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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re MERTON GEORGE YAHN
on Habeas Corpus.

A131798

(Lake County
Super. Ct. No. CR5509)

Petitioner, Merton George Yahn, is a sexually violent predator (SVP) (Welf. & Inst. Code, § 6600 et seq.).¹ He was committed to Coalinga State Hospital in the custody of the Director of the State Department of Mental Health on January 11, 2007 following a jury verdict on the People’s petition to extend his previous SVP commitment. (Former §§ 6604, 6604.1.) He contends that his present indeterminate term should be modified to a two-year term under the principles enunciated by the California Supreme Court in *People v. Castillo* (2010) 49 Cal.4th 145 (*Castillo*). In addition, relying on *People v. McKee* (2010) 47 Cal.4th 1172, he argues that his indeterminate term violates his federal equal protection rights because persons committed pursuant to other state civil commitment statutes serve shorter terms.

Guided by *Castillo, supra*, 49 Cal.4th 145, we exercise our discretion under the unique circumstances of Yahn’s case and apply principles of judicial estoppel. We, therefore, need not and do not decide other issues raised by him.

In our opinion, (*People v. Yahn* (Sept. 12, 2008, A116967) [nonpub. opn.]), we affirmed the superior court’s January 11, 2007 commitment order. When the petition to

¹ Further statutory references are to the Welfare and Institutions Code.

extend Yahn’s SVP commitment was initially filed, the Sexually Violent Predator Act (SVPA) specified a two-year term. (Former § 6604.) While the case was pending in the superior court, it was continued from time to time, and amendments to the SVPA changed the length of the statutory commitment from two years to an indeterminate term. Because of the prior continuances, and at the request of the prosecutor, the superior court set Yahn’s commitment at two years, and did not apply the statutory indeterminate term mandated by the amended SVPA. On appeal, however, we agreed with the Attorney General and held that the amended version of the SVPA applied. We directed the superior court to amend its order to commit Yahn for an indeterminate term. Our remittitur issued December 16, 2008.

On September 5, 2007, while Yahn’s appeal was pending in this court, the People timely filed a further Petition to Extend Commitment as a Sexually Violent Predator. On December 10, 2008, in response to our opinion, the superior court issued its minute order dropping that petition from calendar.

On May 24, 2010, the California Supreme Court issued its opinion in *Castillo*, *supra*, 49 Cal.4th 145, applying the judicial estoppel doctrine to enforce a stipulation by the Los Angeles County District Attorney, Los Angeles County Public Defender, and the Presiding Judge of the Los Angeles County Superior Court to the imposition of a two-year civil commitment to those against whom SVP petitions were pending at the time the SVPA was amended. In doing so, the high court rejected the Attorney General’s argument that the stipulated two-year term was unlawful and unenforceable. (*Id.* at pp. 171–173.)

Castillo explained “ ‘ ‘ ‘[j]udicial estoppel precludes a party from gaining an advantage by taking one position, and then seeking a second advantage by taking an incompatible position. [Citations.] *The doctrine’s dual goals are to maintain the integrity of the judicial system and to protect parties from opponents’ unfair strategies.* [Citation.] Application of the doctrine is discretionary.’ ” ’ [Citation.] The doctrine applies when ‘ “(1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in

asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake.” [Citations.]’ (*Aguilar v. Lerner* (2004) 32 Cal.4th 974, 986–987 [citation], italics added; see also *MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.* (2005) 36 Cal.4th 412, 422 [citation].)” (*Castillo, supra*, 49 Cal.4th at p. 155.)

We find the application of the doctrine of judicial estoppel to be appropriate here. As in *Castillo*, the unique circumstances of Yahn’s case establish (1) the People took two different positions—the District Attorney, representing the People at trial, sought and agreed to the two-year term, and the Attorney General, representing the People on appeal, argued that the District Attorney’s agreement was invalid and unenforceable; (2) these positions were taken in judicial proceedings; (3) the People successfully asserted in the trial court that the two-year term should apply; (4) the two positions taken by the People were wholly inconsistent with each other; and (5) the People did not agree to the two-year term as a result of ignorance, fraud, or mistake, but instead made an informed and considered decision. (*Castillo, supra*, 49 Cal.4th at p. 155.)

We, therefore, conclude that the agreement of the People to a two-year commitment should be enforced. In doing so, however, we do not order Yahn’s release. As we have noted, when we issued our opinion, (*People v. Yahn* (Sept. 12, 2008, A116967) [nonpub. opn.]), the People’s timely petition to extend Yahn’s January 11, 2007 commitment was pending in the superior court. While we agree with Yahn that the two-year commitment order of January 11, 2007 must be reinstated, the People may proceed upon the September 5, 2007 petition to extend his commitment. (See *People v. Whaley* (2008) 160 Cal.App.4th 779, 804.)

The petition for writ of habeas corpus is granted to the extent that, upon issuance of the remittitur herein, the Lake County Superior Court is directed to do the following:

- 1) Amend its order of January 11, 2007 to specify a two-year commitment.
- 2) Vacate its minute order filed December 10, 2008, and reinstate the Petition to Extend Commitment as a Sexually Violent Predator filed September 5, 2007 which may be amended to seek an indeterminate term.
- 3) Proceed in accordance with the law upon the September 5, 2007 petition to extend commitment.

In all other respects, the petition for writ habeas corpus is denied.

Marchiano, P.J.

We concur:

Dondero, J.

Banke, J.