

Filed 1/18/05

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

THE PEOPLE,

Plaintiff and Respondent,

v.

JOEY R. WATSON,

Defendant and Appellant.

2d Crim. No. B172763
(Super. Ct. No. F340614)
(San Luis Obispo County)
ORDER MODIFYING OPINION AND
DENYING REHEARING
[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on December 20, 2004, be modified as follows:

On page 6 at the end of the second full paragraph ending with the citation to *People v. Superior Court (Ortiz)*, insert the following:

Rehearing on Department's Regulations

In a petition for rehearing, respondent asks us to consider two Department of Corrections regulations that conflict with our interpretation of sections 2684 and 4504, subdivision (b). One regulation provides, "Inmates and parolees housed in Department of Mental Health hospitals [pursuant to section 2684] remain under the jurisdiction of the department and shall not be permitted to leave the hospital grounds without the specific authorization of the director." (Cal. Admin. Code, tit. 15, § 3369.1, subd. (c).) The term "department" means the Department of Corrections, and the term "director" means the Director of the Department of Corrections. (*Id.*, § 3000.) The other regulation provides:

"When an inmate is found to require mental health care not available within these resources, but which is available in the Department of Mental Health, the case will be referred to the director for consideration of *temporary* transfer to that department pursuant to Penal Code section 2684." (*Id.*, § 3360, subd. (b), italics added.) These regulations indicate that the Department of Corrections views inmates transferred to ASH pursuant to section 2684 as being "temporarily outside the walls or bounds of the prison" within the meaning of section 4504, subdivision (b).

Administrative regulations that involve an agency's interpretation of a statute are " ' . . . entitled to consideration and respect by the courts' [citation]" (*Bonnell v. Medical Bd. of California* (2003) 31 Cal.4th 1255, 1264.) But such " 'agency interpretations are not legal or . . . authoritative' [citation]. 'Courts must, in short, independently judge the text of [a] statute' [Citation.] . . . [T]he degree of deference accorded [to the agency's interpretation] should be dependent in large part upon whether the agency has a ' "comparative interpretative advantage over the courts" ' and on whether it has arrived at the correct interpretation. [Citation.]" (*Id.*, at pp. 1264-1265; see also *Yamaha Corp. of America v. State Bd. Of Equalization* (1998) 19 Cal.4th 1, 11-12.)

Here judicial deference is unwarranted. The Department of Corrections has no special expertise or technical knowledge giving it a " ' "comparative interpretative advantage over the courts." ' " (*Bonnell v. Medical Bd. of California, supra*, 31 Cal.4th at p. 1265.) Furthermore, the Department of Correction's "interpretation is incorrect in light of the unambiguous language of the statute[s]. We do not accord deference to an interpretation that is " ' "clearly erroneous." ' [Citations.]" (*Ibid.*)

[There is no change in the judgment.]

Respondent's petition for rehearing is denied.