was filed. We therefore agree with the trial court's ultimate determination that Rodriguez's maximum commitment period under section 1370(c)(1) has not yet run, it may hold a hearing under section 1372, and it need not dismiss the criminal cases. Thus, we deny Rodriguez's petition for writ of prohibition or other equitable relief.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. *Charged Offenses*

On December 29, 2016, the Santa Clara County District Attorney (district attorney) filed two informations against Rodriguez. One charged Rodriguez with making criminal threats on or about August 30, 2016 (§ 422). (Case No. C1647395.) The other alleged multiple crimes that occurred on or about November 6, 2016: assault with a deadly weapon (§ 245, subd. (a)(1)) with an enhancement for personally inflicting great bodily injury (§§ 12022.7, subd. (a), 1203, subd. (e)(3)); oral copulation by force, violence, duress, menace, or fear (former § 288a, subd. (c)(2)); rape by force, violence, duress, menace, or fear (§ 261, subd. (a)(2)); making criminal threats (§ 422); and inflicting corporal injury on a spouse, cohabitant, former spouse, or former cohabitant (§ 273.5, subd. (a)). (Case No. C1650275.)

B. *Proceedings Regarding Rodriguez's Competency to Stand Trial*

In December 2016, when the trial court held Rodriguez to answer for his alleged crimes, it ordered $25,000 bail and no bail allowed, respectively, on Rodriguez's two cases.

1. First Competency Proceedings

One year later, on December 27, 2017, the trial court declared a doubt about Rodriguez's competency to stand trial and suspended the proceedings. On May 3, 2018, after the parties submitted the question of competency on the examiners' reports, the trial court found Rodriguez not competent.

On May 24, 2018, the trial court signed an order of commitment committing Rodriguez in both of his cases to the Department of State Hospitals (DSH) for placement in a locked psychiatric facility for care and treatment under section 1370, subdivision (a)(2). The court's order stated the "maximum term is 3 years minus 0 days actual credit" (boldface & capitalization omitted). On May 25, 2018, the trial court signed an order directing DSH to provide a placement for Rodriguez "by 5:00 p.m., June 29, 2018." (Boldface & underlining omitted.) Neither the date on which the court provided the requisite commitment documents to DSH (the section 1370 packet) (see § 1370, subd. (a)(3)(A)–(I)) nor the date on which Rodriguez was admitted into a DSH facility appears in the material provided by the parties to this court.

On September 7, 2018, the medical director of Atascadero State Hospital certified that Rodriguez was competent. The certification of mental competency under section 1372 was filed in the trial court on September 17, 2018.[2] The exact date of Rodriguez's discharge from DSH does not appear in the material provided to this court.

[2] Despite the September 17, 2018 file-stamped date that appears on the certification of mental competency provided to this court, Rodriguez alleges that "the parties stipulated" in the trial court that the certification was filed on "September 7, 2018" (boldface omitted). In his return, the district attorney admits Rodriguez's allegation.

On September 20, 2018, the parties submitted on the examiners' reports the question of restoration to competence. The trial court found Rodriguez's competency restored and reinstated the criminal proceedings. Rodriguez was present in court for this hearing and waived time for trial.

2. Second Competency Proceedings

Almost four months later, on January 10, 2019, the trial court again declared a doubt about Rodriguez's competency and suspended the proceedings. On April 18, 2019, after the parties submitted the question of competency on the examiners' reports, the trial court found Rodriguez not competent.

On May 16, 2019, the trial court ordered that Rodriguez be committed to DSH for placement in a locked psychiatric facility for care and treatment under section 1370, subdivision (a)(2). The court's subsequent written order of commitment (signed on May 31, 2019) stated the "maximum term is 2 years minus 0 days actual credit on C1898510 and TBD credits by Department of State Hospital[s] on C1650275 & C1647395" (boldface & capitalization omitted).[3] On May 31, 2019, the trial court signed an order directing DSH to provide a placement for Rodriguez "by 5:00 p.m. [on] June 14, 2019." (Boldface & underlining omitted.) Neither the date on which the court provided the section 1370 packet to DSH nor the date on which Rodriguez was admitted into a DSH facility appears in the material provided to this court.

On January 9, 2020, the medical director of Atascadero State Hospital certified that Rodriguez was competent. The Director also opined, pursuant to section 1372, subdivision (e), that Rodriguez "probably does not need placement in a psychiatric

[3] Effective January 1, 2019, the maximum incompetency commitment under section 1370(c)(1), was reduced from three years to two. (Stats. 2018, ch. 1008, § 2 [Senate Bill No. 1187 (2017-2018 Reg. Sess.)].) The material provided to this court does not include any calculation of commitment credits that may have been made by DSH for case Nos. C1647395 and C1650275. In addition, the parties have not provided this court the charging document in case No. C1898510. However, the trial court's order of commitment lists an additional misdemeanor battery charge (§ 243, subd. (a)).

facility in order to maintain competence to stand trial." The certification of mental competency under section 1372 was filed in the trial court on January 17, 2020.[4] The exact date of Rodriguez's discharge from DSH does not appear in the material provided to this court.

On January 24, 2020, the parties appeared before the trial court. Attorney Daniel Mayfield substituted into Rodriguez's cases as newly assigned defense counsel. Mayfield requested a continuance of a formal hearing under section 1372 on Rodriguez's restoration to competence (restoration hearing).[5] The cases were set for a restoration hearing on May 21, 2020, and an intervening court date was set for February 7, 2020.

On February 7, 2020, another intervening court date of March 13, 2020, was set in order for Mayfield to subpoena records. On March 13, 2020, the trial court released subpoenaed records to Mayfield and set another court date for April 17, 2020.

On March 17, 2020, because of Santa Clara County's COVID-19 " 'shelter in place' orders, " the Santa Clara County Superior Court suspended "all non-essential functions." The superior court did not include restoration hearings among the "essential functions" it would continue to perform during the suspension.

The parties next appeared in court on July 17, 2020. The trial court released additional subpoenaed records to Mayfield. Rodriguez's cases were set for a restoration hearing on August 24, 2020, and an intervening court date was set for August 14, 2020.

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[4] Rodriguez alleges that the parties stipulated to a filed date of "January 9, 2020" for this second certification (boldface omitted). The district attorney admits Rodriguez's allegation.

[5] The record before this court does not include a transcript of this hearing and does not otherwise disclose which party requested the formal restoration hearing, although at oral argument petitioner indicated he believed it was counsel for Rodriguez. We note that, with respect to Rodriguez's earlier restoration proceeding, the parties submitted the question of restoration to competence on the examiners' reports. The trial court found Rodriguez's competency restored and reinstated the proceedings less than two weeks after the medical director of Atascadero State Hospital issued a certification of competency.

On August 14, 2020, the assigned deputy district attorney requested a continuance of the restoration hearing. As a result, the restoration hearing was reset to September 21, 2020, and an intervening court date was set for August 28, 2020.

By August 28, 2020, the trial court had not yet received certain subpoenaed records from Atascadero State Hospital. Another court date regarding the records was set for September 11, 2020. On September 8, 2020, during the call of the master criminal trial calendar, Santa Clara County Superior Court Judge Eric Geffon described the lack of available courtrooms for trials caused by the COVID-19 pandemic.

On September 10, 2020, Mayfield e-mailed the deputy district attorney and stated that he wished to continue the restoration hearing until at least September 28, 2020. The deputy district attorney responded and informed Mayfield that the trial court had "already automatically continued" the restoration hearing to November 2, 2020.

On September 11, 2020, the trial court released subpoenaed records to Mayfield and set the next court date as November 2, 2020. According to a declaration signed by Mayfield and filed in this court with Rodriguez's petition for a writ of prohibition, many of the scheduled restoration hearing dates between September 11, 2020 and March 15, 2021 were "automatically continued once the COVID-19 Pandemic struck."

On September 29, 2020, the deputy district attorney met with Judge Geffon and "expressed the importance of locating an available courtroom to hear pending mental health cases." Judge Geffon informed the deputy district attorney that the Santa Clara County Superior Court "did not presently have the resources to conduct the hearings in these cases due to the COVID-19 pandemic and the limited trial capacity and backlog of criminal jury trials that had resulted therefrom."

The scheduled November 2, 2020 hearing never occurred. Rodriguez's cases were automatically continued by the trial court to a date in December 2020, which hearing also did not occur.

According to the deputy district attorney and Mayfield, Rodriguez's restoration hearing was reset to January 25, 2021, but that hearing did not take place. The restoration hearing was subsequently reset to a date in March 2021.

C. *Rodriguez's Objection to the Restoration Hearing and Motion to Dismiss*

On March 8, 2021, Rodriguez filed an objection to "the proposed hearing on his alleged restoration to sanity under [section] 1372" and motion to dismiss the charges in case Nos. C1647395 and C1650275, pursuant to section 1385 and *People v. Carr* (2021) 59 Cal.App.5th 1136 (*Carr II*).[6] Rodriguez contended that he had been committed as incompetent in excess of the two-year commitment period allowed by section 1370(c)(1). He maintained that his incompetency commitment should be calculated from "judicial determination to judicial determination" (capitalization omitted) and, thus, his first commitment ran from May 24, 2018, through September 20, 2018 (119 days), and his second commitment ran from May 16, 2019, through the impending March 16, 2021 restoration hearing (670 days), for a total commitment of 789 days, which was more than two years (730 days).

The district attorney orally opposed Rodriguez's objection and motion at a hearing held on March 16, 2021. The district attorney argued that *Carr II* is distinguishable from the present case because Rodriguez had not yet had a restoration hearing and if, at his future hearing, Rodriguez were found to be competent, "time is tolled back to th[e] certificate of competency."[7]

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[6] Rodriguez subsequently filed two supplements to his motion. Unlike his original motion, the cover pages of his supplements also include the case number for his misdemeanor battery case (C1988510). Additionally, in his second supplement, Rodriguez asserted that "all three matters, (at least as they exist under these two docket numbers) [*sic*] should be dismissed." Nevertheless, in his petition for a writ of prohibition to this court, Rodriguez does not address his misdemeanor case. We therefore will not consider the misdemeanor case when addressing the issues raised by Rodriguez in his petition.

[7] The district attorney did not dispute the applicability of the two-year statutory maximum (effective Jan. 1, 2019) to Rodriguez's cases.

The trial court (Judge Geffon) denied Rodriguez's objection and motion at the March 16, 2021 hearing. The court reasoned that after a certificate of restoration is issued, if a trial court disagrees with the certificate and finds the defendant has not been restored to competence, then the time "between the restoration certificate and the restoration hearing" "should be counted against the maximum term." However, if at the restoration hearing a trial court agrees with the certificate of restoration and finds the defendant has been restored to competence, then "it's fair to use the date of the restoration certificate as establishing the date on which the defendant was restored to competency." The court explained that using the date of the certificate of restoration for the purposes of counting the days of a defendant's commitment does not cede its power to ultimately decide whether the defendant has been restored to competence. Additionally, the court opined that its conclusion would not "create[] an equal protection problem."

The trial court noted its concern that, if the time between the certificate of restoration and the restoration hearing were to count in all cases (irrespective of the ultimate determination regarding the defendant's restoration to competence), a trial court "would be forced to send the case out for a restoration hearing when the [defendant's] lawyer is not ready."

After the trial court ruled, Rodriguez's counsel (Mayfield) requested a further continuance and an order to obtain some of Rodriguez's recent jail records related to his recent placement "on at least a 24-hour hold" and "suicide watch."

D. *Writ Proceedings in this Court*

On April 16, 2021, Rodriguez filed a petition for a writ of prohibition or other equitable relief to stay competency restoration proceedings (petition). He specifically requested that we "[s]tay all superior court proceedings in Case Numbers C1650275 and C1647395" and "[i]ssue a peremptory writ of prohibition directing respondent court to

vacate its order denying the motion to dismiss and enter an order granting the motion, or equivalent relief; or [¶] . . . [¶] [] any other relief deemed just and proper."[8]

On April 28, 2021, this court stayed all proceedings in the trial court and requested that the People (real party in interest represented by the district attorney) file a preliminary opposition to the petition. In July 2021, this court issued an order to show cause why a peremptory writ should not issue as requested by Rodriguez. In August 2021, the district attorney filed a return to the order to show cause, and Rodriguez filed a denial to the return.

In his denial, Rodriguez modifies the relief he requested in his petition, in that he asks us to "grant each of his prayers for relief, issue the writ of prohibition, and remand with directions to the superior court to reconsider the motion to dismiss." Additionally, Rodriguez objects on three grounds to the sufficiency of the district attorney's return. We analyze those objections below and then turn to the merits of Rodriguez's petition.

II. DISCUSSION

A. *Rodriguez's Objections to the Return*

We first address Rodriguez's three procedural objections to the district attorney's return.

[8] In his prayer for relief, Rodriguez also asks us to take judicial notice of "all records and pleadings" in case Nos. C1647395 and C1650275. Regarding judicial notice, the California Rules of Court provide: "To obtain judicial notice by a reviewing court under Evidence Code section 459, a party must serve and file a separate motion," (Cal. Rules of Court, rule 8.252(a)(1)) which must state why the matter to be noticed is relevant, whether it was presented to the trial court, whether the trial court took judicial notice of the matter, and, if not, why the matter is subject to judicial notice under the Evidence Code. (*Id*., (2)(A)–(C).) In addition, "If the matter to be noticed is not in the record, the party must attach to the motion a copy of the matter to be noticed or an explanation of why it is not practicable to do so." (*Id*., (a)(3).) Because Rodriguez has not filed a separate motion in accordance with the relevant court rule, we decline his request for judicial notice.

First, Rodriguez asserts that the return is insufficient because it is unverified. However, after Rodriguez filed his denial, the district attorney submitted a verification to the return. Thus, Rodriguez's objection is moot.

Second, Rodriguez asserts insufficiency because the return "does not address analogous, recent case law"—namely, *Stiavetti v. Clendenin* (2021) 65 Cal.App.5th 691 (*Stiavetti*) and *Medina v. Superior Court* (2021) 65 Cal.App.5th 1197 (*Medina*). Rodriguez provides no precedent to support his assertion of insufficiency, and we are not persuaded that the district attorney's failure to address these recent cases renders the return itself insufficient. (See *Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545–546.) We therefore reject this challenge to the return.

Finally, Rodriguez contends that the return includes a declaration of the assigned deputy district attorney that was "not presented to the superior court at the hearing on the motion to dismiss." Under the facts here, we decide we may consider this declaration. "Ordinarily a reviewing court will not consider evidence arising after the trial court ruling, involving facts open to controversy which were not placed in issue or resolved by the trial court." (*BGJ Associates v. Superior Court* (1999) 75 Cal.App.4th 952, 958; see also *People v. Superior Court* (*Lavi*) (1993) 4 Cal.4th 1164, 1173, fn. 5; *Stevens v. Superior Court* (1999) 75 Cal.App.4th 594, 607, fn. 13.) However, in an original writ proceeding, we have discretion to consider relevant information not presented to the trial court. (See *McCarthy v. Superior Court* (1987) 191 Cal.App.3d 1023, 1030, fn. 3; see also *Bruce v. Gregory* (1967) 65 Cal.2d 666, 670–671.) The substance of the information contained in the declaration, which details case events and interactions between the district attorney and the bench officer who ruled on Rodriguez's objection to the restoration hearing and motion to dismiss, appears to have been within the knowledge of the bench officer who made the order at issue in this writ proceeding. Under these circumstances, we will exercise our discretion to consider the declaration of the deputy district attorney.

B. *The Parties' Contentions*

Rodriguez argues the statutory scheme governing inquiry into a defendant's competence does not provide for tolling of the incompetency commitment period and the trial court's interpretation of section 1370 cannot be reconciled with the recent conclusions of the Court of Appeal in *Carr II*, *supra*, 59 Cal.App.5th 1136. He further maintains that "no [restoration] hearing can be held when respondent court lacks jurisdiction after the commitment period lapses under Penal Code section 1370, subdivision (c)(1)." In addition, he asserts that tolling the commitment period based on a certificate of restoration violates separation of powers and the non-delegation doctrine. Finally, he maintains his fundamental right to liberty is implicated by his incompetency commitment, and tolling the commitment period violates his rights to due process and equal protection and against cruel and unusual punishment.[9]

In his return, the district attorney counters with multiple contentions. He asserts, inter alia, that the trial court properly denied Rodriguez's motion because he is presumed competent as of January 9, 2020 (i.e., the date of the latest Certification of Mental Competency) and "[a]bsent a judicial finding overcoming this presumption, the present matters are not subject to dismissal for violation of the maximum two-year commitment period for incompetency." The district attorney argues further that Rodriguez's commitment has not exceeded two years because the commitment period is properly calculated as terminating upon the filing of a certificate of restoration.

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[9] We note that, although Rodriguez acknowledges "the COVID-19 pandemic impacted the timing" of the impending restoration hearing, his current claims regarding the duration of the commitment period and lack of jurisdiction to hold a restoration hearing after the commitment period lapses do not turn on the particular reasons for failing to hold such a hearing, including the COVID-19 pandemic. Rather, Rodriguez makes the general claim that "the competency statutes [do not] permit continuances past time limits" and "the competency commitment period must be treated as mandatory, not discretionary." Rodriguez defines the "commitment period" solely by reference to the dates of the trial court's orders on competence.

C. *Standard of Review and Canons of Statutory Interpretation*

Neither party has addressed in briefing the standard for our review of the trial court's ruling on Rodriguez's objection to a restoration hearing and motion to dismiss under section 1385. However, at oral argument before this court, the parties agreed that we should exercise de novo review in this case. We concur.

Generally, when reviewing a trial court's decision to grant or deny a motion to dismiss, we apply the deferential abuse of discretion standard and review the court's factual findings for substantial evidence. (See *People v. Carmony* (2004) 33 Cal.4th 367, 374; *People v. Memro* (1995) 11 Cal.4th 786, 835–836.) In doing so, we must determine "whether the ruling in question 'falls outside the bounds of reason' under the applicable law and the relevant facts." (*People v. Williams* (1998) 17 Cal.4th 148, 162.)

On the other hand, interpretation and application of a statutory scheme to undisputed facts is a question of law subject to de novo review. (See *People v. Camarillo* (2000) 84 Cal.App.4th 1386, 1389; *Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 799–801; *Moore v. Superior Court of Riverside County* (2020) 58 Cal.App.5th 561, 573.)

" ' " 'When we interpret a statute, "[o]ur fundamental task . . . is to determine the Legislature's intent so as to effectuate the law's purpose. We first examine the statutory language, giving it a plain and commonsense meaning. We do not examine that language in isolation, but in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment. If the language is clear, courts must generally follow its plain meaning unless a literal interpretation would result in absurd consequences the Legislature did not intend. If the statutory language permits more than one reasonable interpretation, courts may consider other aids, such as the statute's purpose, legislative history, and public policy." [Citation.] "Furthermore, we consider portions of a statute in the context of the entire statute and the statutory scheme of which it is a part, giving significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose." ' " ' "

(*Smith v. LoanMe, Inc.* (2021) 11 Cal.5th 183, 190.) "A court 'may not rewrite a statute, either by inserting or omitting language, to make it conform to a presumed intent that is not expressed.' " (*Kaanaana v. Barrett Business Services, Inc.* (2021) 11 Cal.5th 158, 171.)

Because the issues presented in this case are entirely questions of law involving statutory interpretation and constitutional requirements, our review is de novo. (See *Stiavetti*, *supra*, 65 Cal.App.5th at p. 706; see also *Baqleh v. Superior Court* (2002) 100 Cal.App.4th 478, 485; *People v. Superior Court* (*Sokolich*) (2016) 248 Cal.App.4th 434, 441.)

D. *Relevant Competency Statutes and Legal Principles*

"A criminal defendant cannot be tried if he or she is not competent to understand the nature of the charges or the proceedings, or to rationally assist counsel in the conduct of a defense. (§ 1367, subd. (a).) A defendant who is not competent to stand trial may be involuntarily committed for the purpose of assessing whether he or she is likely to gain competence and, if so, for treatment to that end." (*Jackson v. Superior Court* (2017) 4 Cal.5th 96, 100–101 (*Jackson*).)

"[T]he Legislature in 1974 amended the procedures for determining competence. (See Stats. 1974, ch. 1511, § 6, p. 3318.) These amendments provided that a trial court, the defendant's attorney, or the defendant can declare a doubt as to the defendant's competence to stand trial, at which point the trial court must suspend proceedings and hold a hearing to determine the defendant's competence. (§§ 1368, 1369.)" (*Jackson*, *supra*, 4 Cal.5th at p. 101.)

At the section 1369 hearing, the defendant is presumed to be mentally competent unless he is proved by a preponderance of the evidence otherwise. (§ 1369; *People v. Rells* (2000) 22 Cal.4th 860, 862 (*Rells*).) If the defendant is determined at the section 1369 hearing to be competent, the trial court orders criminal proceedings resumed. (§ 1370, subd. (a)(1)(A).) If the defendant is found to be mentally incompetent, criminal

proceedings "shall be suspended until the person becomes mentally competent." (*Id.*, subd. (a)(1)(B).)

If it finds the defendant incompetent to stand trial, the trial court may order the defendant's commitment to an appropriate treatment facility. (See § 1370, subd. (a)(1)(B); *Jackson*, *supra*, 4 Cal.5th at p. 101.) If the court determines that the defendant should be committed to a DSH or other treatment facility, the court issues a commitment order and provides it and other documents to the treatment facility prior to the defendant's admission. (See § 1370, subds. (a)(1)(B), (a)(3)(A)–(I), (a)(5).)

The procedures that follow a defendant's admission to the treatment facility depend on whether, in the judgment of the treatment facility, the defendant will timely be restored to competence. Generally speaking, the statutory purposes of the competency statutes "are to make sure (1) a mentally incompetent criminal defendant is not tried, and (2) the mentally incompetent defendant is confined for incompetency only for a period reasonable for his or her competence to be restored." (*In re Taitano* (2017) 13 Cal.App.5th 233, 252 (*Taitano*).)

"Within 90 days of commitment, the treatment facility must report to the trial court on the defendant's likely progress in regaining competence. ([§ 1370], subd. (b)(1)[10].)" (*Jackson*, *supra*, 4 Cal.5th at p. 101.) If the defendant has not recovered mental competence, but the report discloses a substantial likelihood that the defendant will regain mental competence in the foreseeable future, the defendant remains in treatment. (§ 1370, subd. (b)(1).) Thereafter, at six-month intervals or until the defendant becomes mentally competent, the treatment facility must report to the court regarding the confined defendant's progress toward recovery of mental competence.

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10 The Legislature recently amended section 1370, subdivision (b)(1), but the amendment does not materially alter the reporting requirement as stated here. (See Stats. 2021, ch. 143, § 343.)

(*Ibid*.) "If the defendant regains competence, criminal proceedings may resume." (*Jackson*, at p. 101, citing § 1370, subd (a)(1)(A).)[11]

"If at any point the treatment facility concludes there is *no* substantial likelihood that the defendant will regain competence, the defendant is returned to the trial court. ([§ 1370], subd. (b)(1)(A).) Otherwise, the defendant may continue to be committed for up to [two] years or for a period equal to the longest prison term possible for the most serious charge facing the defendant, whichever is shorter. (*Id*., subd. (c)(1).) At that point, if the defendant has still not regained competence, the defendant is returned to the trial court. (*Ibid*.)" (*Jackson*, *supra*, 4 Cal.5th at p. 101, italics added.)

When the defendant is at the treatment facility, if a statutorily designated health official determines during the commitment that the defendant has regained mental competence, the official must "immediately certify that fact to the court by filing a certificate of restoration with the court," and "the date of filing shall be the date on the return receipt." (§ 1372, subd. (a)(1).) Under this circumstance, a defendant who is confined in a DSH facility shall be delivered to the sheriff of the county from which the patient was committed and returned to the committing court no later than 10 days following the filing of a certificate of restoration. (*Id*., subd. (a)(3); see also § 1370, subd. (a)(1)(C).)

Section 1372, which applies when the defendant has been certified as restored by the designated mental health official, does not expressly require that the court conduct a hearing on whether the defendant has been restored to competence. However, courts have reasoned that "the numerous references in that statute to a hearing indicate a legislative intention that such a hearing be afforded." (*People v. Murrell* (1987) 196 Cal.App.3d 822, 826.)

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[11] In addition, under section 1370, subdivision (a)(1)(G), a second competency hearing during the commitment period is authorized (without issuance of a certificate of restoration) if there is substantial evidence of a change in the defendant's condition.

In the absence of any particulars in section 1372 about the hearing on the restoration of competence, the California Supreme Court has looked to the procedures set out in section 1369, which applies to the original determination of competency, to determine procedures applicable to section 1372. (*Rells*, *supra*, 22 Cal.4th at pp. 867–868.) For example, based on the statutory presumption described in section 1369 our Supreme Court has concluded that, with respect to section 1372, at "a hearing on a defendant's recovery of mental competence . . . the presumption [is] that the defendant is mentally competent unless he is proved by a preponderance of the evidence to be otherwise." (*Rells*, at p. 869.)

In *Rells*, the Supreme Court rejected a due process challenge to this scheme. It relied in particular on the "legal force and effect" (*Rells*, *supra*, 22 Cal.4th at p. 868) of the mental health official's certification of restoration to competence and observed that "[t]he Fourteenth Amendment's due process clause in fact permits the presumption that the defendant is mentally competent unless he is proved by a preponderance of the evidence to be otherwise." (*Id*. at p. 869.)

At a section 1372 restoration hearing, the trial court decides whether to approve the certificate of restoration to competence. If the court approves the certification, the court must order that criminal proceedings resume and must conduct a hearing on whether the defendant may be released on bail or on the defendant's own recognizance. (See § 1372, subds. (c)–(e)[12]; *Taitano*, *supra*, 13 Cal.App.5th at p. 242.) If neither party

[12] Section 1372, subdivision (c), provides: "When a defendant is returned to court with a certification that competence has been regained, the court shall notify either the community program director, the county mental health director, or the regional center director and the Director of Developmental Services, as appropriate, of the date of any hearing on the defendant's competence and whether or not the defendant was found by the court to have recovered competence." (§ 1372, subd. (c).) The restoration hearing afforded by this subdivision was first enacted in 1980. (Stats. 1980, ch. 547, § 14, p. 1517.) Prior to the 1980 amendment, section 1372 did not include any reference to a

requests an evidentiary hearing on whether the defendant has been restored to competence, the trial court can summarily determine that the defendant's competency has been restored. (See *Rells*, *supra*, 22 Cal.4th at p. 868; *People v. Mixon* (1990) 225 Cal.App.3d 1471, 1480–1482.)

The maximum period of commitment under section 1370 is "two years from the date of commitment." (§ 1370(c)(1).) At the time the trial court ruled on Rodriguez's objection and motion to dismiss, section 1370(c)(1) provided: "At the end of two years from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or misdemeanor complaint, or the maximum term of imprisonment provided by law for a violation of probation or mandatory supervision, whichever is shorter, but no later than 90 days prior to the expiration of the defendant's term of commitment, a defendant who has not recovered mental competence shall be returned to the committing

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court determination on the issue of recovered competence. (See Stats. 1974, ch. 1511, § 8, p. 3320.)

Section 1372, subdivision (d), provides: "If the committing court approves the certificate of restoration to competence as to a person in custody, the court shall hold a hearing to determine whether the person is entitled to be admitted to bail or released on own recognizance status pending conclusion of the proceedings. If the superior court approves the certificate of restoration to competence regarding a person on outpatient status, unless it appears that the person has refused to come to court, that person shall remain released either on own recognizance status, or, in the case of a developmentally disabled person, either on the defendant's promise or on the promise of a responsible adult to secure the person's appearance in court for further proceedings. If the person has refused to come to court, the court shall set bail and may place the person in custody until bail is posted." (§ 1372, subd. (d).)

Further, under section 1372, subdivision (e), if the court has approved a certificate of restoration to competence but has not admitted the defendant to bail or released him or her pursuant to subdivision (d), it may order the defendant placed in a secure treatment facility upon a recommendation from a designated health official that defendant "will need continued treatment in a hospital or treatment facility in order to maintain competence to stand trial" or "placing the person in a jail environment would create a substantial risk that the person would again become incompetent to stand trial before criminal proceedings could be resumed." (§ 1372, subd. (e).)

court. The court shall notify the community program director or a designee of the return and of any resulting court orders." (Stats. 2018, ch. 1008, § 2 [former § 1370(c)(1)].)

The current version of section 1370(c)(1) further provides that "custody of the defendant shall be transferred without delay to the committing county and shall remain with the county until further order of the court" and "[t]he court shall not order the defendant returned to the custody of the State Department of State Hospitals under the same commitment." (Stats. 2021, ch. 143, §§ 343 [current § 1370(c)(1)], 424 [effective July 27, 2021].)

"The purpose of section 1370 is to provide a defendant the maximum term possible, not to exceed [two] years or the maximum period of imprisonment for a charged crime such as a misdemeanor offense . . . to restore his or her competency." (*People v. G.H.* (2014) 230 Cal.App.4th 1548, 1559 (*G.H.*); see also *In re Albert C.* (2017) 3 Cal.5th 483, 491 ["A defendant making progress toward attaining competency may be committed . . . for [two] years or the length of the maximum term of imprisonment for the most serious charged offense, whichever is shorter."].) The two-year commitment period "applies to the total period *actually spent* in commitment at a mental institution." (*G.H.*, at p. 1558, italics added.) Further, the two-year period is measured by "the aggregate of all commitments on the same charges." (*In re Polk* (1999) 71 Cal.App.4th 1230, 1238.)

"When a defendant is returned to the trial court [without a certification of restoration to competence]—either because there is no substantial likelihood that the defendant will regain competence or because the defendant has been committed for the maximum statutory period—the trial court must order the public guardian to initiate [Lanterman–Petris–Short Act (LPS Act)] conservatorship proceedings if the defendant is 'gravely disabled' within the meaning of the LPS Act. (§ 1370, subd. (c)(2).[13])" (*Jackson, supra,* 4 Cal.5th at p. 102.) The competency statutes do not authorize a new

[13] The Legislature recently amended section 1370, subdivision (c)(2), by renumbering it as subdivision (c)(3). (See Stats. 2021, ch. 143, § 343.)

competency hearing at this point in the process. (*People v. Quiroz* (2016) 244 Cal.App.4th 1371, 1380.)

"If the defendant is not gravely disabled, the defendant must be released [citation], and the trial court may dismiss the action in the interest of justice pursuant to section 1385 (§ 1370, subd. (d); [citation]). Such a dismissal is 'without prejudice to the initiation of any proceedings that may be appropriate' under the LPS Act. (§ 1370, subd. (e).)" (*Jackson*, *supra*, 4 Cal.5th at p. 102; see also *People v. Waterman* (1986) 42 Cal.3d 565, 568 & fn. 1 (*Waterman*); *County of Los Angeles v. Superior Court* (2013) 222 Cal.App.4th 434, 442–443.)

E. *Analysis*

Rodriguez contends that he has been committed as incompetent for more than the two-year statutory maximum period and, thus, the court has "no jurisdiction for a restoration of competency hearing." He maintains that the "appropriate jurisdictional question" here is whether a court can hold a restoration of competency hearing "more than two years after the commitment order was issued." He claims the restoration hearing can no longer occur because such a hearing "must be authorized by 'special' jurisdiction under section 1372, which can only occur within the commitment period authorized by [section] 1370, subdivision (c)(1)." He maintains the competency statutes do not allow a court to hold a competency hearing after a defendant has completed the maximum commitment term.

We begin our analysis of Rodriguez's contention by reiterating what section 1372 says about a court's authority to hold a restoration hearing: "When a defendant is returned to court with a certification that competence has been regained," the court may hold a "hearing on the defendant's competence and whether or not the defendant was found by the court to have recovered competence." (§ 1372, subd. (c); *Medina*, *supra*, 65 Cal.App.5th at p. 1207.) Under the plain text of the statute, a court has the statutory authority to hold a restoration hearing so long as a designated official certifies that the

defendant has regained mental competence. Section 1372 does not explicitly state any time frame within which the restoration hearing must be held and does not reference section 1370(c)(1)'s two-year maximum for an incompetency commitment.

In this matter, the following events all occurred by late January 2020, well before Rodriguez's aggregate commitment—by any measure—had reached the two-year maximum under section 1370(c)(1): twice (1) a certificate of mental competency was filed in the trial court, (2) Rodriguez was returned to Santa Clara County from his commitment at DSH, and (3) Rodriguez appeared before the trial court. With respect to the first certification of mental competency, the trial court had approved the certificate of restoration. Although the parties agree on the start dates for Rodriguez's two commitments,[14] they disagree whether the time Rodriguez has spent in the trial court since his second return from DSH in January 2020 should count toward section 1370(c)(1)'s two-year maximum commitment period.

Rodriguez contends that his incompetency commitment continues until the trial court approves the certification of restoration under section 1372. That is, Rodriguez asserts his first commitment ended when the court approved the certification on September 20, 2018, and his second commitment continues to this day. By contrast, the district attorney maintains that each of Rodriguez's commitments ended on the date the certification of restoration was filed with the trial court.

Rodriguez's principal authority for his contention that he has exceeded the two-year maximum commitment period is the recent decision of Division Three of the First District Court of Appeal in *Carr II*, *supra*, 59 Cal.App.5th 1136. There, the Court of Appeal addressed an argument by the People that "a defendant who has been certified by

[14] Because the district attorney apparently concedes that Rodriguez's "commitment" under section 1370(c)(1) began on the date of the trial court's order of commitment, we assume without deciding that the beginning of each of Rodriguez's commitments is determined by the two commitment order dates (i.e., May 24, 2018, and May 16, 2019).

state authorities to be competent and returned to court pursuant to section 1372 'is no longer "committed" for purposes of calculating the maximum period' of commitment." (*Id*. at p. 1144.) As Rodriguez's claim of trial court error depends almost entirely upon *Carr II*, we describe both the procedural background of the case and its legal analysis.

In *Carr II*, the trial court had committed the defendant to a treatment facility as incompetent to stand trial under section 1370.1, which applies to any incompetent defendant who has "a developmental disability" (§§ 1367, subd. (b), 1370.1, subd. (a)(1)(B)). Several months later, a DSH psychiatrist certified the defendant was competent. The defendant filed a petition for writ of mandate in the Court of Appeal challenging the certification of competency. (*Carr II*, *supra*, 59 Cal.App.5th at pp. 1140–1141.) The Court of Appeal denied the petition. (*Carr v. Superior Court* (2017) 11 Cal.App.5th 264, 267.) The trial court then held a hearing on whether the defendant had been restored to competence and found the defendant to be incompetent. (*Carr II*, at p. 1141.)

After finding the defendant, who, as described above, was subject to a developmental disability, as incompetent, the trial court again committed him to a treatment facility. A few months later, the defendant moved for release on the ground he had reached the maximum commitment authorized by law. The trial court denied the motion concluding that the certification of competency had "tolled" the defendant's commitment period. (*Carr II*, *supra*, 59 Cal.App.5th at p. 1141.) The defendant then filed a petition for writ of habeas corpus in the trial court, again asserting that he had exceeded the maximum commitment period set forth in section 1370.1, subdivision (c)(1).[15] (*Carr II*, at pp. 1141–1142.) The trial court rejected the People's contention that

[15] Current section 1370.1, subdivision (c)(1)(A) is similar, but not identical to section 1370(c)(1). Section 1370.1, subdivision (c)(1)(A) provides in full: "At the end of two years from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in

the "certification of competency terminated [the defendant's] commitment and thereby tolled" the maximum commitment period. (*Id*. at p. 1142.) The court ruled that the period between the certification of the defendant's competency and its subsequent determination that the defendant remained incompetent " 'did indeed count as part of the "commitment" for purposes of calculating [the defendant's] maximum commitment time.' " (*Ibid*.) Additionally, the trial court ordered that the defendant remain confined in local custody pending investigation of alternative civil commitment proceedings. (*Ibid*.)

On appeal, the Court of Appeal affirmed the trial court, concluding that the "relevant statutes do not explicitly state the point at which an incompetency commitment ends, but the statutory language and the case law . . . clearly indicate that the certificate of competency serves only to initiate proceedings by which the court will hear and decide the question of the defendant's competency." (*Carr II*, *supra*, 59 Cal.App.5th at p. 1144.) Further, the appellate court indicated its agreement with the trial court's conclusion "that the filing of a certificate of competency did not terminate the defendant's commitment so as to prevent the three-year maximum commitment term from accruing." (*Id*. at p. 1140; see also *id*. at p. 1147; *Medina*, *supra*, 65 Cal.App.5th at p. 1207, citing *Carr II*, at p. 1143 ["The filing of the certificate of restoration does not establish competence but initiates court proceedings to determine whether the defendant's competency has been restored."].)

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the information, indictment, or misdemeanor complaint, or the maximum term of imprisonment provided by law for a violation of probation or mandatory supervision, whichever is shorter, a defendant who has not become mentally competent shall be returned to the committing court." (§ 1370.1, subds. (c)(1)(A).) Further, section 1370.1 is like section 1370 in that "[a] defendant who has not regained competency within the maximum period must be returned to court and either released or recommitted under alternative commitment procedures. (§ 1370.1, subds. (c)(1)(A), (c)(2)(A).)" (*Carr II*, *supra*, 59 Cal.App.5th at p. 1144; see also *Medina*, *supra*, 65 Cal.App.5th at p. 1207.)

We do not agree that *Carr II* requires reversal of the trial court's order. Under the facts in this case, we conclude *Carr II* is not dispositive, and we decline to adopt its reasoning. We respectfully disagree with the *Carr II* court's rejection of the significance of the certification of restoration with respect to calculation of the two-year commitment period under section 1370(c)(1). Our Supreme Court has stated that when a certificate of restoration is filed, it "has legal force and effect in and of itself" (*Rells, supra,* 22 Cal.4th at p. 868), and the filing of the certificate triggers a presumption of mental competency under section 1372. (See *Rells*, at pp. 867–871.) As described further below, we decide the legal force and effect of the restoration certificate for a defendant who has been treated at a commitment facility includes the fixing of the end date for calculation of the commitment treatment period under section 1370(c)(1).

The court in *Carr II* questioned the "purpose [to] be served in requiring [a] court to approve the certification as expressly contemplated in section 1372, subdivision (d)" "if the commitment terminates when a health official files a certification of competence." (*Carr II, supra,* 59 Cal.App.5th at p. 1145.) We respectfully disagree with *Carr II* that the section 1372, subdivision (d) language referencing court approval is dispositive. The issuance of the restoration certificate and the subsequent court hearing have distinct statutory objectives in light of the overall competency statutory scheme, and we reject the *Carr II* court's exclusive focus on the judicial determination of restoration of competency.

The incompetency scheme's overall "purpose is restoration of a specific mental state without which the criminal process cannot proceed." (*Waterman, supra,* 42 Cal.3d at p. 569.) More specifically, the commitment of an incompetent defendant is intended to provide treatment to "promote the defendant's speedy restoration to mental competence." (§ 1370, subd. (a)(1)(B)(i); see also *Taitano, supra,* 13 Cal.App.5th at p. 244.)

Rodriguez does not point to any information in the record demonstrating that he is still receiving treatment for the purpose of restoring his competence. Although a

defendant may, at the discretion of the court after it approves the certificate of restoration, be provided "continued treatment . . . in order to maintain competence to stand trial" (§ 1372, subd. (e)), the statute does not include a mechanism for the provision of treatment to alleviate incompetence after the certification is filed. In fact, a defendant must be "returned to the committing court no later than 10 days following the filing of a certificate of restoration." (§ 1372, subd. (a)(3)(C).)

Because Rodriguez is no longer receiving treatment to restore competence, and because he is presumed to be competent by operation of the filing of the certificate of restoration, we conclude the period when the defendant is returned to court after having been certified as competent but before the trial court makes its own determination of competency does not count toward the two-year maximum commitment period referenced in section 1370(c)(1).

We express no opinion whether a different analysis would apply if there were evidence that Rodriguez had wrongfully been denied treatment to restore competence or if he were not transported to and from the treatment facility in a timely manner. (Cf. *Medina, supra*, 65 Cal.App.5th at p. 1203 ["In the usual case, only days actually spent in commitment at a mental institution or treatment facility are applied to the maximum commitment period. But this case is unusual: Medina has been denied the treatment to which he is legally entitled—and the ability to accrue time toward the maximum commitment period—because the providers of services have not fulfilled their obligations."].) We recognize that, on different facts, due process considerations may compel a different result. (See *id*. at p. 1229 ["Medina has not received the treatment to which he is legally entitled, due to the actions of the RCOC, the DDS, and the DSH. . . . Under these circumstances, applying only days actually spent in treatment at a facility toward the maximum confinement period of three years would violate due process."].) There is no evidence of such failures to comply with statutory mandates here.

Our interpretation of section 1370(c)(1) accords with the legislative history of recent amendments to section 1370. When section 1370(c)(1) was amended in 2018 to reduce the maximum commitment period from three years to two years, the Legislative Counsel's Digest stated that the "bill would reduce the term for *commitment to a treatment facility* when a felony was committed to the shorter of 2 years or the period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged." (See Stats. 2018, ch. 1008, § 2 [Senate Bill No. 1187 (2017-2018 Reg. Sess.)], Legis. Counsel's Dig., par. 2 of initial recitals, italics added.) "Although the Legislative Counsel's summaries are not binding [citation], they are entitled to great weight. [Citation.] 'It is reasonable to presume that the Legislature amended those sections with the intent and meaning expressed in the Legislative Counsel's digest.' " (*Jones v. Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158, 1170.) The Legislative Counsel's language supports our conclusion that when the Legislature reduced the commitment period to two years, it intended the two-year period to cover only the time the defendant actually receives treatment to restore his or her competence, not to the entire period before the trial court's approval of the certification of restoration to competence.

Our decision that Rodriguez's commitment period under section 1370(c)(1) did not continue to run after the certification of restoration to competence was filed also accords with conclusions reached by other courts that have discussed the commitment period in other contexts. A number of courts have concluded that the period *before* a defendant is committed for treatment for restoration of competency should not count toward the maximum confinement period for restoration of competency. For example, in *G.H.*, *supra*, 230 Cal.App.4th 1548, the Court of Appeal stated: "The Legislature enacted section 1370 with the purpose of providing treatment to mentally incompetent persons in order to restore their competency, not as a form of punishment. As such, where a defendant is charged with crimes wherein the maximum term of confinement exceeds the

three-year period of confinement, a defendant is not entitled to have his or her precommitment credits deducted from his or her maximum term of confinement." (*Id*. at p. 1559.) Additionally, in *People v. Reynolds* (2011) 196 Cal.App.4th 801, the Court of Appeal concluded that, "[i]n determining whether defendant's previous confinement exceeded the maximum three-year period, the [trial] court correctly disregarded defendant's precommitment custody credits, and there was no violation of defendant's equal protection rights in doing so." (*Id*. at p. 809.) These decisions rely on the distinction between commitment for treatment to restore a defendant to competence and other custodial periods related to the criminal offense. They suggest that a defendant's days in custody in which he or she is not being treated for restoration to competence do not count toward the maximum commitment period. (See, e.g., *id*. at p. 806 ["A defendant who, as a result of a mental disorder, is adjudged not competent to stand trial on a felony charge may be committed *to a state hospital* for no more than three years." (Italics added.)].)

We also reject Rodriguez's contentions that terminating the commitment period when the certification of restoration is filed violates the separation of powers, his constitutional rights to due process and equal protection, or the prohibition against cruel and unusual punishment.

"A core function of the Legislature is to make statutory law, which includes weighing competing interests and determining social policy. A core function of the judiciary is to resolve specific controversies between parties. . . . Separation of powers principles compel the courts to carry out the legislative purpose of statutes . . . [and] also constrain legislative influence over judicial proceedings." (*Perez v. Roe 1* (2006) 146 Cal.App.4th 171, 177.) Moreover, " '[t]he power of the legislature to regulate criminal and civil proceedings and appeals is undisputed.' " (*Briggs v. Brown* (2017) 3 Cal.5th 808, 846.) "[C]ompetency proceedings are civil in nature and collateral to the

determination of defendant's guilt and punishment." (*Centeno v. Superior Court* (2004) 117 Cal.App.4th 30, 43.)

We discern no separation of powers violation under our interpretation of sections 1370(c)(1) and 1372 because the two relevant actors—the designated health official and the trial court—each rightfully exercise distinct powers provided to them by the Legislature under the statutes. The former certifies restoration to competence and the latter decides whether to approve the certificate and resume the criminal prosecution. That the calculation of the statutory commitment period rests on the action of an official in the executive branch does not invade the province of the judiciary to decide the ultimate question of competency and resumption of prosecution under section 1372.

As one Court of Appeal stated when rejecting the People's argument that the trial court could afford a competency hearing at a stage when the statute did not explicitly provide for one, "the availability of a competence hearing in this context turns on a balancing of important considerations: the right of a defendant *not to remain in a treatment facility longer than the statutory maximum*; the right of the defendant not to be tried if incompetent; the interest in prosecuting a competent individual for charged crimes; the state interest in public safety; and the appropriate division of responsibility between the treatment facility and the court, among others." (*Taitano*, *supra*, 13 Cal.App.5th at p. 256, italics added.) The certificate of restoration to competence by the designated health official and prompt return to the trial court vindicates the defendant's right not to remain longer than two years in the treatment facility. The judicial determination of restoration of competency ensures that the defendant is not tried if incompetent. We perceive no constitutional violation in this statutory scheme.

As for Rodriguez's due process argument, because he was certified as competent, is no longer receiving treatment to restore competence, and a contested hearing on the competency issue is required only upon a request of one or both of the parties, his custodial commitment has transmuted. He is presumed competent, and the burden is on

the defense (if either the defendant or defense counsel chooses to challenge a defendant's restoration to competence) to prove he is incompetent. Given that the certification of competency in this case was filed well before the two-year period had run, Rodriguez is not being "held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain [competence] in the foreseeable future." (*Jackson v. Indiana* (1972) 406 U.S. 715, 738.) The determination that he has regained competency was made in January 2020. The time he has spent in custody since January 2020 will be considered as part of his custody credits toward any eventual sentence (if he is convicted), but it does not count toward the two-year commitment maximum under section 1370(c)(1). (See § 1375.5.)

Similarly, the constitutional proscription against cruel and/or unusual punishment is not violated because Rodriguez has not been and will not be held indefinitely due to incompetency and without any treatment. (Cf. *People v. Feagley* (1975) 14 Cal.3d 338, 359, 376.) He has received treatment to restore his competency and will receive additional treatment in the future—up to the two-year maximum—if he now proves he is incompetent.

Finally, our conclusion that the commitment period ended with the filing of the certification in this case (and a court determination under section 1372 can go forward) does not violate Rodriguez's equal protection rights because a defendant like him, who has been certified as having regained mental competence by a designated official, is not similarly situated to a defendant who has not been so certified before attaining the two-year maximum prescribed by section 1370(c)(1). (See *Cooley v. Superior Court* (2002) 29 Cal.4th 228, 253–254; *People v. Guzman* (2005) 35 Cal.4th 577, 591–592.)

III. DISPOSITION

The petition for writ of prohibition or other equitable relief is denied. This court's April 28, 2021 stay order is vacated. This opinion is made final as to this court seven days from the date of filing. (See Cal. Rules of Court, rule 8.490(b)(2)(A).)

_____
Danner, J.

WE CONCUR:

_____
Greenwood, P.J.

_____
Grover, J.

H049016
Rodriguez v. Superior Court

Trial Court: County of Santa Clara

Trial Judge: Hon. Eric S. Geffon

Counsel: Brian C. McComas, by appointment of the Santa Clara County Independent Defense Office, for Petitioner.

Jeffrey F. Rosen, District Attorney, Crystal Tindell Seiler, Barbara A. Cathcart, Supervising District Attorneys, for Real Party in Interest.

H049016
Rodriguez v. Superior Court

ATTACHMENT B

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

MARIO RODRIGUEZ,
Petitioner,
v.
THE SUPERIOR COURT OF SANTA CLARA COUNTY,
Respondent;
THE PEOPLE,
Real Party in Interest.

H049016
Santa Clara County Super. Ct. No. C1650275, Santa Clara County Super. Ct. No. C1647395

BY THE COURT*:

Petitioner's petition for rehearing and motion for judicial notice are denied.

Date: 11/15/2021 _____P.J.

*Before Greenwood, P.J., Grover, J., and Danner, J.

ATTACHMENT C

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

MARIO RODRIGUEZ,
Petitioner,
v.
THE SUPERIOR COURT OF SANTA CLARA COUNTY,
Respondent;
THE PEOPLE,
Real Party in Interest.

H049016
Santa Clara County Super. Ct. No. C1650275, Santa Clara County Super. Ct. No. C1647395

BY THE COURT*:

Petitioner's motion to stay lower court proceedings pending issuance of remittitur is denied.

This court's vacatur of its prior temporary stay order occurs upon the finality of the opinion as to this court—i.e., 30 days from October 26, 2021, the filing date of the modification order. (Cal. Rules of Court, rule 8.490(b)(2) & (b)(2)(C).) Since the 30th day in this instance falls on November 25, 2021 (Thanksgiving Day), which is a court holiday, as is November 26, the finality date of the disposition (including vacatur of the stay) as to this court is November 29, 2021. (Code Civ. Proc., §§ 12, 12a.)

Date: 11/15/2021 _____P.J.

* Before Greenwood, P.J., Grover, J., and Danner, J.

PROOF OF SERVICE

I, Brian C. McComas, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to the above referenced action. My place of employment and business address is PMB 1605, 77 Van Ness Ave., Ste. 101, San Francisco, CA 94102.

On December 6, 2021, I served the attached **PETITION FOR REVIEW FROM DENIAL OF PETITION FOR WRIT OF MANDATE OR EQUITABLE RELIEF** by placing a true copy thereof in an envelope addressed to the person named below at the address shown, and by sealing and depositing said envelope in the United States Mail in San Francisco, California, with postage thereon fully prepaid or by electronic filing:

Mario Rodriguez PFN: DRC910 Elmwood Jail 701 S Abel St., Milpitas, CA 95035	Daniel M. Mayfield Attorney At Law Carpenter and Mayfield 730 N. First Street San Jose, CA 95112

On December 6, 2021, I served the attached **PETITION FOR REVIEW FROM DENIAL OF PETITION FOR WRIT OF MANDATE OR EQUITABLE RELIEF** by transmitting a PDF version of this document by electronic mailing to each of the following:

Office of the Attorney General 455 Golden Gate Ave., Ste. 11000 San Francisco, CA 94102-7004 SFAG.Docketing@doj.ca.gov Honorable Judge Eric S. Geffon C/O Clerk of the Court, Santa Clara County Superior Court 190 W Hedding St., San Jose, CA 95110 egeffon@scscourt.org	Sixth District Appellate Program 95 South Market Street, Ste. 570 San Jose CA 95113 sdapattorneys@sdap.org Sixth District Court of Appeal C/O Clerk of the Court 333 W. Santa Clara, Ste. 1060 San Jose, CA 95113 Sixth.District@jud.ca.gov

Santa Clara County DA Office Appeals Division 333 W Santa Clara St #1060, San Jose, CA 95113 motions_dropbox@dao.sccgov.org	

I declare under penalty of perjury that the foregoing is true and correct. Signed on December 6, 2021 at San Francisco, California.

/s/ B.C. McComas

BRIAN C. McCOMAS

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **Mario Rodriguez v. Superior Court of Santa Clara County**
Case Number: **TEMP-H06Y6C56**
Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **mccomas.b.c@gmail.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
ISI_CASE_INIT_FORM_DT	Case Initiation Form
PETITION FOR REVIEW	H049016_Petition for Review_Rodriguez

Service Recipients:

Person Served	Email Address	Type	Date / Time
Brian McComas Law Office of B.C. McComas 273161	mccomas.b.c@gmail.com	e-Serve	12/6/2021 3:23:23 PM
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Office Of The District Attorney, Santa Clara County	motions_dropbox@dao.sccgov.org	e-Serve	12/6/2021 3:23:23 PM
SDAP Clerk	sixth.district@jud.ca.gov	e-Serve	12/6/2021 3:23:23 PM
Winnie Liu	lawofficeofb.c.mccomasllp@gmail.com	e-Serve	12/6/2021 3:23:23 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

12/6/2021

Date

/s/Brian McComas

Signature

McComas, Brian (273161)

Last Name, First Name (PNum)

Law Office of B.C. McComas

Law Firm