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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,	
Plaintiff and Respondent,	E044352
v.	(Super.Ct.No. CR45283)
SCOTT CHRISTIAN KOPAY,	OPINION
Defendant and Appellant.	

APPEAL from the Superior Court of Riverside County. Carl E. Davis,* Helios (Joe) Hernandez, David Wesley,** and Donal B. Donnelly,*** Judges. Affirmed.

Rudy Kraft, under appointment by the Court of Appeal, for Defendant and

* Retired judge of the Riverside Superior Court, assigned by the Chief Justice pursuant to article VI, section 6, of the California Constitution.

** Judge of the Superior Court for Los Angeles County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

*** Judge of the Superior Court for Imperial County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Steve Oetting and Donald W. Ostertag, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant appeals the trial court's order extending his involuntary treatment as a mentally disordered offender (MDO) within the meaning of Penal Code sections 2970 and 2972.[1] Defendant contends the trial court abused its discretion by failing to address his request to represent himself. Defendant also asserts that the trial court abused its discretion in granting numerous continuances of the trial of the involuntary recommitment petition. Finding no reversible error, we affirm.

1. Factual and Procedural Background

On February 25, 1993, defendant was sentenced to 14 years in state prison, after pleading guilty to first degree burglary (§ 459) and assault with a deadly weapon (§ 245, subd. (a)(1)). Defendant also admitted two serious prior felony convictions (§ 667, subd. (a)).

On April 6, 2004, defendant was certified as an MDO under section 2962 and transferred to Atascadero State Hospital (Atascadero).

On January 3, 2007, the Riverside County District Attorney filed a petition for extending defendant's involuntary commitment one year, until April 6, 2008 (§ 2970).

[1] Unless otherwise noted, all statutory references are to the Penal Code.

Defendant's involuntary commitment was scheduled to expire on April 6, 2007. After numerous continuances, the trial on the petition began on August 23, 2007.

The only witness who testified at trial was Dr. Lev Iofis, a staff psychiatrist and defendant's treating doctor at Atascadero. Defendant first became Iofis's patient in May 2004. Iofis diagnosed defendant with schizophrenia, disorganized type, which is the rarest and most severe type of schizophrenia. Symptoms include delusions, hallucinations, disorganized thinking, bizarre behavior, inability to speak coherently, inappropriate affect, lack of social involvement, lack of facial expression, poverty of speech, poor grooming, and self-neglect. Defendant displayed most of these symptoms.

Iofis saw defendant almost every business day (Monday through Friday) during defendant's treatment, although Iofis did not necessarily talk to him or treat him. Iofis interviewed defendant once or twice a month. Defendant did not respond well to treatment. He never went into remission while at Atascadero. Iofis believed defendant's mental condition would not go into remission without further treatment, and if his treatment was stopped, defendant's symptoms would worsen. Based on Iofis's observation of defendant in the courtroom in August 2007, defendant's condition appeared to have worsened from when Iofis last saw him in January 2007.

Iofis testified that, in his opinion, the best course of treatment for defendant would be hospitalization in a locked facility and treatment with antipsychotic medication, with monitoring to ensure defendant took his medication. Otherwise defendant would not take his medication because he does not believe he is mentally ill and believes he does not need medication. Iofis also stated that defendant poses a danger to others because he is

psychotic and delusional, he responds to hallucinations, his condition is not in remission, and he does not have insight into his condition. Iofis noted defendant assaulted another patient in April 2005, without any provocation, while defendant was delusional.

On August 29, 2007, the jury found defendant qualified as an MDO under sections 2970 and 2972. The same day, the trial court ordered defendant's involuntary treatment continued under section 2970 to April 6, 2008.

2. Right to Self-Representation

Defendant contends the trial court violated his right to self-representation by not addressing his request to represent himself. The court told defendant it would consider defendant's self-representation request later and then forgot about it.

In the middle of defense counsel and the court's discussion on defendant's motion either to dismiss the petition for recommitment or immediately transport defendant back to Atascadero, defendant interjected, "Your Honor, it does not matter to me. I like to go pro per. I'm making the motion to go pro per." The trial court responded that it would "take that up in just a minute," and continued discussing the motion to dismiss. The court apparently forgot to address defendant's self-representation request, and defendant did not raise the matter again in the lower court.

In criminal proceedings a defendant has both the right of representation and a concurrent constitutional right to self-representation. (*People v. Williams* (2003) 110 Cal.App.4th 1577, 1588 (*Frank Williams*).) Such is not the case with MDO proceedings because they are not punitive in nature. "[T]hey are considered civil proceedings, and therefore there is no *constitutional* right to self-representation. However, as the MDO

commitment statutes give defendants the right to appointed counsel, a defendant also could refuse counsel and represent him- or herself. The right only being statutory, any denial of a request to represent oneself is governed by due process principles and the decision is reviewed for an abuse of discretion." (*Ibid*.)

While the People recognize that *People v. Hannibal* (2006) 143 Cal.App.4th 1087, 1092-1093 (*Hannibal*), and *Frank Williams, supra*, 110 Cal.App.4th at pages 1583-1593, hold that an MDO has a statutory right to self-representation, the People argue these cases were wrongly decided because they are premised on the incorrect assumption that, because section 2972, subdivision (a) requires the court to advise an MDO of the right to representation, defendant inferentially also has the right to self-representation.

The People argue that section 2972, subdivision (a) implies that an MDO must be represented by counsel. We reject this overly broad interpretation of subdivision (b). Subdivision (b) of section 2972, states that "[i]f the person is indigent, the county public defender shall be appointed." This provision means no more than what it states. It does not preclude an indigent MDO from self-representation upon request. The provision merely requires that representation by the public defender be provided to an indigent MDO who wishes to be represented by an attorney.

We are not persuaded by the People's argument that section 2972 mandates an MDO be represented by an attorney. Rather we conclude, consistent with *Hannibal* and *Frank Williams*, that defendant had a statutory right both to representation by an attorney and self-representation: "The statute [section 2972] expressly gives the right to counsel to defendants in MDO proceedings and surely they have by implication the right to refuse

appointed counsel and represent themselves." (*Frank Williams, supra,* 110 Cal.App.4th at p. 1591.) The People fail to cite any persuasive case law to the contrary.

Defendant, however, forfeited or abandoned his self-representation right by not reasserting it after the court told defendant the court would consider it later and then forgot to do so. (*People v. Lloyd* (1992) 4 Cal.App.4th 724, 731-732; *People v. Skaggs* (1996) 44 Cal.App.4th 1, 7-8.) Perhaps defendant also forgot about his request or did not reassert it because he no longer wished to represent himself.

Also, under these circumstances, it could reasonably be concluded that defendant's request was made on a whim due to defendant's momentary dissatisfaction with his attorney. A request for self-representation under such circumstances could be construed as equivocal and fleeting, such that there was no violation of defendant's right to self-representation.

Even if there was error in the trial court not considering and granting defendant's self-representation request, such error was harmless under the *People v. Watson* (1956) 46 Cal.2d 818, 836 (*Watson*).) (*Hannibal, supra,* 143 Cal.App.4th at pp. 1092-1093, and *Frank Williams, supra,* 110 Cal.App.4th at pp. 1592-1593.) Defendant acknowledges that under *Hannibal* and *Frank Williams* the error is evaluated under the *Watson* harmless error standard. Defendant argues, however, that the trial court's failure to address defendant's self-representation request resulted in the elimination of any possibility of conducting a harmless error analysis since defendant never had an opportunity to explain why he wanted to represent himself. There thus is no way of knowing whether self-

representation would have resulted in a more favorable result and therefore the *Watson* harmless error analysis should not apply.

We disagree. There was overwhelming evidence supporting the court's finding that defendant qualified as an MDO and it is not reasonably probable that defendant would have achieved a more favorable result had he represented himself. (*Hannibal, supra,* 143 Cal.App.4th at p. 1092, and *Frank Williams, supra,* 110 Cal.App.4th at pp. 1592-1593.)

3. Continuances of the Proceedings

Defendant contends there were illegal and excessively prolonged delays in bringing to trial the petition for continued involuntary treatment.

A. Failure to Comply with the 180-Day Limitation Period

Defendant claims the Department of Mental Health failed to comply with the 180-day limitation period stated in section 2970. Under section 2970, if defendant's severe mental disorder is not in remission or cannot be kept in remission without treatment, the medical director of Atascadero is required to submit to the district attorney his written evaluation on remission not later than 180 days prior to the termination of defendant's involuntary commitment, "unless good cause is shown for the reduction of that 180-day period." (§ 2970.)

Defendant's involuntary commitment period in question began on April 6, 2006, and was scheduled to expire a year later, on April 6, 2007. The only evidence in the record indicating when the medical director of Atascadero provided the district attorney with a written evaluation on defendant's remission consists of a declaration in support of

the petition provided by supervising deputy district attorney Miguel Valdovinos. The declaration states that the petition allegations "are based, in part, on the Request for Petition of Continued Involuntary Treatment dated January 2, 2006, Affidavit, and Evaluation on Remission of mentally Disordered Offender Prior to End of Parole Term from David K. Fennell, M.D., Medical Director, Atascadero State Hospital and Recommended Continuing Care Plan/Discharge Summary." The declaration further states that these documents were attached to the petition, but they were not attached.

As both parties acknowledge, the date of January 2, *2006*, stated in Valdovinos's declaration as when the medical director provided the written evaluation on remission, appears to be incorrect since the petition was filed on January 3, *2007*, and the petition pertained to the one-year involuntary commitment period beginning on April 6, 2006.

Defendant argues in his opening brief that the declaration merely contains a typo and the date actually was January 2, *2007*, the day before the petition was filed. The People argue that this cannot be assumed since there is no evidence in the record establishing the actual date the Atascadero medical director provided the remission report. The district attorney requests this court to take judicial notice under Evidence Code section 452, subdivision (h) of a copy of the medical director's actual recommendation for defendant's recommitment, which is dated August 26, 2006.

Plaintiff's request for judicial notice of the recommitment report is denied because such evidence is not the type of evidence that qualifies under Evidence Code section 452, subdivision (h) as "Facts and propositions that are not reasonably subject to dispute and

are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (Evid. Code, § 452, subd. (h).)

Defendant, however, concedes in his reply brief that the August 26, 2006, letter, which the People request judicially noticed, demonstrates that the department of mental health complied with the 180-day deadline. Defendant therefore has withdrawn his claim that the 180-day deadline was violated, but raises in his reply brief the new argument that, assuming the recommitment report was provided to the district attorney in August 2006, the district attorney's delay in filing the petition until January 2007 was unreasonable and made it impossible for defense counsel to be prepared to go to trial before the 30-day cutoff for beginning trial by March 7, 2007.

This factual issue was not raised in the trial court or even in defendant's opening brief. (*Campos v. Anderson* (1997) 57 Cal.App.4th 784, 794; *People v. Saunders* (1993) 5 Cal.4th 580, 589-590.) The prosecution thus did not have an opportunity to present evidence refuting the contention or address the argument in the trial court or in the People's respondent's brief on appeal. Furthermore, the record on appeal does not contain any evidence as to when the recommitment report was provided, although the parties both agree the report was provided in August 2006. Defendant has not timely raised this argument and/or shown that any delay in filing the petition in January 2007 was without good cause and constituted prejudicial error.

In addition, defendant's reliance on *People v. Tatum* (2008) 161 Cal.App.4th 41 (*Tatum*) for the proposition that the delay in filing the petition constituted prejudicial error is misplaced. In *Tatum*, the defendant raised in the trial court an objection to the

delay in filing the petition and the trial court held the delay constituted prejudicial error. The petition was not filed until 33 days before expiration of the defendant's commitment and the trial court found that the delay was caused by the district attorney's inexcusable negligence, outrageous errors, and callousness. (*Tatum, supra,* at pp. 47, 53,65-66.) Such circumstances were not established in the instant case and the trial court reasonably found there was good cause for continuing the proceedings.

B. 30-Day Cutoff for Beginning Trial Before Expiration of Commitment

Defendant argues the trial court violated section 2972 by failing to begin the trial at least 30 days before expiration of his commitment on April 6, 2007. Section 2972 provides that a 2970 petition for continued involuntary treatment "shall commence no later than 30 calendar days prior to the time the person would otherwise have been released, unless the time is waived by the person or unless good cause is shown." (§ 2972, subd. (a).) Under this provision, defendant's trial should have begun no later than March 7, 2007. Since there was no express waiver of this provision, any trial delays after the 30-day cutoff must be justified by a showing of good cause. (*People v. Fernandez* (1999) 70 Cal.App.4th 117,133 (*Fernandez*).) We review the trial court's good cause findings for abuse of discretion. (*Ibid.*, *Tatum, supra,* 161 Cal.App.4th at p. 57.)

As with the 180-day limit discussed above, the 30-day limit for beginning the trial on the petition is directory, not mandatory. (*People v. Williams* (1999) 77 Cal.App.4th 436, 451 (*John Williams*); *Tatum, supra,* 161 Cal.App.4th at pp. 56-57.) The 30-day provision "contemplates a trial at least 30 days before the release date, presumably

because, under normal circumstances, a trial would take no longer than 30 days. However, the statute does not expressly set any deadline for completion of a trial, even if it begins more than 30 days before a release date. Nor does it limit continuances or otherwise prohibit a court from extending a trial beyond the release date if necessary," so long as the petition is filed prior to the offender's release date. (*John Williams, supra,* at p. 452; *Tatum, supra,* 161 Cal.App.4th at pp. 56-57; § 2972, subd. (e).)

In addition, "the waiver/good cause exception to the 30-day requirement does not expressly limit the amount of time . . . a court may excuse for good cause. And, under the exception, the statute does not expressly set any deadline for commencement or completion of a trial or prohibit either from occurring after an MDO's release date." (*John Williams, supra,* 77 Cal.App.4th at p. 452.) Here, as discussed below, there was good cause for not beginning the trial by March 7, 2007, and for the subsequent continuances.

C. Trial Continuances

Defendant complains that the trial court granted seven inappropriate trial continuances, over defendant's objection, without good cause. Defendant also objects to the length of the continuances, claiming the continuances were unreasonably long. Defendant argues that because the continuances were not justified by good cause, the prolonged delays in bringing his case to trial constituted prejudicial error requiring reversal of the judgment and dismissal of the petition for continued involuntary treatment. The trial, which began on August 24, 2007, was delayed over four months beyond expiration of the one-year involuntary commitment period on April 6, 2007.

Although *People v. Jenkins* (2000) 22 Cal.4th 900 (*Jenkins*) is a criminal case, our high court's analysis of whether good cause existed for various continuances in the proceedings is appropriate in the instant MDO proceedings. In *Jenkins*, the court explained that "A showing of good cause requires a demonstration that counsel and the defendant have prepared for trial with due diligence. [Citations.] When a continuance is sought to secure the attendance of a witness, the defendant must establish 'he had exercised due diligence to secure the witness's attendance, that the witness's expected testimony was material and not cumulative, that the testimony could be obtained within a reasonable time, and that the facts to which the witness would testify could not otherwise be proven.' [Citation.] The court considers '"not only the benefit which the moving party anticipates but also the likelihood that such benefit will result, the burden on other witnesses, jurors and the court and, above all, whether substantial justice will be accomplished or defeated by a granting of the motion."' [Citation.]" (*Jenkins, supra*, 22 Cal.4th at p. 1037.)

Applying this analysis, we conclude there was a sufficient showing of good cause for each of the continuances, including the length of each continuance. The continuances primarily were granted because those critical to the trial, such as counsel or the sole key witness, were unavailable. In addition several of the initial continuances were due to the unavailability of medical reports and delay in the court-appointed doctor examining defendant and submitting a report. For the reasons discussed below, we conclude that there was a sufficient basis for the trial court concluding that substantial justice would not

have been accomplished without the continuances. There was good cause for each of the continuances.

(1) The March 29, 2007, Hearing

The petition for recommitment was filed in January and defendant was transported to local custody for the purpose of appearing in court on the matter. At a hearing on February 2, 2007, the public defender was appointed to represent defendant and defendant denied the petition. The court ordered that a court-appointed doctor examine defendant and furnish a report by February 23.

On February 23, defense counsel told the court that defendant had not yet been evaluated and requested the matter be continued three weeks. The court continued the hearing to March 16, 2007. On March 16, the doctor's evaluation report was still not available. Pursuant to defense counsel's request, the hearing was continued to March 29, 2007. Defense counsel also noted at the March 16 hearing that defendant had not been transferred back to Atascadero from the county jail. The court ordered defendant transported back to Atascadero.

At the hearing on March 29, 2007, defense counsel requested the court to either dismiss the petition, because defendant had not been transported back to Atascadero, or order the director of the Department of Mental Health to show cause as to why the department was not accepting patients such as defendant and then to order the director to find a placement for defendant. Defense counsel complained that there was a freeze on Atascadero admitting patients, including patients such as defendant who were already admitted but ordered transported to jail for court proceedings. The trial court responded

that it did not have the authority to order the director to appear in court under such circumstances.

Defense counsel then demanded the trial begin immediately and noted that another judge had reserved the date of April 2, 2007, for trial, although the trial had not actually been set on that day. The prosecutor informed the court that no witnesses had been subpoenaed and there were no court days remaining prior to April 2, 2007.[2] The prosecutor added there was not enough time to notice the doctor witnesses. Defense counsel then moved to dismiss the case. The court denied the motion, stating that the only option was to house defendant in county jail. The court would not release him.

The court asked if the parties wanted the court to set a trial date. Defense counsel responded that she wanted the trial set on April 2, 2007. The court stated that it was not practical to assume the case could be tried in one day with expert witnesses. Therefore April 2 was not an option. The prosecutor requested May 1, 2007, which would allow sufficient time for trial preparation. Defense counsel stated she had a scheduling conflict since she had to try another case on April 30. The prosecutor said any day after May 1 would be fine, and suggested May 7. Defense counsel objected to delaying the trial until then and when asked when defendant would like the trial set, defendant again stated she wanted the trial to begin immediately, without providing a reasonable date. The court set the trial on May 7.

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[2] March 29, 2007, was a Thursday. The court was closed on Friday, March 30 for Cesar Chavez Day. April 2 was a Monday.

The May 7 trial date was not an unreasonable trial date since it provided both counsel sufficient time to prepare for trial. Defendant's demand that trial begin on the next court day was not reasonable since this was the first time the trial had been set and prosecution stated that witnesses needed to be subpoenaed, such as defendant's treating doctor, Dr. Iofis.

In addition, although defense counsel claimed she was ready for trial, it was apparent from the record that she in fact was not ready. Although defendant claims defense counsel was willing to go to trial immediately without the medical records, the records were key to the prosecution, as was the testimony of Dr. Iofis. It was reasonable to give the prosecution sufficient notice of the trial date to allow prosecution a minimal amount of time to subpoena Dr. Iofis and prepare for trial.

Defendant argues that consistent with the 10-day rule requiring a criminal case to be brought to trial within 10 days of a defendant declaring ready for trial, there was no good cause to continue the trial more than 10 days after defendant announced ready for trial on March 29, 2007. Defendant acknowledges the 10-day rule does not apply by statute to defendant's MDO case since it is not a criminal case. Nevertheless defendant argues that it supports the proposition that there was no good cause to schedule the trial on May 7, 2007, more than 10 days after defendant announced ready for trial on March 29, 2007.

Since the 10-day rule is inapplicable, it is irrelevant in determining whether there was good cause for setting the trial on May 7, 2007.

(2) May 7, 2007, Hearing

At the time of the May 7 hearing, the prosecution filed a written request to continue the trial to May 21, 2007, on the grounds there were outstanding medical records and reports, which neither party had received. Defendant objected to the continuance and moved to dismiss the case for failure to bring the case to trial before the end of defendant's commitment.

During the May 7 hearing, defense counsel stated that she was ready and available to try the case, and objected to a continuance. The prosecutor responded that none of the medical records, which formed the whole basis for defendant's recommitment, were available.

The trial court found that under such circumstances there was good cause to continue the trial to May 21. We agree since this was the first continuance and the records were critical to the trial. Although it is unclear why the prosecution did not obtain the records sooner, the record indicates that previous delays were due in part to the court-appointed doctor not having examined defendant and provided a report.

(3) June 4, 2007, Hearing

Prior to the June 4, 2007, hearing, the case was continued three times after it was initially set to begin on May 7, 2007. These three continuances, on May 21, 24, and 30, 2007, were due to defense counsel's unavailability. Defendant acknowledges there was good cause for these three continuances (*Tatum, supra,* 161 Cal.App.4th at p. 62; *Fernandez, supra,* 70 Cal.App.4th at p. 133), but argues that they did not justify subsequent continuances caused by the prosecution.

On June 4, 2007, the prosecution filed a motion requesting a two-week continuance on the grounds Iofis, defendant's primary treating physician at Atascadero, would be unavailable to testify until the week of June 21. At the hearing on June 4, 2007, defense counsel objected to a continuance, noting that Iofis had not been properly subpoenaed and defendant should have gone to trial by then. The trial court granted a continuance to June 21 on the ground Iofis was unavailable.

Defendant argues that since the prosecution did not bother to subpoena Iofis and the court failed to inquire further into the actual circumstances leading to Iofis's unavailability, the prosecution failed to establish good cause for the continuance.

The trial court did not abuse its discretion in granting the continuance due to the unavailability of the prosecution's key witness. The court reasonably continued the trial to June 21, 2007, the date the prosecution stated Iofis would be available to testify.

(4) June 21, 2007, Hearing

On June 21, Iofis was still not available. The prosecutor informed the court that Iofis was still engaged in another matter but would be available at the beginning of the following week. The prosecution requested another brief continuance until Iofis was available. In addition, defense counsel and the prosecutor were trailing on trials, with the prosecutor's last day on June 26. Defense counsel objected to a continuance and moved to dismiss the case. The trial court found the People had established good cause to continue the trial one week, to June 27. The court denied defendant's motion to dismiss.

Defendant complains the prosecution did not use diligence in obtaining Iofis's presence on June 21 because there was no subpoena. But it is reasonable to conclude that

even had there been a subpoena, the trial court would have permitted a brief trial continuance rather than force Iofis to attend the trial since he was still engaged in another matter. There was no abuse of discretion in continuing the trial six days, to June 27, 2007.

(5) June 27, 2007, Hearing

Defendant asserts that continuance of the June 27, 2007, trial date was also not supported by good cause. On June 27, the prosecutor and defense counsel both announced they were ready for trial. Defense counsel estimated the trial would take five days. After a pause in the proceedings, the court stated that the jury trial would begin on July 5, "due to unavailability of counsel." Defense counsel orally and by written motion requested dismissal of the case on the grounds there had been many continuances and the case should have been tried long ago.

During the June 27 hearing, the court did not state which attorney was unavailable or whether both were unavailable for the five-day trial. The minute order, however, states that defense counsel was unavailable, and the court continued the trial and motion to dismiss to July 5. Since it appears the continuance was due to defense counsel's unavailability, although the record is somewhat unclear, we conclude defendant has failed to establish the continuance was without good cause (*Tatum, supra,* 161 Cal.App.4th at p. 62; *Fernandez, supra,* 70 Cal.App.4th at p. 133), particularly since the trial court stated at least one of the attorneys was unavailable and the trial was continued a brief period of time.

(6) July 12, 2007, Hearing

On July 5, 2007, defense counsel requested a continuance to July 12, 2007, due to being engaged in trial. The court accordingly continued the trial to July 12.

On July 12, 2007, the prosecution filed a written motion to continue the trial to July 30 because Iofis was unavailable on July 12, and July 30 was the soonest Iofis could testify. At the hearing on July 12, defense counsel stated she would not be available from July 23 until August 10. The court thus continued the trial to August 15, 2007.

On July 23, 2007, the court was informed that defendant's trial attorney was on vacation until August 13. The court set the case for trial on August 13, 2007, perhaps not realizing the court had previously set the trial on August 15.

There was good cause to continue the trial to August 13 since Iofis, a key witness, was unavailable. Then when Iofis was available to testify, defense counsel was gone on vacation. The length of the continuance was reasonable. The court continued the trial until the first day defense counsel was available, upon returning from her vacation.

(7) August 13, 2007, Continuance request

When the prosecutor attempted to serve Iofis with a subpoena to testify for trial on August 13, the prosecutor discovered Iofis was on vacation. The prosecution was thus unable to serve the subpoena personally but mailed the subpoena to Iofis. By the time defense counsel was back from vacation and available for trial, Iofis was on a prepaid vacation out of state. The court granted a week continuance of the trial to August 23, 2007.

The trial went forward on August 23, and the court denied defendant's motion to dismiss on the ground there was good cause for the trial continuances. The court also found defendant was not prejudiced by the delays.

As to each of the continuances, the trial court acted within its discretion to continue the trial for the period of time granted. On each occasion there was good cause. In most instances, either defense counsel, the prosecutor, or the key witness was unavailable. Each of these participants was critical to ensuring that defendant and the People received a fair trial. The delays did not prejudice defendant's right to a just outcome and did not result in prolonging defendant's commitment, since his commitment ultimately was extended anyway.

Defendant argues that he was prejudiced by the inability to prepare for trial in the time remaining prior to his release date of April 6, 2007, and he was involuntarily confined beyond the statutorily authorized release date of April 6. As to defendant's first argument, defendant has not established that filing the petition on January 3, 2007, prevented defendant from fully preparing for trial in the time remaining prior to his release date. (*Tatum, supra,* 161 Cal.App.4th at p. 61.) Defendant had three months to prepare for trial, prior to expiration of his release date on April 6, 2007. Other factors, such as the delay in the court-appointed doctor examining defendant and providing a report, contributed to the need to delay the trial.

As to the argument defendant was confined beyond his April 6 release date, this also does not constitute reversible error since there was good cause for each of the continuances and defendant was ultimately recommitted for another year.

Defendant also asserts that, as a consequence of the delays, his incarceration in jail was extended, resulting in defendant not receiving treatment at Atascadero. This occurred because Atascadero was no longer accepting new or returning patients after defendant was transported to the jail for purposes of appearing in court. This is not the type of prejudice that supports reversal of the judgment. Reversal is required only if it is reasonably probable that the result in the proceedings would have been more favorable to defendant in the absence of the error. (*Watson, supra,* 46 Cal.2d at p. 836.)

4. Disposition

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

s/Gaut
J.

We concur:

s/Richli
Acting P. J.

s/King
J.