

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)

Joey Reuben Watson appeals from the judgment entered following his no contest plea to battery by a prisoner in violation of Penal Code section 4501.5.¹ Section 4501.5 provides that a "person confined in a state prison" is guilty of a felony if he "commits a battery upon the person of any individual who is not himself a person confined therein"

Appellant admitted one prior serious or violent felony conviction within the meaning of California's "Three Strikes" law. (§§ 1170.12, subs. (a)-(d), 667, subs. (b)-(i).) He was sentenced to prison for four years. The sentence was ordered to run consecutively to the prison term he was already serving.

Appellant contends that, as a matter of law, he could not have violated section 4501.5 because the battery was committed after he had been transferred from state

¹ All statutory references are to the Penal Code.

prison to Atascadero State Hospital (ASH) pursuant to section 2684. As a result of the transfer, appellant maintains that he was no longer "confined in a state prison" within the meaning of section 4501.5. We agree and reverse.

Facts And Procedural Background

Robert Hopkins worked as a registered nurse in the admissions unit at ASH. On February 13, 2003, he was evaluating appellant, a new patient who had been transferred from prison to ASH pursuant to section 2684. Appellant "lunged at" Hopkins and struck him "about the face" one to three times.

After appellant was held to answer for violating section 4501.5, he moved to set aside the information. (§ 995.) Appellant contended that he had been committed without reasonable or probable cause because he had not been confined in a state prison when he had committed the battery. The motion was denied.

Appellant filed in this court a petition for a writ of prohibition. (§ 999a.) On September 30, 2003, we summarily denied the petition. (*Watson v. Superior Court*, No. B169997.)

Before pleading no contest, appellant's counsel said that appellant "will reserve the issue" whether a prisoner transferred to ASH pursuant to section 2684 is subject to section 4501.5. After taking the no contest plea, the trial court stated that, "at the time of judgment," it would indicate that appellant is entitled to "a certificate of probable cause to contest the ruling on the 995."

When the trial court sentenced appellant, it stated that he "is to be given a certificate of probable cause, to allow his appeal of the issue, regarding the application of these crimes to a 2684 prisoner"

The trial court subsequently granted appellant's request for a certificate of probable cause.

Appellant's Claim Is Cognizable On Appeal

Respondent contends that, because appellant pleaded no contest, his claim is not cognizable on appeal. "[W]hen a defendant pleads guilty or no contest and is convicted without a trial, only limited issues are cognizable on appeal. A guilty plea admits every element of the charged offense and constitutes a conviction [citations], and consequently issues that concern the determination of guilt or innocence are not cognizable. [Citations.] Instead, appellate review is limited to issues that concern the 'jurisdiction of the court or the legality of the proceedings, including the constitutional validity of the plea.' [Citations.]" (*In re Chavez* (2003) 30 Cal.4th 643, 649.) "A certificate of probable cause cannot render reviewable a claim that is otherwise not cognizable on appeal from a guilty plea. [Citations.]" (*People v. Collins* (2004) 115 Cal.App.4th 137, 149.)

Thus, if appellant were merely claiming that the evidence is insufficient to support his conviction, his claim would not be cognizable on appeal. (*People v. Lobaugh* (1987) 188 Cal.App.3d 780, 785.) But this is not appellant's claim. Instead, he is claiming that it was legally impossible for him to have committed a battery while "confined in a state prison" (§ 4501.5) because the battery occurred after he had been transferred to ASH pursuant to section 2684. Such a claim is cognizable on appeal where, as here, the underlying facts are undisputed, the trial court was put on notice of those facts before accepting the defendant's plea, and a certificate of probable cause has been filed. "[S]ince a trial court's acceptance of a negotiated plea which patently includes a legally impossible admission constitutes an act in excess of its jurisdiction, the validity of such a plea is an issue cognizable on appeal if the procedural requirements of . . . section 1237.5 [pertaining to the filing of a certificate of probable cause] are met." (*People v. Soriano* (1992) 4 Cal.App.4th 781, 783.)

In *Soriano* the defendant pleaded no contest to filing a " 'forged instrument, to wit, a death certificate' " in violation of section 115. (*People v. Soriano, supra*, 4

Cal.App.4th at p. 783.) The parties agreed that the defendant's "plea was defective because a death certificate is not an 'instrument' within the meaning of Penal Code section 115 . . . [citations]." (*Ibid.*) The *Soriano* court permitted an appeal from the conviction because it was legally impossible for the defendant to have violated section 115. (*Id.*, at pp. 784-785.)

In *People v. Jerome* (1984) 160 Cal.App.3d 1087, the defendant pleaded guilty to the charge of orally copulating a minor under 14 years of age. It was undisputed, however, that the victim was 15 years old, and the complaint so alleged. The appellate court concluded that, because it was legally impossible for the defendant to have committed the crime to which he had pleaded guilty, the trial court had exceeded its jurisdiction by imposing sentence for that crime. (*Id.*, at p. 1094.) But it did not permit the defendant to raise the issue on appeal because he had failed to obtain a certificate of probable cause. Instead, it treated the appeal as a petition for writ of habeas corpus. (*Id.*, at pp. 1094-1095.)

Unlike the defendant in *Jerome*, appellant obtained a certificate of probable cause. His claim of legal impossibility, therefore, is cognizable on appeal.

Appellant Was Not "Confined In A State Prison"

Appellant contends that, after his transfer to ASH pursuant to section 2684, he was not "confined in a state prison" within the meaning of section 4501.5. In interpreting the meaning of "confined in a state prison," three sections are particularly relevant: 4504, 6082, and 2684.

Section 4504, subdivision (a), provides: "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 or the Department of the Youth Authority, regardless of the purpose of such confinement and regardless of the validity of the order directing such confinement, until a judgment of a competent court setting aside such order becomes

final." ASH is not included among the prisons and institutions specified in section 5300.

Section 6082 provides: "References . . . to prisons refer to all facilities, camps, hospitals and institutions for the confinement, treatment, employment, training and discipline of persons in the legal custody of the Department of Corrections."

Pursuant to section 2684, mentally ill persons confined in a state prison may be transferred to ASH for care and treatment. Subdivision (a) of section 2684 provides: "If, in the opinion of the Director of Corrections, the rehabilitation of any mentally ill, mentally deficient, or insane person confined in a state prison may be expedited by treatment at any one of the state hospitals under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services, the Director of Corrections, with the approval of the Board of Prison Terms for persons sentenced pursuant to subdivision (b) of Section 1168, shall certify that fact to the director of the appropriate department who shall evaluate the prisoner to determine if he or she would benefit from care and treatment in a state hospital. If the director of the appropriate department so determines, the superintendent of the hospital shall receive the prisoner and keep him or her until in the opinion of the superintendent the person has been treated to the extent that he or she will not benefit from further care and treatment in the state hospital."

Our opinion in *People v. Superior Court (Ortiz)* (2004) 115 Cal.App.4th 995, is dispositive of the issue whether a prisoner transferred to ASH pursuant to section 2684 is "confined in a state prison" within the meaning of section 4501.5. In *Ortiz* we interpreted the meaning of "state prison" in section 4573.6, which provides that it is a felony for a person to knowingly possess a controlled substance "in any state prison" We held that ASH does not qualify as a "state prison" within the meaning of section 4573.6 because inmates transferred to ASH pursuant to section 2684 are no longer under the custody of the Department of Corrections. (*Id.*, at pp. 1000-1001.)

They are under the custody of ASH, which is under the jurisdiction of the Department of Mental Health. We reasoned: "An inmate transferred to ASH pursuant to [section 2684] is returned to prison only if the hospital superintendent determines the inmate 'has been treated to such an extent that such person will not benefit by further care and treatment in the state hospital' (§ 2685.) [¶] Accordingly, the Department of Corrections has no power to care for or control inmates after they are transferred to ASH pursuant to section 2684. Once the transfer has occurred, the superintendent of the hospital has the sole authority to determine whether the inmate should be returned to prison." (*Id.*, at p. 1001.)

Our reasoning in *Ortiz* applies with equal force to the interpretation of the meaning of "state prison" in section 4501.5. Respondent, however, argues that a prisoner transferred to ASH pursuant to section 2684 is "temporarily outside of the prison walls" and, therefore, is still "confined in a state prison" within the meaning of section 4501.5. Respondent relies on section 4504, subdivision (b), which provides in relevant part: "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 the purpose of confinement in a local correctional institution pending trial or for any other purpose for which a prisoner may be allowed temporarily outside the walls or bounds of the prison"

Respondent's argument is without merit. We rejected the same argument in *Ortiz*: "[S]ection 2684 inmates who are transferred to ASH are not 'temporarily outside the walls or bounds of the prison' as contemplated by the statute. (§ 4504, subd. (b).) Rather, inmates are *transferred* to ASH for treatment, and that transfer may be permanent. Moreover, the Department of Corrections has no power to control inmates after the transfer has occurred." (*People v. Superior Court (Ortiz)*, *supra*, 115 Cal.App.4th at p. 1001.)

Accordingly, a prisoner transferred to ASH pursuant to section 2684 is not "confined in a state prison" within the meaning of section 4501.5. Since it is undisputed that the battery committed by appellant occurred after he had been transferred to ASH pursuant to section 2684, it was legally impossible for him to have violated section 4501.5.

Disposition

The judgment is reversed.

CERTIFIED FOR PUBLICATION.

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

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

Linda Rush, under appointment by the Court of Appeal, for Defendant and Appellant.

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