

S273391

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

CIRO CAMACHO,

Petitioner

vs.

SUPERIOR COURT OF
MERCED COUNTY,

Respondent

PEOPLE OF THE STATE OF
CALIFORNIA,

Real Party in Interest

No.:

Court of Appeal No.
F082798

Merced Co. Case No.
146207

(Department 2; The Honorable
Ronald W. Hansen)

**EMERGENCY STAY
REQUESTED**

Stay of jury trial pending review

Date: 5/24/22

Time: 8:30

Courtroom 1

Hon. Carol Ash (209) 725-4113

FROM THE JUDGMENT OF THE SUPERIOR COURT OF
MERCED COUNTY, THE HONORABLE RONALD W. HANSEN
PRESIDING

PETITION FOR REVIEW

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PETITION FOR REVIEW

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

Petitioner, CIRO CAMACHO, respectfully requests that this Court grant review following an unpublished denial by the Court of Appeal, Fifth Appellate District, rendered on January 21, 2021. [Cal. Rule of Court, Rules 8.500(b)(2) & (4).] A copy of the Court's unpublished opinion denying petitioner's writ is attached hereto as Exhibit A. A petition for rehearing was not filed in the Court of Appeal.

QUESTIONS PRESENTED

1. Does the confinement of an individual facing a civil commitment proceeding for fifteen years without trial violate the constitutional right to a speedy trial and deny due process under the State and Federal Constitutions?
2. When multiple parties each bear some responsibility for the same period of pretrial delay, does *Vermont v. Brillon* (2009) 556 U.S. 81 require delays caused by defense counsel be charged solely to the defendant when defendant's personal access to the courts is restricted?
3. What actions, if any, does Due Process compel trial courts and prosecutors to take to protect the accused's right to a speedy trial?
4. May a court presume that an unwritten waiver of the speedy trial right remains effective indefinitely and permit defense counsel to reassert such a waiver on defendant's behalf for more than 8 years in the absence of the defendant's personal appearance in court?
5. Is petitioner entitled to the dismissal of the pending SVP petition as a matter of right, given that a substantial right has been violated and there is no other plain, speedy, and adequate remedy in the ordinary course of law?

NECESSITY FOR REVIEW

The Petitioner has been held in pre-trial confinement at the Department of State Hospitals (DSH) for more than fifteen (15) years without trial or evidentiary hearing. Between 2010 and 2018, the Petitioner endured a period of 8 years, 3 months, and 25 days without making a single appearance in court or any substantive action being taken on his case.

When Petitioner was finally returned to court on July 5, 2018, he immediately demanded a jury trial. Petitioner withdrew his general time waiver on October 18, 2018. Following the withdrawal of the time waiver, Petitioner's appointed counsel declared a conflict in the case, necessitating another delay.

On May 7, 2021, the trial court denied Petitioner's motion to dismiss the SVP Petition against him for a violation of his speedy trial rights. Following a summary denial and successful Petition for Review, the Court of Appeals – Fifth Appellate District issued an unpublished opinion denying relief on the grounds that substantial evidence supports the trial court's ruling.

The facts of Petitioner's case demand a meaningful review on the merits in light of the District Court rulings in *Litmon v. Superior Court* (2004) 123 Cal.App.4th 1156, 1176; *People v. Superior Court (Vasquez)* (2018) 27 Cal.App.5th 36; *People v. DeCasas* (2020) 54 Cal.App.5th 785, 811; and *In re Butler* (2020) 55 Cal.App.5th 614. In each of those cases, the Courts of Appeal applied the United States Supreme Court precedents of *Barker v. Wingo* (1972) 407 U.S. 514 and *Matthews v. Eldridge* (1976) 424

U.S. 319 to determine whether a lengthy period of pre-trial incarceration violated the Due Process rights of an individual charged under the Sexually Violent Predator Act [hereinafter “SVPA”, *see* Welfare and Institutions Code §§ 6600 et. seq.] In each case excessive periods of pre-trial confinement similar to petitioner’s were found to violate due process and the right to a speedy trial.

Relying heavily on the opinion in a different SVP speedy trial case, *People v. Tran* (2021) 62 Cal. App. 5th 330, the Appellate Division found no due process violation in petitioner’s matter. The unpublished opinion denying relief begins by noting that, “[n]either the California Supreme Court nor the United States Supreme Court has decided what test is to be applied in deciding a due process/timely trial claim in an SVP proceeding.” (See Exhibit A at p. 11; *citing Tran, supra*, at p. 347-348.) The opinion goes on to apply the tests announced in *Barker v. Wingo* (1972) 407 U.S. 514 and *Matthews v. Eldridge* (1979) 424 U.S. 319 and, relying on *Tran*, finds that Petitioner acquiesced to the lengthy delays in his case and is therefore not entitled to relief.

The logic upon which the opinion rests is that pretrial delays caused by the inaction of defense counsel must be imputed entirely to the defendant. (See, *Vermont v. Brillon* (2009) 556 U.S. 81.) Petitioner, however, contends that holding him responsible for delays that were sought in his absence is inconsistent with due process. While confined at the Department of State Hospitals, petitioner’s ability to object to his attorney’s requests was hindered. Similarly, he lacked the ready ability to request a

Marsden hearing or air his grievances on the record. In these circumstances it “would be fundamentally unfair to hold [petitioner] personally and solely accountable for delays caused by his counsel.” (*In re Butler* (2020) 55 Cal.App.5th 614, 658.)

Moreover, the *Barker* test requires a thorough analysis of the roles played by the prosecution and the courts because “the primary burden is on the courts and prosecutors to assure that cases are brought to trial.” (*Barker, supra*, 407 U.S. at p. 529.) Unless the roles of these players are examined, there can be no “balancing” because only one side of the equation is considered.

Neither the trial court nor Court of Appeals conducted any analysis of the role of the prosecution or the court in the delays petitioner experienced. The trial court characterized petitioner’s efforts to discuss the role of other parties as blame shifting. The Court of Appeal observed that there was no evidence “the prosecution engaged in deliberate delay tactics or acted in bad faith” (*see* Exhibit A at p.16) and that the trial court might have “continued [petitioner’s] matter ... ‘to ensure adequate preparation and a fair trial.’” (*see* Exhibit A at p. 18.) The Court of Appeals engaged in no further analysis of the roles played by either party in the delays petitioner experienced. The combination of finding petitioner solely responsible for the delays in his case while at the same time making no inquiry into the role played by the prosecution and courts is not consistent with the test articulated in *Barker*. Failing to account for the roles of two co-equal participants also avoids the important issue of how to apply *Brillon* in situations where multiple parties share

responsibility. (*See, In re Butler, supra*, 55 Cal.App.5th at p. 661.)

Thus, petitioner respectfully urges this Court to grant review to resolve the critical issue of how to appropriately evaluate due process/speedy trial claims in the context of SVPA proceedings. Petitioner further respectfully requests that this Court clarify the constitutional obligations of trial courts and prosecutors to pursue a speedy disposition in proceedings where individuals have already served their criminal sentences yet remain confined against their will. Finally, petitioner respectfully requests this Court clarify what constitutes an effective waiver of the right to a speedy trial in quasi-criminal proceedings, how long such waivers remain effective, and whether Due Process requires an in person or written waiver.

The Department of State Hospitals (DSH) last reported that 5,227 patients are being housed there on forensic commitments.¹ Answering these questions will both settle an important question of law and ensure uniformity of decisions in these cases. (Cal. Rules of Court, rule 8.500(b)(1).) It will also help reduce litigation by providing clear answers about how these claims are to be treated.

¹ [See Forensic vs. Civil Commitment Population - Department of State Hospitals Forensic vs. Civil Commitment Population \(CSV\) - California Health and Human Services Open Data Portal](#). (As last updated 3/25/2021.)

EMERGENCY STAY REQUESTED

Petitioner is due to commence trial on May 24, 2022. Petitioner would suffer irreparable harm if a stay is not granted. The petitioner's appellate remedies after trial are inadequate or untimely. A stay is also necessary to prevent the issuance of unnecessary subpoenas, transportation orders, and other trial preparation such as arranging the travel of experts.

STATEMENT OF THE CASE

On January 11, 2005, the trial court concluded that Petitioner met the criteria for confinement as a Sexually Violent Predator (SVP) pursuant to Welfare and Institutions Code § 6600. On or about November 1, 2006, a Petition for Recommitment was filed seeking to extend Petitioner's SVP commitment. Petitioner is still pending trial on this 2006 petition.

Since November 1, 2006, Petitioner has endured repeated delays in the proceedings – including a more than 8-year period during which he did not make a single court appearance. Following his extended absence from Court, Petitioner demanded a jury trial. He followed this demand by withdrawing his general time waiver on October 18, 2018. When defense counsel expressed doubts about his readiness for a December trial date, petitioner made an oral motion to dismiss on speedy trial grounds. After this, trial counsel declared a conflict and new counsel was appointed.

The Petitioner filed a noticed motion to dismiss based on a violation of his right to a speedy trial and to due process. On May

7, 2021, the trial court denied the motion and confirmed the matter for trial on June 10, 2021. Petitioner timely filed a petition for writ of prohibition/mandate with the Fifth District Court of Appeals on May 19, 2021. The petition was summarily denied on June 3, 2021.

On August 12, 2021, this Court granted a petition for review and transferred the matter back to the Fifth Appellate District with instructions to vacate the summary denial and issue an order to show cause why relief should not be granted. The order to show cause was issued on August 19, 2021. On January 21, 2022, the Fifth Appellate Division issued its unpublished opinion denying relief. A copy of that opinion is attached hereto as Exhibit A.

STATEMENT OF FACTS

Mr. Camacho's SVP case has been pending in one form or another in the Merced County Superior Court since 2002 – nearly two decades ago. For ease of reference, the statement of facts is broken down into four separate periods.

A. Filing to Initial Commitment.²

Mr. Camacho made his first appearance in this case on August 28, 2002, before the Honorable William Ivey. He was represented by Deputy Public Defender Wayne Eisenhart. Deputy District Attorney Margarita Carlson appeared for the People. Mr. Camacho entered a denial of the petition and was remanded into custody. On September 24, 2002, the court

² 8/28/02 – 1/11/05

determined that probable cause existed to believe that Petitioner was an SVP and ordered Petitioner transferred to DSH.

In early 2004, Drs. Shoba Sreenivasan, Ph.D. and Kathleen Longwell, Ph.D. submitted evaluations finding that Mr. Camacho did meet the criteria for commitment under Welfare & Institutions Code § 6600. On January 11, 2005, Mr. Camacho was present in court and waived his right to a jury trial. The Court found the allegations in the petition were true based on the doctors' reports and committed petitioner to DSH for two years under Welf. & Inst. §§ 6600, et. seq.

B. OSC – Appointment of Counsel.³

During this period, 49 hearings were held in Petitioner's case. He was present for five of them. Mr. Eisenhart filed a request for an order to show cause and petitioner's case came before the court on April 14, 2006. Petitioner was residing at the Coalinga State Hospital. Mr. Eisenhart's request for an Order to Show Cause was withdrawn subject to the District Attorney's decision to file a petition to extend the commitment on December 18, 2006. Petitioner remains pending trial on this 2006 petition.

On November 6, 2006, Dr. Hy Malinek prepared a "recommitment evaluation". Dr. Malinek noted that Mr. Camacho was a medium-low risk for re-offense but found that petitioner continued to meet criteria for commitment as an SVP. On February 8, 2007, petitioner waived his right to a probable cause hearing on the recommitment petition.

³ 8/14/06 – 08/08/08

Deputy Public Defender Vincent Andrade took over petitioner's case on May 30, 2008, and then declared a conflict on July 25, 2008. The court referred petitioner's case to the conflict panel – who assigned attorney William Davis to represent him. Davis accepted appointment on August 8, 2008. Thereafter, four more hearings were held before petitioner appeared in court on October 10, 2008.

Dr. Sreenivasan submitted an updated positive report in 2008. While Sreenivasan found that Mr. Camacho met criteria for continued commitment, the report did note that he was participating in sex-offender treatment and making progress. Dr. Jack Vongsen also referenced Mr. Camacho's progress in treatment, but also found that Mr. Camacho met the SVP criteria.

C. Representation by William Davis.⁴

After accepting appointment, Mr. Davis appeared with his client in court on October 10, 2008. Between October 10, 2008, and March 11, 2010, there were 28 hearings in Petitioner's case. He was present in court for all but one. The March 11, 2010, appearance, however, would be his last one for more than 8 years. Petitioner did not make another court appearance until July 5, 2018, despite his case being on the court's docket 102 times.

In that more than eight-year interim, Drs. Vongsen and Sreenivasan both submitted updated evaluations in 2010 reiterating their previous findings that Petitioner met SVP criteria and continuing to note his progress in sex-offender

⁴ 08/08/08 – 11/06/18

treatment and his commitment to rehabilitation. Four more evaluations were submitted in 2015, including a report from John Hupka, Ph.D., finding that Petitioner did not meet criteria for continued commitment based on his substantial progress in treatment and amenability to treatment in the community. While Drs. Jack Vongsen, Wesley Maram, and Douglas Korpi all opined that Mr. Camacho did continue to meet criteria, two of the three presented Petitioner in a favorable light. Dr. Maram characterized Mr. Camacho's continuing participation in treatment as a protective factor and Dr. Korpi noted that Petitioner was "veering ever so close to no longer meeting criteria." Despite these favorable reports, Mr. Camacho's counsel did not set the matter for trial or other evidentiary hearing in 2015.

On May 17, 2018, the Honorable Douglas Mewhinney (sitting as a visiting judge) ordered counsel to ensure that Mr. Camacho appear by video conferencing at the next hearing. That did not happen, but Petitioner was finally brought to court – via video – on July 5, 2018, where he took part in an *in camera* hearing with the Court and defense counsel. It was the first time in 8 years, 3 months, and 25 days that Mr. Camacho had been present in court. Defense counsel set forth reasons for continuing the case. Based on those reasons, the court found good cause to continue the probable cause hearing, and the matter was continued to August 16, 2018.

At a hearing on September 20, 2018, the prosecution lodged its first and only objection to a defense request to continue. On

October 4, 2018, Mr. Camacho appeared in court and demanded a jury trial which was scheduled for April 2, 2019. At a readiness hearing on October 18, Mr. Camacho withdrew his general time waiver and demanded a speedy trial. As a result of this demand, the Court advanced the trial date from April 2, 2019, to December 11, 2018. Despite having had the case for more than ten years, defense counsel expressed doubts about whether he could be ready to proceed by that date. At a readiness hearing on November 1, the court confirmed the jury trial for December 11.

On November 6, 2018, Petitioner orally moved to dismiss the petition pursuant to *People v. Vasquez* (2018) 27 Cal.App.5th 36. Fitzgerald, Alvarez, and Ciummo (hereinafter “FAC”) was appointed to represent Mr. Camacho in his *Vasquez* claim.

D. The Current Phase.⁵

Mr. Davis continued to represent Mr. Camacho for four additional court dates, during which the Court inquired about the *Vasquez* claim and repeatedly confirmed the jury trial. On November 29, 2018, Mr. Davis declared a conflict of interest and FAC was appointed to represent Mr. Camacho for all purposes.

On December 6, Mr. Camacho entered a time waiver to give new counsel the opportunity to prepare his case and to file necessary motions. Since the appointment of new counsel, Mr. Camacho’s case has been continued for the purposes of case preparation, the research and filing of petitioner’s motion to dismiss and also due to defense counsel’s trial schedule and factors related to the COVID-19 pandemic. Trial was stayed by

⁵ 11/16/18 – Present.

order of this Court on June 16, 2021 and will expire upon finality of the Court of Appeals ruling. The case is currently set for trial on May 24, 2022.

ARGUMENT

“Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause.” (*Foucha v. Louisiana* (1992) 504 U.S. 71, 80.) As such, an individual alleged to be a sexually violent predator (hereinafter “SVP”) has a due process right to a timely trial. (*People v. Superior Court (Vasquez)* (2018) 27 Cal.App.5th 36, 56. California courts have traditionally applied the tests set forth in *Barker v. Wingo* (1972) 407 U.S. 514 and *Matthews v. Eldridge* (1976) 424 U.S. 319 to speedy trial claims in the context of SVP petitions.

Under *Barker*, courts must weigh four factors: the length of the delay, the reason for the delay, the defendant’s assertion of his right, and the prejudice to the defendant. The four factors, “are related ... and must be considered together with such other circumstances as may be relevant.” (*Barker, supra* 407 U.S. at 533.) Emphasizing flexibility, the court created “a balancing test, in which the conduct of both the prosecution and the defendant are weighed.” (*Id.* at p. 530.)

Under *Matthews*, courts are to engage in a three-factor analysis including (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards; and (3) the

government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedure would require. (*Matthews, supra*, 424 U.S. 319, 335.)⁶

A. Blaming the Delay Solely on Petitioner Violates Due Process.

Relying on *Tran, supra*, which in turn relied on *Brillon, supra*, the Court of Appeals found petitioner solely responsible for the delays in his case – including the more than 8-year period during which he did not appear in court. This rigid application of *Brillon's* admonition that, “[a]n assigned counsel’s failure to ‘move the case forward,’ is *generally* charged to the defendant” (*Brillon, supra*, 556 U.S. at p. 92) is inconsistent with both the explicit language of *Barker* and principles of due process.

Because the right to a speedy trial is inherently vague, “[a]ny inquiry into a speedy trial claim necessitates a functional analysis of the right in the particular context of the case.” (*Barker, supra*, 407 U.S. at p. 521-522.) The amorphous nature of the right caused the *Barker* court to emphasize flexibility when considering speedy trial claims:

We regard none of the four factors identified above as either a necessary or sufficient condition to finding the deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such other

⁶ The first and third *Matthews* factors are always the same in any SVP case. (See, *Butler, supra*, 55 Cal.App.5th at p. 663.) The second factor is discussed at D. *infra*.)

circumstances as may be relevant. In sum, these factors have no talismanic qualities; courts must still engage in a difficult and sensitive balancing process. But, because we are dealing with a fundamental right of the accused, this process must be carried out with full recognition that the accused's interest in a speedy trial is specifically affirmed in the Constitution. (*Id.* at p. 533.)

The *Barker* court also addressed petitioner's situation, noting that its test allows "a court to attach a different weight to a situation in which the defendant knowingly fails to object from a situation in which [defense counsel] acquiesces in long delay without adequately informing [the defendant]." *Barker, supra*, 407 U.S. at p. 533. This language caused the First District Court of Appeal to conclude that a reading of *Brillon* which charges a delay solely to the defense "when multiple parties each bear some responsibility for the same period of delay ... is unnecessarily narrow." (*In re Butler, supra*, 55 Cal.App.5th at p. 661.)

B. *Barker* Requires Analysis of the Trial Court and Prosecutor's Roles.

The Court of Appeals blamed the delay entirely on the petitioner, implicitly finding that the prosecution and trial court bore no responsibility. The plain language of *Barker*, however, compels at least some analysis of the role played by the prosecution and trial court in petitioner's case. "The approach we accept is a balancing test, in which the conduct of *both the*

prosecution and the defendant are weighed.” (*Barker, supra*, 407 U.S. at p. 530.) Even mundane reasons that contribute to a delay are to be considered and held against the government. “A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant.” (*Id.* at p. 531.)

“A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process. Moreover ... society has a particular interest in bringing swift prosecutions, and society’s representatives are the ones who should protect that interest.” (*Barker, supra*, 407 U.S. at p. 527.) Indeed, *Barker* specifically, “places the primary burden on the courts and the prosecutors to assure that cases are brought to trial.” (*Id.* at p. 529.) As such, Courts have tended to follow this Court's approach in *People v. Williams* (2013) 58 Cal.4th 197 in analyzing the roles of the prosecution and trial court in addition to the role of the defendant in causing any pretrial delay. (*See, e.g., People v. Superior Court (Vasquez), supra*, 27 Cal.App.5th at p. 64.)

“[T]he trial court has an affirmative constitutional obligation to bring the defendant to trial in a timely manner.” (*Williams, supra*, 58 Cal.4th at p. 251.) The trial judge “is the captain of the ship [and] must be vigilant in protecting the interests of the defendant, the prosecution, and the public in having a speedy trial.” (*Ibid.*) “The court and the district attorney bear ultimate responsibility for providing a timely trial to a person against whom an SVP petition has been filed.” (*People v. Landau* (2013) 214 Cal.App.4th 1, 41; *citing People v. Litmon* (2008) 162 Cal.App.4th 383, 406.)

Courts of Appeal who have analyzed the speedy trial right in the context of SVP proceedings have opined on the duties of those parties. For example, with regard to the prosecution the *Butler* court observed:

[t]he People’s due process obligation in an SVPA proceeding requires that it diligently prosecute the case. This may entail stating on the record that it is prepared to go to trial, taking affirmative steps to set a trial date, promptly requesting clinical evaluations and records, and securing the attendance of witnesses in a timely manner. Continuance requests, whether by defense counsel or the prosecution, should be supported by an affirmative showing of good cause, and where such a

showing is lacking, an objection to the request may be warranted. Where the prosecution encounters repeated continuances of a setting hearing or trial date, or other dilatory tactics, diligent prosecution of an SVP petition may necessitate objecting to the delays, insisting upon trial deadlines, and making the trial court aware of the length of time since the filing of the SVP petition or other pertinent details from the record. The prosecution may even find it necessary to seek the removal of appointed counsel, the appointment of new or additional counsel, or other measures to ensure that an alleged SVP defendant is brought to trial at a meaningful time and in a meaningful manner. (*In re Butler* (2020) 55 Cal.App.5th at p. 655.)

With respect to the trial court, *Butler* noted:

the matter was continued over 50 times, either at the request of the defense or the prosecution or by stipulation, and there [was] no evidence that the trial court required counsel to provide a good cause basis for any continuance, and no evidence that the trial court ever made an on-the-record finding of good cause to justify the delay ... nor ... any indication that the trial court ever inquired as to why the case had dragged on after so many years and no attempt was made to determine whether the public defender's office or prosecution had done anything to prepare adequately for trial." (*Butler, supra*, 55 Cal.App.5th at 660-661.)

In *Tran*, the Court of Appeals also engaged in analysis of the role played by the prosecution and the court. For example, The *Tran* court noted that the prosecutor repeatedly sought to move the case forward and expressed his concern about delaying the case in light of defendant’s “multiple demands to speed up the proceedings.” (*See, Tran, supra* 62 Cal.App.5th at p. 338.) The court took note of the prosecutor’s repeated comments about the length of the proceedings and the fact that “absolutely nothing [was] happening.” (*Id.* at p. 340.) And, of course, the *Tran* court took note of the prosecutor objecting to further continuances, effectively forcing the case to trial. (*Id.* at p. 342.)

With respect to the role of the trial court, the *Tran* court made note of several active steps such as suggesting a different public defender could be assigned (*see Tran, supra* at p. 335), urging defense counsel to meet with the client (*id.* at pps. 336-337, 339), repeatedly urging counsel to speed the case up (*id.* at pps. 337-344) and discussing the importance of balancing the defendant’s right to a speedy trial against the need for prepared and effective counsel on the record (*id.* at p. 344.) Ultimately, the trial court forced Mr. Tran’s matter to trial. (*Id.* at p. 345.)

The Court of Appeals did not analyze the role played by either the prosecutor or the trial court in causing the delays – implicitly finding, therefore, that neither party played any role. This finding is contrary to authority where the State was charged with at least a portion of the delay based on similar facts. In *Butler*, for example, the court was criticized for conducting 60 hearings in Mr. Butler’s absence and never asking, “whether

Butler objected to the continuances or wanted a trial ... [or] ever ordered Butler to be transported to court to ascertain his wishes.” (*Butler, supra*, 55 Cal.App.5th at p. 659). (See also: *Vasquez, supra*, 27 Cal.App.5th at p. 75 [trial court took no meaningful action to set deadlines or control proceedings]; *People v. DeCasas* (2020) 54 Cal.App.5th 785, 810 [trial court “enabled and compounded the delays ... by failing to fulfill its duties ‘to set deadlines and to hold the parties strictly to those deadlines unless a continuance is justified by a concrete showing of good cause.’”])

Neither the trial court nor the prosecution made any effort to move Petitioner’s case forward, instead acquiescing to repeated requests to continue the case. There is no evidence of the court ever requiring a written motion supported by a declaration as required under Penal Code § 1050. Very few good cause findings were made. There is no evidence that the court set deadlines, much less that the parties were strictly held to those deadlines absent a finding of good cause. In short, there is ample evidence that the State bears at least some responsibility for the delay in bringing Petitioner to trial.

Logic therefore compels a return to the “purely legal” question posed by the court in *Butler*: “whether, when multiple parties each bear some responsibility for the same period of delay, *Brillon* requires that the delay be charged solely to the defense.” (*Butler, supra*, 55 Cal.App.5th at p. 661.) Petitioner respectfully urges the court to adopt *Butler*’s finding that such a reading is “unnecessarily narrow.” (*Ibid.*)

C. Courts May Not Presume an Indefinite Time Waiver in Defendant's Absence.

Implicit in the Court of Appeals ruling is the conclusion that it is legally permissible to conclude that because petitioner entered a “general time waiver” on December 23, 2008, he may be deemed to have acquiesced in every continuance between that date and July 5, 2018, despite not having been present in court. Such a conclusion must be closely scrutinized in the speedy trial context because “presuming waiver of a fundamental right from inaction is inconsistent with [the United States Supreme Court's] pronouncements on waiver of constitutional rights.” (*Barker, supra*, at p. 525.)⁷ Viewing petitioner’s silence as consent to the lengthy delays in his case is fundamentally unfair given his absence from the court proceedings.

“The trial court ... has a responsibility absent a written time waiver to inquire of a defendant whether he or she agrees to the delay.” (*Vasquez, supra*, 27 Cal.App.5th at p.75) There was never any written waiver provided. It is manifestly unfair to conclude that petitioner’s entry of a general time waiver in 2008 remained effective in 2018 when he was prevented from complaining otherwise.

⁷ See also, *Aetna Ins. Co. v. Kennedy* (1937) 301 U.S. 389, 393 [courts should not presume acquiescence in the loss of fundamental rights]; *Carnley v. Cochran* (1962) 369 U.S. 506 [presuming waiver from a silent record is impermissible].

D. Existing Procedural Safeguards Failed to Uphold Due Process.

Both lower courts failed to consider petitioner's lengthy absence from Court when balancing the *Matthews* factors. The first and third *Matthews* factors are always the same in any SVP case. (See, *Butler, supra*, 55 Cal.App.5th at p. 663.) The second factor to consider under a *Matthews* analysis is "the fairness and reliability of the existing ... procedures, and the probable value, if any, of additional procedural safeguards." (*Matthews, supra*, 424 U.S. 319, 343.) Here, no procedural safeguards existed to prevent petitioner from being confined in a state hospital for more than 8 years without being brought before the court.

While the SVPA imposes no deadlines for trial, due process should require – at a minimum – that an individual who is pending prosecution under that act either enter into an appropriate written waiver or be brought before the court once a year and given an opportunity to be heard. Simple procedural guardrails can be put in place at little or no expense that will prevent situations like petitioner's from occurring in the future.

E. Prejudice.

A lengthy delay like the one petitioner has experienced "increases the risk that an erroneous deprivation of an alleged SVP's liberty interest has occurred." (*In re Butler, supra* 55 Cal.App.5th at 663.) "In the absence of *any* showing of diligent prosecution or effective case management ... it [is] simply not a valid exercise of governmental power to detain [petitioner] for more than [15] years without a merits trial establishing the

legitimacy of that detention.” (*Id.* at p. 664 (emphasis in original).) One psychologist has opined that petitioner does not fulfill the requirements of being an SVP and two others have equivocated on the issue. The outcome of a jury trial is not certain under such circumstances. (*See, Vasquez, supra*, 27 Cal.App.5th at p. 81; *DeCasas, supra*, 54 Cal.App.5th at p. 813.)

Moreover, it is unquestionable that petitioner’s more than 15 years without a trial is oppressive. His confinement in the Department of State Hospitals is, “a massive curtailment of liberty which can engender adverse social consequences to the individual.” (*Vitek v. Jones* (1980) 445 U.S. 480, 491-492.) Under such circumstances, even if there is no evidence that petitioner’s defense was impaired – prejudice should weigh in favor of petitioner’s claim. *DeCasas, supra*, 55 Cal.App.5th at p. 812.

CONCLUSION

For the reasons stated, this petition for review should be granted. Should the court grant review, an emergency stay of the proceedings in the trial court should be issued.

Dated: 3/1/2022

Respectfully submitted,

Douglas C. Foster

Douglas C. Foster
FITZGERALD, ALVAREZ & CIUMMO
Attorneys for Petitioner *Ciro Camacho*

WORD COUNT CERTIFICATION

I hereby certify, under penalty of perjury, that the attached petition for review contains 5,813 words, as determined by the computer program used to prepare this document.

Dated: 3/1/2022

Respectfully submitted,

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Attorneys for Petitioner *Ciro Camacho*

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

CIRO CAMACHO,

Petitioner,

v.

THE SUPERIOR COURT OF MERCED
COUNTY,

Respondent;

THE PEOPLE,

Real Party in Interest.

F082798

(Super. Ct. No. 146207)

OPINION

ORIGINAL PROCEEDINGS; petition for writ of mandamus/prohibition. Ronald W. Hansen, Judge. (Retired Judge of the Merced Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.)

Fitzgerald, Alvarez & Ciummo and Douglas C. Foster for Petitioner.

No appearance for Respondent.

Rob Bonta, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Eric L. Christoffersen, Julie A. Hokans, and Sally Espinoza, Deputy Attorneys General, for Real Party in Interest.

-ooOoo-

INTRODUCTION

In a “PETITION FOR WRIT OF MANDAMUS/PROHIBITION” (boldface omitted) filed on May 19, 2021, Ciro Camacho sought writ review of the Merced County Superior Court’s May 7, 2021 order denying his motion to dismiss a civil commitment petition under the Sexually Violent Predators Act (SVPA) (Welf. & Inst. Code,¹ § 6600 et seq.) due to a violation of his right to a timely trial. On June 3, 2021, we summarily denied this petition. The California Supreme Court granted review, remanded the matter, and issued a stay of trial proceedings “to remain in effect pending further order of the Court of Appeal.” In conformance with the high court’s directions, we (1) vacated our order denying Camacho’s petition; and (2) issued an order directing the People—the real party in interest—to show cause as to why writ relief should not be granted. The People filed a return on September 20, 2021, and Camacho filed a traverse on October 19, 2021.

Camacho asks us to issue a writ of mandate, prohibition, and/or habeas corpus vacating the superior court’s May 7, 2021 order and dismissing the underlying action. For the reasons set forth below, we again deny his petition.

BACKGROUND²

On August 22, 2002, a petition for Camacho’s commitment as a sexually violent predator (SVP) was filed. At a September 24, 2002 hearing, the superior court heard witness testimony. The deputy district attorney and counsel for Camacho, Public Defender Wayne Eisenhart, each argued the matter. The court found probable cause

¹ Subsequent statutory citations refer to the Welfare and Institutions Code.

² This section of the opinion is based on exhibits attached to Camacho’s writ petition, which include (1) a summary of the proceedings conducted in superior court; (2) Camacho’s dismissal motion; (3) the People’s response to said motion; (4) a certified transcript of a May 7, 2021 motion hearing; and (5) a May 7, 2021 minute order.

existed that Camacho was likely to engage in sexually violent predatory criminal behavior if released.

Following a January 11, 2005 trial, the court found that Camacho was an SVP and committed him for a two-year period to the custody of the State Department of Mental Health.³ (See former § 6604, added by Stats. 1995, ch. 763, § 3.) The following year, the SVPA was amended to change the length of commitment from two years to an indeterminate term. (See § 6604, as amended by Stats. 2006, ch. 337, § 55, eff. Sept. 20, 2006.)

A medical evaluation prepared on November 6, 2006, reported that Camacho continued to satisfy SVP commitment criteria. Thereafter, a petition to extend Camacho's commitment was filed.

At a February 8, 2007 proceeding, Camacho appeared in person and waived the probable cause hearing. At a March 29, 2007 trial setting conference, Camacho appeared in person and entered a general time waiver. On April 3, 2007, the court ordered Camacho's return to the custody of the State Department of State Hospitals. On May 1, 2007, the matter was continued "for hospital status." On May 8, 2007, the matter was continued "for Dr report / Trial setting." On June 20, 2007, the matter simply "[c]ontinued." On July 6, 2007, the matter was continued "for receipt of Dr report." On July 31, August 7, and August 16, 2007, the matter was continued "for Dr report / Trial setting."

At a January 10, 2008 trial setting conference, the court set trial for May 12, 2008. At an April 25, 2008 readiness conference, the court vacated the pending trial date. At a May 16, 2008 trial setting conference, Eisenhart entered a general time waiver. On July 25, 2008, the public defender declared a conflict. In August 2008, William Davis

³ In 2012, the State Department of Mental Health was renamed the State Department of State Hospitals. (*People v. Superior Court (Karsai)* (2013) 213 Cal.App.4th 774, 778, fn. 1.)

was appointed to represent Camacho. That same month, two updated medical evaluations reported that Camacho continued to meet SVP criteria. Camacho was subsequently transported back to the superior court from the State Department of State Hospitals.

Between October 10, 2008, and May 7, 2009, 18 trial setting conferences were held. Camacho appeared in person at each of them. At the conference held on December 23, 2008, Camacho entered a general time waiver. Eventually, the court set trial for August 17, 2009. Between July 16 and August 6, 2009, three readiness conferences were held. Camacho appeared in person at each of them. The court ultimately vacated the pending trial date.

Between August 17, 2009, and February 8, 2010, two trial setting conferences and three readiness conferences were held. Camacho appeared in person at each of them. At a February 25, 2010 trial setting conference, the deputy district attorney and Davis were present. Camacho's presence was waived and "[t]ime [was] waived." On March 11, 2010, the court ordered Camacho's return to the custody of the State Department of State Hospitals. Between June 17 and December 16, 2010, at least 14 trial setting conferences were held. "Time waive[rs]" were entered in 10 of them. At the conference held on October 12, 2010, the matter was continued "by all parties." Two updated medical evaluations prepared in 2010 reported that Camacho continued to meet SVP criteria.

At least 13 more trial setting conferences were held in 2011. Notably: (1) on February 11, 2011, the parties "agree[d] to continue"; (2) on March 24, 2011, "DA & defense continued"; and (3) at the April 14, 2011 conference, which Davis did not attend, the deputy district attorney indicated "defense [was] still waiting to confirm experts."

Between January 5 and March 15, 2012, six trial setting conferences were held. General time waivers were entered at five of them. At the conference held on March 15, 2012, the matter was continued "by DA and defense." At some point, a petition for Camacho's recommitment was filed. Between April 10 and August 21, 2012, seven "trial

setting / pre-probable cause” conferences were held. General time waivers were entered at five of them. Notably: (1) on April 10, 2012, the matter was continued “by stipulation”; and (2) on July 31, 2012, “Davis & DA continued.” The court set a probable cause hearing for March 19, 2013. Between December 4 and 20, 2012, four readiness hearings were held. General time waivers were entered at each of them.

Readiness hearings were held on January 8 and 17, 2013, and a “pre-probable cause” hearing was held on January 29, 2013. The court ended up vacating the pending probable cause hearing date. There were nine proceedings between March 19 and December 19, 2013. At the proceeding held on June 20, 2013, “Defense & DA continued” the matter. Eventually, the court set a probable cause hearing for February 20, 2014.

In 2014, 10 proceedings were held, but there was no probable cause hearing.

In 2015, nine proceedings were held. At each one, the matter was continued. Four updated medical evaluations were prepared in 2015. Three of them—prepared on April 22, June 15, and July 17, respectively—reported that Camacho continued to meet SVP criteria. The other evaluation—prepared on April 27—reported that he no longer satisfied that criteria.

In 2016, eight proceedings were held. At each one, the matter was continued. Notably, at the proceedings held on April 21 and September 15, 2016, the court found “[g]ood cause.”

Three proceedings were held between January 19 and March 16, 2017. The court set a probable cause hearing for April 20, 2017. The matter was continued to July 20, 2017, due to Davis’s unavailability. On July 20, 2017, the court found “good cause to continue due to contract negotiations regarding attorney Davis.” Following four proceedings that took place between August 17 and November 16, 2017, the matter was continued to January 11, 2018. Notably, at the proceeding held on November 16, 2017, a continuance “at request of counsel” was granted.

At a January 11, 2018 proceeding, which Davis did not attend, the deputy district attorney indicated “Davis requested a continuance.” The matter was continued to February 15, 2018, and then February 22, 2018, due to Davis’s unavailability. “[A]t [the] mutual request of [the] parties,” the matter was continued to March 22, 2018, and then May 17, 2018. At the May 17, 2018 proceeding, the court “advise[d] counsel to set up video conference with court’s IT” The matter was continued to June 21, 2018, and then July 5, 2018. At a July 5, 2018 proceeding, which the deputy district attorney did not attend, Camacho appeared via video. The court found “good cause to continue at Davis’[s] request.” The matter was continued to August 16, 2018, and then September 20, 2018. At the September 20, 2018 proceeding, over the People’s objection, the court granted Davis’s request for a continuance. At an October 2, 2018 proceeding, Camacho was “not brought to video for court by hospital.” The matter was continued to October 4, 2018, “for [Camacho] to be present via video.” At the October 4, 2018 proceeding, Camacho appeared via video and “demand[ed] jury trial.” The court set trial for April 2, 2019. At an October 18, 2018 readiness conference, Camacho appeared via video and “request[ed] speedy trial rights.” Davis “express[ed] concerns about being ready for trial in December.” Nonetheless, the court vacated the pending trial date and set trial for December 11, 2018.

At a November 6, 2018 readiness conference, Camacho appeared in person and moved to dismiss the commitment petition for prejudicial pretrial delay. The court appointed the law firm of Fitzgerald, Alvarez & Ciummo to represent Camacho in connection with this motion and continued the matter to November 29, 2018, to allow newly appointed counsel to research the issue.⁴

⁴ Various attorneys from this firm appeared on Camacho’s behalf. In this opinion, for ease of reference, we identify each attorney as “Fitzgerald, Alvarez & Ciummo.”

At a November 29, 2018 readiness conference, where Camacho appeared in person, Davis declared a conflict and was relieved. Fitzgerald, Alvarez & Ciummo was appointed to represent Camacho for all purposes. It requested a continuance, and the readiness conference was continued. The court confirmed the December 11, 2018 trial date. At a December 6, 2018 readiness conference, Camacho appeared in person and entered a general time waiver. The court vacated the pending trial date, set trial for February 19, 2019, and ordered Camacho's return to the custody of the State Department of State Hospitals.

At a January 24, 2019 readiness conference, the People requested a continuance. Neither Camacho—who appeared via video—nor Fitzgerald, Alvarez & Ciummo objected. The court vacated the pending trial date. Four trial setting conferences were held between March 21 and May 16, 2019. Camacho appeared via video at each of them. Notably: (1) at the March 21, May 9, and May 16, 2019 conferences, Fitzgerald, Alvarez & Ciummo “request[ed] additional time” and the People did not object; and (2) at the April 18, 2019 conference, there was a “[m]utual request to continue.” At a June 4, 2019 proceeding, Camacho was unable to appear via video due to technical difficulties. Fitzgerald, Alvarez & Ciummo “request[ed] additional time” and the People did not object. At a June 27, 2019 proceeding, where Camacho appeared via video, Fitzgerald, Alvarez & Ciummo “request[ed] additional time.” Once again, the People did not object. On July 18, 2019, Camacho appeared via video and requested a trial date. The court set trial for October 15, 2019. Camacho was subsequently transported back from the State Department of State Hospitals. At an October 11, 2019 readiness conference, Fitzgerald, Alvarez & Ciummo asked the court to “vacate trial due to [being] currently in trial on another case.” The court found “good cause” and granted the request. Camacho, who appeared in person, entered a general time waiver. The court set trial for December 3, 2019. On December 3, 2019, where Camacho appeared in person, Fitzgerald, Alvarez & Ciummo's request for a continuance to file a motion was granted. The court set trial for

February 18, 2020. Camacho returned to the custody of the State Department of State Hospitals.

At a February 13, 2020 readiness conference, Fitzgerald, Alvarez & Ciummo moved to continue the trial. The People did not object. The court vacated the pending trial date. Camacho, who appeared via video, entered a general time waiver. A scheduled April 9, 2020 proceeding was vacated “due to COVID.” Seven proceedings were held between June 11, 2020, and February 16, 2021. Camacho appeared via video at three of them. Notably: (1) on July 13, 2020, the court was “unable to connect” with Camacho at the hospital; (2) on August 19, 2020, where Camacho appeared via video, there was a “[m]utual request to continue”; (3) on January 25, 2021, Camacho was “in quarantine and unable to appear via video”; and (4) on February 16, 2021, Camacho was “unable to appear due to hospital not having a room available for video.”

At a February 19, 2021 proceeding, where Camacho appeared via video, Fitzgerald, Alvarez & Ciummo “request[ed] additional time to file” a motion to dismiss the commitment petition for prejudicial pretrial delay. The People did not object. The court granted the request. The dismissal motion was filed on March 11, 2021. Citing *Barker v. Wingo* (1972) 407 U.S. 514 (*Barker*) and *Mathews v. Eldridge* (1976) 424 U.S. 319 (*Mathews*), Fitzgerald, Alvarez & Ciummo contended that Camacho had been deprived of his right to a timely trial. At a May 7, 2021 hearing, the court denied the motion. It reasoned:

“[I]n applying [the *Barker v. Wingo*] factors, the length of delay is significant, there’s no question about it, but most of those delays were at the request of defense counsel, and, uh – and/or mutually agreed upon by the parties for various reasons: Either defense counsel wasn’t ready to proceed, having difficulty obtaining expert opinions and evaluations and/or – or was unavailable.

“There – the – Mr. Camacho was present many – on many occasions. He either – by video or was personally present on many

occasions in this case, and, uh, it wasn't until October of 2018 that he personally first asserted a right to speedy trial.

“I could not find – and there's no evidence to support a systemic breakdown in the appointed-counsel system [¶] . . . [¶] . . . I don't find that there was a systemic breakdown in the appointed-counsel system in this history, but there's still – weighing the *Barker/Wingo* factors – was he denied procedural safeguards?”

“He's been evaluated multiple times by mental-health experts. He's had, I think, two or more probable-cause hearings. He had an extended hearing for extended placement for two years, and he still fell within the findings of an SVP.

“There – it is troubling for the length of time that this case has lingered without a trial on the merits, but most of that is attributable to Mr. Camacho or his counsel.

“[Fitzgerald, Alvarez & Ciummo]'s argument to blame it on the Court and blame it on the People, uh, when it appears that it's the defense who's making a motion either personally or through his attorney or at least, at a minimum, Mr. Camacho has not expressed any objection to the continuance until October – of the multiple continuances until October of 2018. [¶] . . . [¶]

“. . . [Camacho] had counsel representing him; and, presumably, in some type of communication with them; and so, you know, that's still a basis of impugning the reasons for the continuances to him based on his counsel's multiple requests. [¶] . . . [¶]

“. . . Well, the other factor is the risk of prejudice, the length of his hospitalization and – is a loss of a significant right; but, uh, as far as preparing for the defense, uh, in an SVP trial, I don't find any prejudice.

“I mean, it's still going to be based on expert opinions, based on the nature of the defense, based on whether he continues to suffer from a mental disorder, whether he presents a substantial danger to the public, and at least from the reports which are available, that's – those conditions all still exist”

The court confirmed June 15, 2021, as the trial date and continued the matter for a readiness conference on June 10, 2021.

DISCUSSION

I. Relevant law

“Under the SVPA, the state can civilly commit an individual found to be an SVP indefinitely for confinement and appropriate treatment in a state hospital.” (*People v. Tran* (2021) 62 Cal.App.5th 330, 347 (*Tran*)). “An SVP is ‘a person who has been convicted of a sexually violent offense against one or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.’” (*Id.* at pp. 346-347, quoting § 6600, subd. (a)(1).)

“An SVP petition must be supported by at least two evaluations by mental health experts appointed by the Director of State Hospitals opining that the person meets the commitment criteria. [Citations.] After the petition is filed, the trial court must ‘review the petition and determine whether the petition states or contains sufficient facts that, if true, would constitute probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release.’ [Citation.] If the court finds that the petition is facially sufficient, it must hold a probable cause hearing within 10 days. [Citation.] The probable cause hearing may be continued upon a showing of good cause. [Citation.] If probable cause is found, the subject of the petition is entitled to a trial. [Citations.]” (*Tran, supra*, 62 Cal.App.5th at p. 347, fn. omitted.)

“ ‘The SVPA does not establish a deadline by which a trial on an SVP petition must be held after the trial court finds probable cause to believe the inmate is an SVP.’ [Citation.] Further, because it is a civil proceeding—not a criminal prosecution—the Sixth Amendment right to a speedy trial does not apply. [Citation.] Nevertheless, ‘[b]ecause civil commitment involves a significant deprivation of liberty, a defendant in an SVP proceeding is entitled to due process protections.’ [Citation.] This includes the due process right to a *timely* trial. [Citation.]” (*Tran, supra*, 62 Cal.App.5th at p. 347, fn.

omitted.) “ ‘Neither the California Supreme Court nor the United States Supreme Court has decided what test is to be applied in deciding a due process/timely trial claim in an SVP proceeding.’ [Citation.] California Courts of Appeal have consistently applied the tests articulated in *Barker* . . . and *Mathews* [Citations.]” (*Id.* at pp. 347-348.)

Barker “set forth a nonexhaustive list of four factors for courts to consider when determining whether the right to a speedy trial has been violated: (1) the length of the delay; (2) who is to blame for the delay; (3) the defendant’s assertion of the right; and (4) prejudice. [Citations.] None of these factors is ‘a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant. . . . [T]hese factors have no talismanic qualities; courts must still engage in a difficult and sensitive balancing process.’ [Citation.]” (*Tran, supra*, 62 Cal.App.5th at p. 348.)

Mathews “articulated a more general balancing test of three factors ‘for resolving what process is constitutionally due’ [citation]: (1) the private interest affected by the government action; (2) ‘the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards’; and (3) the government’s interest. [Citation.] Like the *Barker* test, the *Mathews* test ‘involve[s] careful balancing of the competing interests’ [Citation.]” (*Tran, supra*, 62 Cal.App.5th at p. 348.)

II. Standard of review

“We review for abuse of discretion a trial court’s ruling on a motion to dismiss for prejudicial pretrial delay.” (*People v. Superior Court (Vasquez)* (2018) 27 Cal.App.5th 36, 55 (*Vasquez*)). “Under an abuse of discretion standard, ‘ “[t]he trial court’s findings of fact are reviewed for substantial evidence, its conclusions of law are reviewed de novo, and its application of the law to the facts is reversible only if arbitrary and capricious.” ’ [Citations.]” (*Ibid.*)

“Findings of fact are reviewed under a ‘substantial evidence’ standard. [Citation.] The standard is deferential: ‘When a trial court’s factual determination is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court begins and ends with the determination as to whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, which will support the determination’ [Citation.]” (*People v. Superior Court (Jones)* (1998) 18 Cal.4th 667, 681, italics & fn. omitted.) “Under the substantial evidence standard of review our role does not involve a reevaluation of the evidence. Rather, we presume the existence of every fact the court could reasonably have deduced from the evidence.” (*People v. Fultz* (2021) 69 Cal.App.5th 395, 416.) For instance, “when two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the trial court. If such substantial evidence be found, it is of no consequence that the trial court believing other evidence, or drawing other reasonable inferences, might have reached a contrary conclusion.” (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 874, italics omitted.)

Ultimately, a reviewing court is “required to uphold [a discretionary] ruling if it is correct on any basis, regardless of whether such basis was actually invoked.” (*In re Marriage of Burgess* (1996) 13 Cal.4th 25, 32, citing *Davey v. Southern Pacific Co.* (1897) 116 Cal. 325, 329.)

III. Analysis

In denying Camacho’s dismissal motion, the court expressly invoked the *Barker* test but did not mention the *Mathews* test. Consistent with the approach of our sister courts, we will analyze the due process claim under both. (See *Tran, supra*, 62 Cal.App.5th at p. 348.)

a. *Barker*

i. Length of the delay

In 2005, Camacho was committed to the custody of the former State Department of Mental Health. In late 2006, a petition to extend his SVP commitment was filed. In early 2007, Camacho appeared in court and waived the probable cause hearing. Thereafter, for approximately five years, no trial was conducted. In 2012, a petition for Camacho’s recommitment was filed. Thereafter, for over six years, neither a probable cause hearing nor a trial was conducted. In October 2018, Camacho “demand[ed] jury trial” and “request[ed] speedy trial rights.” Up to when the dismissal motion was filed on March 11, 2021, no trial was conducted. “[T]hese substantial delays weigh in [Camacho]’s favor.” (*Tran, supra*, 62 Cal.App.5th at p. 349.)

ii. Blame for the delay

“In the *Barker* analysis, the reason for the delay is the ‘flag all litigants seek to capture.’ [Citation.] ‘A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay.’ [Citation.]” (*People v. Williams* (2013) 58 Cal.4th 197, 239 (*Williams*).)

Here, the record shows the delay was at Camacho’s request or agreement. His right to due process was not violated.

A November 6, 2006 medical evaluation reported that Camacho continued to satisfy SVP criteria and a petition to extend his commitment was filed in late 2006.

Camacho appeared in court twice in early 2007. On February 8, 2007, he waived the probable cause hearing. On March 29, 2007, Camacho entered a general time waiver. He was then returned to the custody of the State Department of State Hospitals. The

matter was continued for various reasons, i.e., “for hospital status,” “for Dr report / Trial setting,” or “for receipt of Dr report.” The court set but later vacated a May 12, 2008 trial date.

At a May 16, 2008 trial setting conference, Camacho’s counsel entered a general time waiver. The public defender subsequently declared a conflict in July 2008 and, in August, Davis was appointed to represent Camacho. Two updated medical evaluations reported that Camacho continued to meet SVP criteria. Camacho was transported back to the superior court from the State Department of State Hospitals and he appeared in person at 18 trial setting conferences held between October 10, 2008, and May 7, 2009. He entered a general time waiver at the December 23, 2008 conference.

Camacho appeared in person at three readiness conferences held between July 16 and August 6, 2009. The court set but later vacated an August 17, 2009 trial date. Camacho appeared in person at five proceedings held between August 17, 2009, and February 8, 2010.

At a February 25, 2010 trial setting conference, in Camacho’s absence, Davis entered a time waiver. Apart from the time waivers entered on December 23, 2008, nothing in the record explicitly indicates why the matter was put over at the other proceedings held between October 10, 2008, and February 8, 2010. At each of these proceedings, Camacho appeared in person and no objection was raised. There is no hint that the prosecution “engaged in deliberate delay tactics or acted in bad faith.” (*Tran, supra*, 62 Cal.App.5th at p. 352.)

Given the change in Camacho’s legal representation as well as the submission of medical evaluations unfavorable to him, both of which occurred at around the same time, one could reasonably deduce that the court continued the matter largely “to ensure adequate preparation and a fair trial” (*Williams, supra*, 58 Cal.4th at p. 251), which inured to Camacho’s “direct benefit” (*Tran, supra*, 62 Cal.App.5th at p. 353). (See *Townsend v. Superior Court* (1975) 15 Cal.3d 774, 782 (*Townsend*) [trial court “must

carefully navigate procedurally between ‘the Scylla of delay and the Charybdis of ineffective and inadequate representation’ ”].)

On or after March 11, 2010, Camacho was returned to the custody of the State Department of State Hospitals and would not make another court appearance—in person or via video—until July 5, 2018. Between June 17 and December 16, 2010, at least 14 trial setting conferences were held, and Davis entered time waivers at 10 of them. At the October 12, 2010 conference, the matter was specifically continued “by all parties.” Two updated medical evaluations prepared in 2010 reported that Camacho continued to meet SVP criteria.

In 2011, at least 13 more trial setting conferences were held. At the February 11 and 24, 2011 conferences, the parties expressly agreed to continue the matter. At the April 14, 2011 conference, the deputy district attorney advised the court that Davis—who was not present—was “still waiting to confirm experts.”

Between January 5 and March 15, 2012, six trial setting conferences were held and Davis entered general time waivers at five of them. At the March 15, 2012 conference, the matter was specifically continued “by DA and defense.” After a petition for Camacho’s recommitment was filed, seven “trial setting / pre-probable cause” conferences were held between April 10 and August 21, 2012, and Davis entered general time waivers at five of them. At the April 10 and July 31, 2012 conferences, the parties expressly agreed to continue the matter. After the court set a probable cause hearing for March 19, 2013, four readiness hearings were held between December 4 and 20, 2012, and Davis entered general time waivers at each of them.

Following three more proceedings held between January 8 and 29, 2013, the court vacated the pending probable cause hearing date. Nine proceedings were held between March 19 and December 19, 2013. At the June 20, 2013 proceeding, the parties expressly agreed to continue the matter. The court set a probable cause hearing for February 20, 2014.

Ten proceedings were held in 2014, none of which was the probable cause hearing.

Nine proceedings were held in 2015 and the matter was continued at each one. Four updated medical evaluations were prepared in 2015, three of which were unfavorable to Camacho.

Eight proceedings were held in 2016 and the matter was continued at each one. At the April 21 and September 15, 2016 proceedings, the court expressly found good cause to continue.

Following three more proceedings held between January 19 and March 16, 2017, the court set a probable cause hearing for April 20, 2017. Due to Davis's unavailability, the matter was continued to July 20, 2017. On that date, the court found "good cause to continue due to contract negotiations regarding attorney Davis." Four more proceedings were held between August 17 and November 16, 2017. At the November 16, 2017 proceeding, a continuance "at request of counsel" was granted. The matter was continued to January 11, 2018.

On January 11, 2018, the deputy district attorney informed the court that Davis—who was not present—"requested a continuance." Subsequently, due to Davis's unavailability, the matter was continued to February 22, 2018. The matter was then continued to May 17, 2018, at the parties' mutual request.

Nothing in the record suggests that the prosecution engaged in deliberate delay tactics or acted in bad faith at the proceedings held between June 17, 2010, and the early part of 2018. (See *Tran, supra*, 62 Cal.App.5th at p. 352.) Instead, in view of the two unfavorable medical evaluations in 2010, the deputy district attorney's remark at the April 14, 2011 trial setting conference that Davis was "still waiting to confirm experts," and the three unfavorable medical evaluations in 2015, one could reasonably infer that Davis—on behalf of Camacho—entered time waivers and either requested or acquiesced to continuances in order to secure more favorable evaluations. (See *Williams, supra*, 58

Cal.4th at p. 251; *Townsend, supra*, 15 Cal.3d at p. 782; *Tran, supra*, 62 Cal.App.5th at p. 353.) In fact, one such evaluation was obtained in 2015, though it depicted the minority view. There also appear to be valid reasons given for some of the continuances, namely Davis’s unavailability and “good cause” “contract negotiations.” (See *Williams, supra*, at p. 239.)

At the May 17, 2018 proceeding, the court instructed counsel to arrange video conferencing. Ostensibly, the matter was continued to allow time to prepare. (See *Williams, supra*, 58 Cal.4th at p. 239 [valid reasons justify appropriate delay].) At a July 5, 2018 proceeding, Camacho appeared via video, the deputy district attorney was absent, and the court found “good cause to continue at Davis’[s] request.” The matter was continued to September 20, 2018. On that date, over the People’s objection, the court granted Davis’s request for a continuance. (See *Tran, supra*, 62 Cal.App.5th at p. 352 [no suggestion that the prosecution “engaged in deliberate delay tactics or acted in bad faith”].) At an October 2, 2018 proceeding, when Camacho was “not brought to video for court by hospital,” the matter then was continued to October 4, 2018. (See *Williams, supra*, at p. 239.) At the October 4, 2018 proceeding, Camacho appeared via video and “demand[ed] jury trial.” At an October 18, 2018 readiness conference, he appeared via video and “request[ed] speedy trial rights.” The court vacated a pending April 2, 2019 trial date and set trial for December 11, 2018. At a November 6, 2018 readiness conference, Camacho appeared in person and moved to dismiss the commitment petition for prejudicial pretrial delay. Fitzgerald, Alvarez & Ciummo was appointed to represent Camacho in connection with this motion and the matter was continued to November 29, 2018, to allow counsel to research the issue. (See *Williams, supra*, at p. 251; *Townsend, supra*, 15 Cal.3d at p. 782; *Tran, supra*, at p. 353.) Subsequently, the court relieved Davis (who declared a conflict), appointed Fitzgerald, Alvarez & Ciummo to represent Camacho for all purposes, and granted its request for a continuance. At a December 6, 2018 readiness conference, Camacho appeared in person

and entered a general time waiver. The court vacated the pending trial date, set trial for February 19, 2019, and ordered Camacho's return to the custody of the State Department of State Hospitals.

Given the change in Camacho's legal representation, one could reasonably deduce that the court continued the matter and Camacho entered a time waiver "to ensure adequate preparation and a fair trial" (*Williams, supra*, 58 Cal.4th at p. 251), which inured to Camacho's "direct benefit" (*Tran, supra*, 62 Cal.App.5th at p. 353).

At a January 24, 2019 readiness conference, the People expressly requested a continuance. There was no objection by either Camacho—who appeared via video—or Fitzgerald, Alvarez & Ciummo. The court vacated the pending trial date. Four trial setting conferences were held between March 21 and May 16, 2019, and Camacho appeared via video at each of them. At the March 21, May 9, and May 16, 2019 conferences, Fitzgerald, Alvarez & Ciummo "request[ed] additional time" and the People did not object. At the April 18, 2019 conference, the parties mutually agreed to continue the matter. At a June 4, 2019 proceeding, after Camacho was unable to appear via video due to technical difficulties, Fitzgerald, Alvarez & Ciummo "request[ed] additional time" and the People did not object. At a June 27, 2019 proceeding, Camacho was able to appear via video. Fitzgerald, Alvarez & Ciummo "request[ed] additional time" and the People did not object. Except for the June 4, 2019 proceeding, Camacho appeared via video at every proceeding between January 24 and June 27, 2019, and acquiesced to the continuances. (See *Williams, supra*, 58 Cal.4th at p. 240.) On July 18, 2019, Camacho appeared via video and requested a trial date. The court set trial for October 15, 2019. Camacho was subsequently transported back to the court from the State Department of State Hospitals. At an October 11, 2019 readiness conference, Fitzgerald, Alvarez & Ciummo's request to "vacate trial due to currently [being] in trial on another case" was granted for "good cause" by the court. Camacho, who appeared in person, entered a general time waiver and the court set trial for December 3, 2019. On that date, Camacho

appeared in person and Fitzgerald, Alvarez & Ciummo requested a continuance to file a motion, which was granted. The court set trial for February 18, 2020, and ordered Camacho's return to the custody of the State Department of State Hospitals.

At a February 13, 2020 readiness conference, Fitzgerald, Alvarez & Ciummo moved to continue the trial. The People did not object and the court vacated the pending trial date. Camacho, who appeared via video, entered a general time waiver. Between July 18, 2019, and February 13, 2020, Camacho attended every proceeding, either in person or via video. Although he initially requested a trial date, he later entered time waivers and acquiesced to the continuances. (See *Williams, supra*, 58 Cal.4th at p. 240.) As a result of the COVID-19 pandemic, a scheduled April 9, 2020 proceeding was vacated. (See *id.* at p. 239.) Seven proceedings were held between June 11, 2020, and February 16, 2021, three of which Camacho attended via video. On July 13, 2020, Camacho was unable to appear via video due to technical difficulties.

On January 25 and February 16, 2021, he was unable to appear via video due to pandemic-related measures. Nevertheless, Camacho—either personally or through his attorney—acquiesced to the continuances. (See *Williams, supra*, 58 Cal.4th at p. 240.) At a February 19, 2021 proceeding, Camacho appeared via video and Fitzgerald, Alvarez & Ciummo “request[ed] additional time to file” a motion to dismiss the commitment petition for prejudicial pretrial delay. The People did not object and the court granted a continuance. The dismissal motion was filed on March 11, 2021.

Hence, the record contains substantial evidence that the delay was “the result of defense counsel’s agreement or . . . explicit request.” (*Tran, supra*, 62 Cal.App.5th at p. 350.) “As a general rule, ‘delays caused by defense counsel are properly attributed to the defendant, even where counsel is assigned.’ [Citation.]” (*Id.* at p. 349.) This rule “‘is not absolute. Delay resulting from a systemic “breakdown in the public defender system,” [citation], could be charged to the State.’ [Citation.]” (*Ibid.*; see *id.* at p. 350 [“ [A]n assigned counsel’s failure “to move the case forward” does not warrant

attribution of delay to the State.’ ”]; cf. *People v. DeCasas* (2020) 54 Cal.App.5th 785, 810 [“deleterious effects” of staffing cuts hindered public defender’s ability to effectively represent the defendant]; *Vasquez, supra*, 27 Cal.App.5th at pp. 71-73 [dramatic staffing cuts and increased workload hampered public defender’s ability to dedicate necessary resources to the defendant’s case]; *People v. Litmon* (2008) 162 Cal.App.4th 383, 403 [“[A]ny chronic, systematic postdeprivation delays in SVP cases that only the government can rectify must be factored against the People.”].) However, the record does not support such a finding. (See *Tran, supra*, at p. 352 [“Without a more developed factual record, we cannot make a determination whether the defense delays were justifiable, or ‘whether the lack of progress was attributable to each attorney’s own inability to properly manage or prioritize his or her caseload, or whether the performance of individual attorneys was indicative of unreasonable resource constraints, misallocated resources, inadequate monitoring or supervision, or other systemic problems.’ ”].)

iii. Assertion of right

In applying *Barker*’s “assertion-of-right” factor, “ [t]he issue is not simply the number of times the accused acquiesced or objected; rather, the focus is on the surrounding circumstances, such as the timeliness, persistence, and sincerity of the objections, the reasons for the acquiescence, whether the accused was represented by counsel, the accused’s pretrial conduct (as that conduct bears on the speedy trial right), and so forth. [Citation.] The totality of the accused’s responses to the delay is indicative of whether he or she actually wanted a speedy trial.’ [Citation]” (*Williams, supra*, 58 Cal.4th at p. 238.)

The petition to extend Camacho’s SVP commitment was filed in late 2006. A separate petition for recommitment was filed in 2012. However, Camacho first asserted his right to a timely trial on October 18, 2018. (Cf. *In re Butler* (2020) 55 Cal.App.5th 614, 629-630, 635, 649 [the defendant made “sincere and repeated demands for speedy trial” starting a month after filing of commitment petition].) Up to October 18, 2018,

Camacho waived time repeatedly and requested or acquiesced to the numerous continuances, either in person or through his attorney. (See *ante*, at pp. 13-17; cf. *Tran, supra*, 62 Cal.App.5th at p. 353 [“Defendant made numerous demands to speed up the proceedings and objections to his counsel’s requests for continuances.”].)

iv. Prejudice

“We assess prejudice in view of three ‘interests of defendants which the speedy trial right was designed to protect’—namely, ‘(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired.’ ” (*Tran, supra*, 62 Cal.App.5th at p. 353, quoting *Barker, supra*, 407 U.S. at p. 532.)

Here, the length of Camacho’s pretrial incarceration “is undoubtedly oppressive and would do little to minimize [his] anxiety and concern” (*Tran, supra*, 62 Cal.App.5th at p. 353) and “constitutes some degree of prejudice” (*ibid.*). Nevertheless, regarding “the ‘most serious’ type of prejudice, the inability to adequately prepare his defense” (*Williams, supra*, 58 Cal.4th at p. 236), the record contains substantial evidence that the passage of time improved Camacho’s prospects: the first medical evaluation opining that he no longer satisfied SVP criteria was prepared on April 27, 2015. In addition, while “ ‘excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify’ ” (*Tran, supra*, at p. 354), Camacho cannot benefit from this presumption because substantial evidence demonstrates that he—not the state—was responsible for the delay (see *ante*, at pp. 13-19; *Tran, supra*, at p. 354).

v. Balancing of factors

Of the four *Barker* factors, only one—the length of the delay—unequivocally weighs in Camacho’s favor. Accordingly, we conclude that the court did not abuse its discretion when it denied Camacho’s dismissal motion.

b. *Mathews*

i. Private interest affected

Camacho “was subjected to a significant curtailment of his liberty during his extended pretrial detention.” (*Tran, supra*, 62 Cal.App.5th at p. 354.) “ ‘The right to be free from involuntary confinement is fundamental and deprivation of this right requires due process.’ [Citation.]” (*Id.* at pp. 354-355.) The People “acknowledge[] that freedom from involuntary civil confinement as an SVP is significant.”

ii. Risk of erroneous deprivation

The original petition to commit Camacho as an SVP was filed on August 22, 2002. A probable cause hearing and a trial were conducted on September 24, 2002, and November 11, 2005, respectively. Camacho was found to be an SVP beyond a reasonable doubt and committed to the custody of the State Department of State Hospitals. (Cf. *In re Butler, supra*, 55 Cal.App.5th at pp. 625-626 [the defendant detained for 13 years awaiting trial on original SVP petition]; *People v. DeCasas, supra*, 54 Cal.App.5th at pp. 789-801 [no trial during 13-year-period following filing of original SVP petition]; *Vasquez, supra*, 27 Cal.App.5th at p. 40 [the defendant detained for over 17 years awaiting trial on original SVP petition].) A medical evaluation prepared on November 6, 2006, reported that Camacho continued to satisfy SVP criteria and a petition to extend his commitment was subsequently filed. (See *Tran, supra*, 62 Cal.App.5th at p. 355 [“[T]he initial SVP petition had to be supported by evaluations by mental health experts concluding that defendant met the SVP commitment criteria.”].) Thereafter, “throughout the life of the case, [Camacho] was reevaluated numerous times to assess whether he still met the SVP criteria.” (*Ibid.*, fn. omitted.) The risk of erroneous deprivation “was mitigated by the procedural safeguards required by the SVPA.” (*Ibid.*)

iii. Government's interest

“There is no question that ‘the state has a compelling protective interest in the confinement and treatment of persons who have already been convicted of violent sex offenses, and who, as the result of current mental disorders that make it difficult or impossible to control their violent sexual impulses, represent a substantial danger of committing similar new crimes [citations]’ [Citations.]” (*Tran, supra*, 62 Cal.App.5th at p. 355.)

iv. Balancing of factors

Substantial evidence demonstrated that “[a]ny risk of an erroneous deprivation of [Camacho]’s liberty was reasonably mitigated by the procedural requirements of the SVPA” (*Tran, supra*, 62 Cal.App.5th at p. 355) and “tip[ped] the scales in favor of [a] finding that [he] was provided with all the process that he was due” (*ibid.*). Once again, we conclude that the court did not abuse its discretion when it denied Camacho’s dismissal motion.

DISPOSITION

The order to show cause is discharged and Camacho’s writ petition is denied. Upon finality of this opinion, the stay of trial proceedings is vacated. (*State Water Resources Control Bd. v. Superior Court* (2002) 97 Cal.App.4th 907, 919.)

DETJEN, Acting P. J.

WE CONCUR:

SNAUFFER, J.

DE SANTOS, J.

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **Ciro Camaco v. Superior Court of Merced
County**

Case Number: **TEMP-XJ23WGGH**

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: **dougcfoster.esq@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	Second Petition for Review

Service Recipients:

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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.

3/2/2022

Date

/s/Douglas Foster

Signature

Foster, Douglas (205674)

Last Name, First Name (PNum)

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