

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

DANIEL JAMES MACY,

Petitioner,

v.

THE SUPERIOR COURT OF
SANTA CRUZ COUNTY,

Respondent;

THE PEOPLE,

Real Party in Interest.

H037138

(Santa Cruz County
Super. Ct. No. ME-43)

ORDER

THE COURT:

The above captioned opinion, filed on June 15, 2012, is hereby modified as follows: On page 17 of the opinion, after "It is reasonable to conclude, as the court did in *Gray*," add the following footnote:

We reject petitioner's claim that the petition must be dismissed and *Gray* is no longer good law as the result of the amendment of section 6604.1, subdivision (b), by Proposition 83, which was approved in November 2006 and provided for indeterminate rather than two-year terms of commitment for SVP's (§ 6604). In the last sentence of subdivision (b) of section 6604.1, the initiative measure merely substituted "all commitment proceedings" for "extended commitment proceedings" so that sentence now reads: "The rights, requirements, and procedures set forth in Section 6603 shall apply to all commitment proceedings." Petitioner contends that this change somehow abrogated *Gray* and mandates a

different interpretation of the last sentence of subdivision (c) of section 6603, which was unchanged by Proposition 83. (See *Gray, supra*, 95 Cal.App.4th at p. 328 ["Section 6603, subdivision (c), merely provides that [following a split of opinion] the new evaluators shall conduct their evaluations 'in accordance with' section 6601, subdivision (f). It does not, on its face, provide any consequences for a split of opinion between the second set of evaluators. [Fn. omitted.] Accordingly, we are unwilling to imply the drastic requirement of dismissal"].) He further argues that this court must judicially correct a "drafting oversight" in the second to last sentence of section 6604.1, subdivision (b), ("[t]he provisions of subdivisions (c) to (i), inclusive, of Section 6601 shall apply to evaluations performed for purposes of extended commitments"), which was not amended by Proposition 83, by substituting "all commitment proceedings" for "extended commitments" and this "judicial correction" thereby makes section 6601 applicable to all evaluations, including updated evaluations conducted pursuant to section 6603. Petitioner has not provided any legislative history whatsoever to suggest that the initiative measure was intended to abrogate *Gray's* interpretation of section 6603 or make section 6601 applicable to updated evaluations prepared pursuant to section 6603 rather than merely to evaluations performed to commence SVP proceedings under a new petition, including a petition to extend a commitment under previous law to an indeterminate term. It is unreasonable to conclude that Proposition 83's amendment of section 6604.1 did cryptically what it could have accomplished simply by amending section 6603 to require dismissal when updated evaluations conducted pursuant to section 6603 produce a second split of opinion.

There is no change in the judgment.

The petition for rehearing is denied.

ELIA, J.

PREMO, Acting P. J.

MIHARA, J.