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.: S 2 7 3 3 9 1 Court of Appeal No. F082798 Merced Co. Case No. 146207

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

REPLY

FITZGERALD, ALVAREZ & CIUMMO
Douglas C. Foster / SBN 205674
138 W. El Portal Drive, Suite D
Merced, CA 95348
dougcfoster.esq@gmail.com
Telephone: (209) 691-7280
Facsimile: (209) 691-7290

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES:

STATUTES:

JURY INSTRUCTIONS:

REPLY

I. PETITIONER CORRECTLY IDENTIFIED THE INTEREST AT STAKE UNDER *MATHEWS*.

Respondent contends that petitioner "misreads the second factor of the *Mathews* test [because] [t]he factor is not the erroneous deprivation of Camacho's speedy trial right" but "focuses on the risk that Camacho would erroneously be committed as an SVP." (Answer at p. 45; *citing Heller v. Doe* (1993) 509 U.S. 312, 331.)[1] Respondent then focuses on the outcome of petitioner's evaluations, urging the court to conclude that the outcome of any trial is a *fait accompli*. "A trier of fact has previously determined that [petitioner] suffered from a diagnosed mental disorder that made him likely to commit sexually violent acts … three out of four doctors who evaluated him concluded that he continued to meet the criteria for commitment as an SVP." (Answer at p. 46.) In essence, the argument is that since petitioner would be committed as an SVP anyway, the pre-trial delays don't matter.

Respondent takes no account of the fact that petitioner's initial commitment was for two years while a true finding on the recommitment petition would result in an indeterminate commitment. More importantly, respondent fails to recognize that it is the inability to exercise the trial right, not the outcome of the trial, that causes the deprivation of an SVP's fundamental liberty rights. "[T]he significance of 'the private interest … cannot be understated since it is 'the most elemental of liberty interests',

[1] Referring to *Mathews v. Eldridge* (1976) 424 U.S. 319

the fundamental right of a citizen 'to be free from involuntary confinement by his own government without due process of law.'" (*People v. Litmon* (2008) 162 Cal.App.4th 383, 399 (*Litmon II*).) Therefore, appropriate procedures are necessary to assure that a trial takes place. (*See*, *e.g.*, *People v. Superior Court* (*Vasquez*) (2018) 27 Cal.App.5th 36, 81 [risk of erroneous deprivation under *Mathews* found because outcome of jury trial was uncertain despite 23 positive evaluations]; *People v. DeCasas* (2020) 54 Cal.App.5th 785, 813 [risk of erroneous deprivation "considerable" where petitioner "has already experienced an extended confinement without any determination that he was an SVP" and had two psychologists opining that he did not meet criteria.]; *Zinermon v. Burch* (1990) 494 U.S. 113, 131 [confinement in hospital for five months "without a hearing or other procedure to determine" whether standard of confinement is met "clearly infringes on … liberty interest].)

The First District aptly summarized the issues in the *Butler* decision, writing:

> The risk of erroneous deprivation under the second *Mathews* factor also increases with the length of the delay. In some cases, a previous hung jury, or a subsequent negative evaluation, or renewed participation in sex offender treatment as the case ages may suggest the possibility that the alleged SVP might not be determined to be an SVP at trial, increasing this risk. But even absent such circumstances, extraordinary pretrial delay increases the risk that an erroneous deprivation of an alleged SVP's liberty interest has occurred. The right to

> a trial is not a mere formality. 'It may well be there was strong evidence in the People's favor, but it was the government's burden to prove [petitioner] was an SVP and [petitioner] had a right to present evidence showing he did not pose a risk to the public.'" (*In re Butler* (2020) 55 Cal.App.5th 614, 663 (emphasis supplied).)

Thus, "the governmental interest in continued detention of an alleged SVP lessens as the delay increases" (*Ibid.*) In light of the prejudice that continues to accumulate, "the responsibility falls on … the court to ensure that the matter proceeds efficiently and effectively, even where the alleged SVP might prefer delay." (*Ibid.*)

The risk that petitioner might suffer an erroneous deprivation of his liberty became manifest in 2015, upon receipt of Dr. Hupka's evaluation which opined that Mr. Camacho no longer met SVP criteria. Given that Drs. Maram and Korpi opined that continued participation in treatment was a protective factor for Mr. Camacho, the risk of erroneous deprivation grew each day that petitioner participated in programming but was unable to make his case to judge or jury.

When evaluating petitioner's case under *Mathews*, the question becomes whether the risk of an erroneous deprivation of Mr. Camacho's liberty right was protected "through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards." (*Mathews v. Eldridge* (1976) 424 U.S. 319, 335.) Here it was not. The trial court employed no

procedures to protect Mr. Camacho's trial rights. It sat passively by and allowed the years to slide away. The trial court made no effort to bring petitioner to court, to set or enforce deadlines, or to require good cause for continuances sought by counsel. For more than eight years, respondent court abdicated its responsibility to, "be vigilant in protecting the interests of the defendant, the prosecution, and the public in having a speedy trial." (*People v. Williams* (2013) 58 Cal.4th 197, 251.) In short, respondent court was complicit in permitting the risk of an erroneous deprivation of Mr. Camacho's liberty to increase year after year, when it had many well-established tools available to mitigate that risk. (*See also*, § IV, *infra*.)

II. RESPONDENT RELIES ON PRESUMPTIONS THAT ARE NEITHER LEGALLY COMPELLED NOR FACTUALLY ACCURATE.

A. There is No Legal Presumption That Petitioner Ratified His Counsel's Actions.

Respondent's entire opposition is premised on the notion that this Court must presume the truth of certain facts. Respondent asks the court to presume that: (1) Petitioner and Davis were in regular contact with one another (*see* Answer at pps. 31 [the record, "does not undermine a presumption that Davis was in regular communication with Camacho"], 37 [presumption that Davis was "in regular communication with Camacho"]); (2) Davis acted "in accord with Camacho's wishes … when he sought to delay trial and entered time waivers" (*Id.* at pps. 31–32, *see also*, pps. 38, 42 [presumption that Davis waived time or did not object to continuances in accord with petitioner's

wishes and with petitioner's assent]); (3) Petitioner "instructed Davis that he wanted to remain in the state hospital rather than being transported to the county jail for hearings at which the intent was for Davis to merely continue the case." (*Id.* at p. 32; *see also*, p. 45 [petitioner's absence from court was, "by his own, informed choice."]); and (4) Petitioner sought to "delay trial while he continued to progress thorough sex offender treatment." (*Id.* at p. 35; *see also*, p. 46 [presumption that Camacho wanted to delay his trial]). The cases cited by respondent are inapposite and the record does not support respondent's presumptions. In fact, the record clearly demonstrates that petitioner sincerely wished to proceed with trial.

The cases respondent cites: *People v. Stanley* (2006) 39 Cal.4th 913 and *Burt v. Titlow* (2013) 571 U.S. 12 simply do not stand for the propositions for which respondent cites them. Far from establishing legal presumptions that bind the court in petitioner's case, the quoted passages from *Stanley* and *Titlow* simply recite the legal standard applicable to claims of ineffective assistance of counsel. Petitioner makes no claim that Davis was ineffective.

Nor is there any rational foundation from which one can derive the content of petitioner's conversations with Davis as respondent's argument requires. As this Court has observed, "deferential scrutiny of counsel's performance is limited in extent and indeed in certain cases may be altogether unjustified." (*People v. Ledesma* (1987) 43 Cal.3d 171, 217.) Respondent would have the court apply the standard for ineffective assistance

claims to presume that petitioner affirmatively agreed to each and every continuance, despite his never having been present in court. Such an application of the standard is "altogether unjustified."

Similarly, an attorney's duty to, "respond promptly to reasonable status inquiries … and to keep clients reasonably informed" (*See* Cal. Bus. & Prof. Code § 6068(m)) does not create any legal presumption applicable to the facts of petitioner's case or to the merits of petitioner's claim. In fact, this Court declined to draw an inference like the one urged by respondent in two different cases involving quasi-criminal proceedings. (*See, People v. Blackburn* (2015) 61 Cal.4th 1113, 1130 [declining to presume waiver based on proffered presumption that counsel would "discuss all pertinent matters that will arise or that have arisen in pretrial hearings".]; *People v. Tran* (2015) 61 Cal.4th 1160, 1168–1169 [same].)

In fact, the law is exactly the *opposite* of what respondent contends. "Presuming waiver from a silent record is impermissible. The record must show, or there must be an allegation and evidence which show, that an accused … intelligently and understandingly [waived the right]. Anything less is not waiver." (*Carnley v. Cochran* (1962) 369 U.S. 506, 516; *see also*, *Aetna Ins. Co. v. Kennedy* (1937) 301 U.S. 389, 393 [courts should not presume acquiescence in the loss of fundamental rights.].) The *Vasquez* court recognized the problem with respondent's approach when it wrote:

> It does not appear from the record that during the first 14-year period the trial

> court took meaningful action to set deadlines or otherwise control the proceedings and protect Vasquez's right to a timely trial. While it may be that Vasquez was not seeking a speedy trial because he was facing evaluations supporting his commitment, we cannot tell because Vasquez was not present in court during most of this period. Neither is there a record of any inquiry by the trial court as to why the case was dragging on for so many years. Even where the attorneys stipulate to continue a trial date, the trial court has an obligation to determine whether there is a good cause for the continuance. The trial court also has a responsibility absent a written time waiver to inquire of a defendant whether he or she agrees to the delay. Had the trial court inquired of Vasquez during this first 14-year period, we would know whether Vasquez was seeking a speedy trial, or was content to let his case be continued so long as the evaluations supported his commitment. (*Vasquez*, *supra*, 27 Cal.App.5th at p. 75; emphasis supplied.)

Despite this long-standing authority, respondent asks this Court to conclude from an entirely silent record that Davis could effectively waive both petitioner's right to be personally present *and* his right to a speedy trial merely by appearing in court on petitioner's behalf. The law neither compels nor supports such a conclusion.

B. Professional Advice in the Legal Environment Created by the SVPA.

A finding of ineffective assistance is not a prerequisite to finding that petitioner's due process rights were violated. The SVPA itself, "does not delineate a timeframe in which an alleged SVP's trial must be conducted once the court has determined the petition is supported by probable cause." (*People v. Landau* (2013) 214 Cal.App.4th 1, 27.) As respondent notes, Mr. Camacho was initially committed as an SVP in 2005, just prior to the passage of Proposition 83 in November 2006. Proposition 83 changed the term of confinement for SVP defendants from two-years to an indeterminate term of commitment upon a finding that a person met criteria as an SVP. (*See*, Answer at p. 8.) Thus, when the government filed the recommitment petition, Mr. Camacho was for the first time facing a lifetime commitment to the state hospital. Moreover, it was unclear at that time what rules applied to the timing of trials conducted under the SVPA.

"A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time … There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way." (*Strickland v. Washington* (1984) 466 U.S. 668, 689.) In evaluating Davis's performance, it is important to keep in mind that the 2006 amendments to the SVPA resulted in a period

of "substantial legal uncertainties, not resolved until at least early 2008" surrounding application of the act to individuals committed prior to the 2006 amendment. (*People v. Castillo* (2010) 49 Cal.4th 145, 163.)

It was not until April 2008, that the Sixth Circuit issued its decision in *Litmon II*, *supra*, recognizing that SVP defendants have the right, "to be heard at a 'meaningful time' as a matter of due process. (*See*, 162 Cal.App.4th at p. 399). In 2013, the *Landau* decision articulated the first legal test to determine whether an SVP defendant's due process rights were violated by excessive pretrial delay. (*Landau*, *supra*, 214 Cal.App.4th at p. 33.) Finally, in *Vaquez*, a California Court ruled for the first time that a defendant who suffers excessive pretrial delay under the SVPA is denied due process. (*See*, *Vasquez*, *supra*, 27 Cal.App.5th 36, 83.) Amidst this uncertainty, Davis would be issuing sound legal guidance to Mr. Camacho by advising him that the safest course of action was to remain at the hospital participating in sex offender treatment and await a favorable evaluation.

The problem, of course, is that simply because a particular strategy is advisable does not mean that it is what the client wants. Evidence that a particular strategy existed is no evidence whatsoever that a particular individual agreed with implementing it; nor is it evidence the strategy, once employed, should continue indefinitely. Some affirmative evidence is required. In petitioner's case, however, as was the case in *Vasquez*, "there is no evidence in the record to support

[respondent's] contention that [Camacho] did not want to have a trial on the petition." (*Vazquez*, *supra*, 27 Cal.App.5th at p. 62.)

C. The Facts Support the Sincerity of Petitioner's Claim.

Regardless of whether Mr. Camacho initially agreed to delay his trial, merely acquiesced in Davis's strategy, or actively disagreed with it, the landscape clearly changed in 2015. That year, petitioner received a favorable evaluation from Dr. John Hupka, who opined that Mr. Camacho no longer met criteria for confinement as an SVP. Drs. Maram and Korpi also recognized Camacho's progress in treatment, with Korpi indicating that Camacho was "ever so close" to not meeting criteria. This placed petitioner in a position to argue that he was amenable to treatment in the community and that amenability created reasonable doubt about whether it was, "necessary to keep [petitioner] in custody in a secure facility to ensure the health and safety of others." (CALCRIM 3454) Moreover, petitioner could continue in the treatment program while awaiting trial, further strengthening his case, and potentially shifting the opinions of the other evaluators.

But petitioner's case was not set for trial in 2015. (*See,* Ex. A at pps. 21–22.) It was not set for trial in 2016 or 2017, despite being on the court's calendar a total of 18 times. (*Id*. at pps. 22–24.) Mr. Camacho was not present in court for any of these hearings to voice his opinion. Nevertheless, respondent asks this Court to presume that Davis was simply implementing petitioner's instructions each time the case was delayed.

Respondent cites no evidence to support this presumption. On the other hand, basic inferences from the record demonstrate that there were disagreements between petitioner and his counsel.

On May 17, 2018, Mr. Davis participated in a discussion with the trial court and deputy district attorney about the need for an *in-camera* hearing. (Ex. A at p. 24.) Petitioner was not present at that time. (*Ibid.*) Following that discussion, the court set a date for an *in-camera* hearing and directed counsel to set up video conferencing to facilitate Mr. Camacho's presence. (*Ibid.*) The specific request for an *in-camera* hearing suggests the existence of concerns regarding the attorney-client relationship which necessitated a discussion with the court outside of the presence of the District Attorney.[2]

Though the *in-camera* proceedings did not take place on the date originally scheduled, petitioner and Davis were both present at an *in-camera* hearing on July 5, 2018. (*See,* Ex. A at p. 25.) After those discussions, the court found it necessary to make a good cause finding to grant Mr. Davis's request to continue. (*Ibid.*)[3] This is again indicative of a disagreement between petitioner and his counsel, since no good cause finding would have been required if petitioner consented to Davis's request.

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[2] *See*, *People v. Madrid* (1985) 168 Cal.App.3d 14, 19 ["the better practice is to exclude the district attorney … whenever information would be presented during the hearing to which the district attorney is not entitled, or which could conceivably lighten the prosecution's burden of proving it's case." (citations omitted).]

[3] This was one of only 5 good cause findings made in this case's more than 20-year history.

Petitioner did not come before the court again until October 4, 2018, when he demanded a jury trial. (*Id* at p. 26.)[4]

The circumstances of the October 4, 2018, hearing provide further evidence of petitioner's sincerity. First, the court ordered the parties back only two weeks later for a "readiness" hearing – an odd title given that the trial was still six months away. (*See*, Ex. A at p. 25.) Second, the court ordered the hospital to permit petitioner to call Davis. (*Ibid*.) In addition to seriously undermining respondent's assumption that Davis and Camacho were in regular communication, this fact demonstrates that there were unresolved issues between Davis and Camacho at the close of the October 4 hearing.

The nature of those issues became apparent on October 18, 2018, when Camacho demanded the court set a speedy trial. (*See*, Ex. A at p. 26.) By this time, petitioner had been Davis's client for ten years. Mr. Camacho's most recent evaluations were favorable, and there was a credible argument that he could be safely returned to the community. Despite this, Davis doubted he could be ready to proceed by December. (*Ibid*.) It was against this backdrop that petitioner finally said, "enough," and brought his motion to dismiss on November 6, 2018. (*Ibid*.) The timing and circumstances surrounding petitioner's speedy trial demand clearly rebuts respondent's assertion that, "Camacho did not

[4] Notably, the *Vasquez* decision was filed on September 12, 2018. If petitioner's intentions were as cynical as respondent claims, there would have been no reason to wait until November to raise the issue.

actually want his case to proceed to trial in a timely manner." (Answer at p. 38.)

Respondent's blithe assertion that Mr. Camacho's lack of desire for a speedy trial is evidenced by his having, "no qualms with waiving time to allow his current counsel over two years to prepare and file what turned out to be a 25-page motion to dismiss" both ignores the record and unfairly maligns defense counsel. Fitzgerald, Alvarez & Ciummo was appointed for all purposes on November 29, 2018. (Ex. A at p. 27.) Petitioner's new attorneys faced the challenge of coming up to speed with his case, obtaining updated evaluations, and investigating the merits of the speedy trial claim. Additionally, in early 2019, staffing changes caused a change in primary attorney.[5] Nevertheless, petitioner's case was set for trial on October 15, 2019. (Ex. A at pps. 28-29). On September 12, 2019, petitioner's matter was confirmed for trial but later had to be continued because defense counsel was in trial on another matter. (*Id.* at p. 29.) After a failed attempt to get the trial underway in December 2019, petitioner's trial was set to commence on February 18, 2020, but was continued for good cause on the defense's written motion. (*Id.* at p. 30.) The pandemic struck prior to the next trial date and jury trials came to a halt.

But the pandemic did not prevent the courts of appeal from issuing two important decisions regarding the speedy trial right in SVP cases. In August 2020, the Second District issued the

[5] Petitioner's matter was initially assigned to attorney Lauri Partin. Ms. Partin left the firm, and petitioner's matter was re-assigned to current counsel on 4/18/2019.

decision in *DeCasas* in which it criticized the trial court for "enabl[ing] and compound[ing] 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 for the delay.'" (*DeCasas*, *supra*, 54 Cal.App.5th at p. 810.) Then, in October 2020, the First District issued the *Butler* opinion finding a due process violation under circumstances clearly analogous to petitioner's case. (*Butler*, *supra*, 55 Cal.App.5th at p. 664.) Under those circumstances, Mr. Camacho chose to temporarily forego trial and litigate the speedy trial issue. Counsel filed the written motion to dismiss in March 2021. (Ex. A at p. 32.)

Respondent's contention that "[a]ll indications and presumptions are that Camacho did indeed want to delay his trial" (Answer at p. 47) is entirely unsupported by the evidence. Respondent asks this Court to conjure legal presumptions out of thin air in order to create evidence that petitioner's demand for a speedy trial lacked sincerity, while at the same time ignoring the plain evidence in the record amply demonstrating Mr. Camacho's efforts to take his case to trial.

III. PREJUDICE

Respondent contends that petitioner has failed to demonstrate sufficient prejudice to justify a finding that petitioner's due process right was violated. (*See* Answer at pps. 38–41.) In this regard, respondent argues that "pretrial incarceration in SVP cases is not as oppressive or as anxiety producing as it is in criminal cases." (*Id.* at p. 39.) Respondent

then claims concerns that "witnesses [may] die or disappear … [or be] unable to recall accurately events of the distant past" are not "implicated" in petitioner's case. (*Id.* at p. 40.) Finally, respondent argues that this Court should simply ignore long-established precedent holding that government negligence in bringing a defendant to trial triggers a presumption of prejudice. (*Doggett v. United States* (1992) 505 U.S. 647, 657.) Respondent urges this Court to find that the *Doggett* "presumption should [not] apply in the context of a civil commitment scheme like the SVPA" because, "the question at trial focuses on the events as they exist at the time of trial, not at a time in the past." (*Id.* at p. 41.) Each of these contentions is meritless.

A. Pretrial Confinement of an SVP is Oppressive.

Respondent contends that this Court should not view pretrial confinement of an SVP in the same way it does pretrial confinement of criminal defendants. This argument not only ignores multiple appeals court decisions, but it also fails to account for the fact that SVP defendants have already served sentences for their crimes. They remain detained only on the say so of medical professionals opining about future dangerousness.

As noted by the *Butler* court, the problem with respondent's argument "is that it starts from the flawed premise that the extended pretrial confinement of alleged SVPs is otherwise justifiable." (*Butler*, *supra*, 55 Cal.App.5th at p. 652.) As the *Vasquez* court observed, "it is the loss of time spent in pretrial custody that constitutes prejudice … discounting the time [petitioner] spent in pretrial confinement under [respondent's]

theory assumes the right to a jury trial is a mere formality." (*Vasquez*, *supra* 27 Cal.App.5th at p. 63.) Moreover, "[t]he loss of liberty produced by an involuntary commitment is more than a loss of freedom from confinement. It is indisputable that commitment to a mental hospital 'can engender adverse social consequences to an individual' and that '[w]hether we label this phenomena "stigma" or choose to call it something else … we recognize that it can occur and that it can have a very significant impact on the individual." (*Litmon II*, *supra*, 162 Cal.App.4th 383, 400; *quoting Addington v. Texas* (1979) 441 U.S. 418, 425-426.) There is no basis for distinguishing between the oppression experienced by individuals facing civil commitments from those facing criminal conviction. Each suffers myriad adverse consequences as a result of pretrial detention.

B. Loss of Evidence

Respondent argues that petitioner's case does not trigger concerns about the loss of evidence. While it is true that "many of the typical concerns triggered by delayed criminal prosecutions – faded memories, lost evidence, and missing or deceased witnesses" are often "not [ ] as pressing in SVP trials" (*Butler*, *supra*, 55 Cal.App.5th at p. 651) that does not mean that such concerns never arise.

> SVP evaluations are typically comprehensive and draw from numerous sources, including probation and police reports, investigative reports from prosecuting agencies, court records and transcripts, face-to-face interviews with the SVP defendant, prison and hospital rule violation reports, records of arrests,

> convictions and juvenile dispositions, and hospital records including staff treatment notes, medication reports, and attendance records." (*People v. Superior Court* (*Couthren*) 41 Cal.App.5th 1001, 1010–1011.)

Some of these documents may be lost to time. More importantly, authors of reports or individuals who made statements that were included in those reports may move away or die. Thus, while concerns about missing witnesses may not be as "pressing" in SVP trials, those concerns do still exist. Those concerns have only been heightened by California's new approach to case-specific hearsay.

Since at least 2009, it has been clear that experts may not testify to certain hearsay information in SVP cases. (*See*, *People v. Dean* (2009) 174 Cal.App.4th 186, 197.) In 2018, *People v. Yates* held that "[a]dmission of expert testimony relating case-specific hearsay … that was neither subject to a hearsay exception nor independently established by competent evidence" in SVP trials is error. (*See*, 25 Cal.App.5th 474, 486.) Thus, while some of the concerns regarding the loss of witnesses and evidence is mitigated by the nature of SVP proceedings, the law now requires that hearsay declarants must testify. Whenever civilian witnesses must be called as witnesses, the typical concerns associated with speedy trial delays are implicated. As such, it is simply incorrect to conclude – as respondent does – that "no such concerns are implicated" in petitioner's case. (Answer at p. 40.)

C. Presumed Prejudice.

Finally, respondent writes that, "Camacho provides no reason why [the *Doggett* rule presuming prejudice] should apply in the context of a civil commitment scheme like the SVP Act where the question at trial focuses on events as they exist at the time of trial, not at a time in the past." (Answer at p. 41.) Respondent cites no authority for the proposition that an SVP trial is immune from *Doggett's* rule that, "such is the nature of the prejudice presumed that the weight we assign to official negligence compounds over time as the presumption of evidentiary prejudice grows." (505 U.S. at p. 657.) Nor does respondent demonstrate why the First District was incorrect when it applied, *Doggett* to SVP proceedings, stating that "[a]ffirmative proof of particularized prejudice is not essential to every speedy trial claim … excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify … [and] *its importance increases with the length of delay*." (*See*, *Butler*, *supra*, 55 Cal.App.5th at pps. 652-653; *quoting*, *Doggett*, *supra* 505 U.S. at pps. 655-656, italics in original.)

Indeed, respondent seeks to turn established law on its head, suggesting that prejudice is mitigated over time by "participating in the sex offender treatment program." (Answer at p. 39.) But to the contrary, as in *Vasquez* the delay in petitioner's case is presumptively prejudicial. "Those 17 years are gone … There can be no question that a 17-year delay from the filing of

the petition caused an 'oppressive' period of pretrial confinement." (*Vasquez*, *supra*, 27 Cal.App.5th at p. 64.)

The more than twenty years that have elapsed since the first petition against Mr. Camacho similarly cannot be recovered. Here, petitioner has been facing SVP commitment proceedings since 2002. After being committed for a 2-year period in 2005, Mr. Camacho returned to court in 2006 and was told he was facing a lifetime commitment. Since 2015, one doctor opined that Mr. Camacho no longer met criteria. Despite this favorable opinion, Mr. Camacho has not been able to make his case to a jury. Prejudice is not only presumed, but amply demonstrated.

IV. THE TRIAL COURT WAS ON NOTICE OF ITS DUTY TO PROTECT THE SPEEDY TRIAL RIGHTS OF SVP DEFENDANTS

Respondent notes that, "the actions of the People, and those of the trial court, are more properly characterized as acceding in Camacho's desire to delay trial rather than as negligence." (Answer at pps. 33–34.) The problem with this analysis is that trial courts were on notice that acceding to repeated continuances in SVP cases was problematic. (*See*, *e.g.*, *Orozco v. Superior Court* (2004) 117 Cal.App.4th 170, 179 [trial court "should not acquiesce" in "leisurely" approach to SVP cases]; *Litmon v. Superior Court* (2004) 123 Cal.App.4th 1156, 1172 (*Litmon I*) ["every effort consistent with existing statutory law must be made to bring SVP petitions to trial expeditiously"]; *Litmon II*, *supra*, 162 Cal.App.4th at p. 406 ["[t]he ultimate responsibility for bringing a person to trial on an SVP petition at a 'meaningful time' rests with the government."]; *Williams*, *supra*, (2013) 58 Cal.4th 197,

251 ["trial courts must be vigilant in protecting the interests of the defendant, the prosecution, and the public in having a speedy trial."] Despite these repeated warnings, the respondent court continued to … do nothing.

Trial courts have an affirmative obligation to bring SVP cases to trial. To argue the contrary, "flies in the face of precedent … which creates just such an affirmative obligation." (*Butler*, *supra*, 55 Cal.App.5th at p. 659.) As was the case in *Butler*, there is no "indication in the record that the trial court ever inquired as to why [petitioner's] case had dragged on after so many years [or why] no attempt was made to determine whether [defense counsel] or prosecution had done anything to prepare adequately for trial." (*Id.* at pps. 660-661.) Respondent court effectively abandoned its role in protecting petitioner's rights.

Respondent's answer makes no attempt to justify the trial court's complete abdication of responsibility. While respondent notes that Welfare and Institutions Code § 6603 now requires that requests for continuances must be made in writing and may only be granted upon a finding of good cause which must be set forth on the record, (*see*, Answer at pps. 47–48) the answer makes no effort to explain the trial court's failure to take these steps. Nor does respondent offer any rationale why the trial court, "acquiesced in the leisurely manner" in which the case was proceeding, despite being on notice to avoid such delays. (*Orozco*, *supra*, 117 Cal.App.4th at p. 179.) Like the court of appeal, respondent simply notes that there was no deliberate attempt to delay the proceedings, then moves back the oft repeated

contention that Camacho consented to the delays. (*See*, Answer at pps. 32–34.)

Respondent's argument appears to be that trial courts have no responsibility to determine whether a person detained on SVP proceedings have *in fact* given consent to over two decades worth of continuances. So long as the defendant is silent, respondent's logic would permit defense counsel to continue an SVP case indefinitely simply by representing that his client agreed to the delay. If *Barker's* admonition that, "the primary burden [is] on the courts and the prosecutors to assure that cases are brought to trial" is to mean anything, the absolute abdication of that obligation that occurred in petitioner's case must be recognized to violate Due Process.

CONCLUSION

In summary, petitioner has demonstrated (1) that he has suffered a presumptively prejudicial delay in bringing his case to trial; (2) that he clearly asserted his right to a speedy trial; (3) that he was prejudiced because of the delay; and (4) that the official negligence of state actors – the prosecution and trial court – are responsible for the delays. Thus, under the test set forth in *Barker v. Wingo* (1972) 407 U.S. 514, this Court should find that petitioner's due process right to a speedy trial was violated.

Further, under the test set forth in *Mathews v. Eldridge*, petitioner has demonstrated that (1) "forced civil confinement for mental health constitutes 'a massive curtailment of liberty,' requiring due process protection. (*Butler*, *supra*, 55 Cal.App.5th at p. 663.); (2) that there is a significant risk of an erroneous

deprivation of petitioner's liberty rights; and (3) that "the state has no interest in detaining individuals who do not qualify as [an SVP, and] … interest in continued detention of an alleged SVP lessens as the delay increases." (*Ibid.*)

Thus, under both tests articulated by the United States Supreme Court, petitioner has demonstrated that his due process right to a speedy trial was violated. The only possible remedy is dismissal of the petition.

Dated: 10/3/2022

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 5,413 words, as determined by the computer program used to prepare this document.

Dated: 10/3/2022

Respectfully submitted,

Douglas C. Foster

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

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **CAMACHO v. S.C (PEOPLE)**
Case Number: **S273391**
Lower Court Case Number: **F082798**

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Law Offices of Douglas C. Foster
Law Firm