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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

RONALD DEAN PATRICK,

Defendant and Appellant.

2d Crim. No. B172437
(Super. Ct. No. F340973)
(San Luis Obispo County)

Appellant, Ronald Dean Patrick, was transferred from state prison to Atascadero State Hospital (ASH) for psychiatric treatment pursuant to Penal Code section 2684.¹ While Patrick was an inpatient at ASH, he struck a hospital employee and was charged with two counts of battery by a prisoner pursuant to section 4501.5. Section 4501.5 states, in pertinent part, "[e]very person *confined in a state prison . . .* who commits a battery. . . shall be guilty of a felony and shall be imprisoned in the state prison" (Italics added.)

Patrick pled no contest to one count of section 4501.5, obtained a certificate of probable cause and appealed the judgment of conviction, contending that section 4501.5 does not apply to him because he was confined in a hospital, not a state prison. We agree and reverse.

¹ All statutory references are to the Penal Code unless otherwise stated.

FACTS AND PROCEDURAL HISTORY

Pursuant to section 2684, Patrick was transferred from state prison to ASH for psychiatric treatment. Patrick assaulted an ASH staff member on two separate occasions. Patrick was charged with two counts of battery by a person confined in state prison against one who is not a prisoner. Patrick pled no contest to one count of battery by a prisoner as part of a plea bargain. Pursuant to the plea bargain, Patrick was sentenced to the low term of two years in state prison, which was doubled due to a prior "strike" conviction.

Both during and after the plea, the court told Patrick it would issue a certificate of probable cause so he could "contest the legal issue of whether or not a 2684 prisoner should be subject to . . . 4501.5 [E]ven though you pled no contest, you can still appeal it."

The trial court issued the certificate and Patrick appeals contending that section 4501.5 does not apply to him because he was not confined in prison when he struck the hospital employee.

DISCUSSION

Appealability

The People argue that we should dismiss this appeal, despite the issuance of a certificate of probable cause, because Patrick's plea constitutes an admission he was confined in state prison at the time of the offense. We disagree.

We may consider an appeal from a conviction by plea where the defendant has filed a written statement with the trial court "showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings," and the trial court has "executed and filed a certificate of probable cause for such appeal with the clerk of the court." (§ 1237.5; *People v. Lloyd* (1998) 17 Cal.4th 658, 663.) The purpose of these screening requirements is to prevent unnecessary expenditures of judicial resources on wholly frivolous issues. (*People v. Hoffard* (1995) 10 Cal.4th 1170, 1179.)

Patrick filed such a statement with the trial court stating that section 4501.5 only proscribes battery by a prisoner confined in a state prison and ". . . defendant was

not confined to a prison, but to Atascadero State Hospital pursuant to Penal Code § 2684." This statement presented a reasonable legal ground on which to challenge the validity of the plea. (See, e.g., *People v. Soriano* (1992) 4 Cal.App.4th 781, 784-785 [challenge to plea for filing forged instrument is proper on grounds of legal impossibility - writing at issue not instrument under section 115 as matter of law].) Accordingly, the trial court executed and filed a certificate of probable cause to appeal.

We conclude that the appeal lies.

Does Section 4501.5 Apply to Patrick?

Patrick contends section 4501.5 does not apply to him because he was not "confined in prison" within the meaning of the statute. We agree. Because the issue is one of statutory construction, it is a question of law subject to our independent review. (*People v. Superior Court (Ortiz)* (2004) 115 Cal.App.4th 995, 999.) In construing statutes, we ascertain the intent of the Legislature so as to effectuate the purpose of the law. (*People v. Sinohui* (2002) 28 Cal.4th 205, 211-212; *Ortiz*, at pp. 999-1000.) We begin with the words of the statute and give those words their ordinary meaning. (*Ortiz*, at pp. 999-1000.) If the statutory language is clear and unambiguous, we need go no further. (*Ibid.*)

Section 2684 provides, in pertinent part, "[i]f, in the opinion of the Director of Corrections, the rehabilitation of any mentally ill . . . person confined in a state prison may be expedited by treatment at any . . . of the state hospitals under the jurisdiction of the State Department of Mental Health . . . , the Director of Corrections . . . shall certify that fact If the director of the appropriate department [of the Department of Mental Health] so determines, the . . . hospital shall receive the prisoner and keep him . . . until . . . the person has been treated to the extent that he . . . will not benefit from further care and treatment in the state hospital."

Pursuant to section 2684, Patrick had been transferred from state prison to ASH for psychiatric treatment. While at ASH, Patrick was charged with violating section 4501.5. For purposes of the chapter in which section 4501.5 is located, "[a] person is deemed confined in a 'state prison' if he is confined in any of the prisons and institutions

specified in Section 5003 by order made pursuant to law, including, but not limited to, commitments to the Department of Corrections . . . regardless of the purpose of such confinement" (§ 4504, subd. (a).) Section 5003 does not list ASH as one of the institutions for which the Department of Corrections has jurisdiction.

Section 4504, subdivision (b) also provides, in pertinent part, that "[a] person is deemed 'confined in' a prison although, at the time of the offense, he is *temporarily outside* its walls or bounds for the purpose of serving on a work detail . . . or for any other purpose for which a prisoner may be allowed temporarily outside the walls or bounds of the prison" (Italics added.) This statutory provision for temporary, constructive prison custody also does not apply to persons transferred to ASH under section 2684. Under section 2684, an inmate who is transferred to ASH would be returned to prison only if the hospital superintendent determines the inmate will no longer benefit by further care and treatment in the hospital. (*People v. Superior Court (Ortiz)*, *supra*, 115 Cal.App.4th at pp. 1001-1002.) Inmates are transferred to ASH for treatment, which may be permanent. (*Id.*, at p. 1002.) Accordingly, such transfer is not temporary.

We conclude that Patrick was not confined in state prison for purposes of section 4501.5. Accordingly, the judgment is reversed.

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PERREN, J.

We concur:

YEGAN, Acting P.J.

COFFEE, J.

Barry T. LaBarbera, Judge
Superior Court County of San Luis Obispo

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