

New rule for mentally disordered

In 5-2 decision, state justices say courts must obtain a personal waiver of right to jury trial

By L.J. Williamson

The state Supreme Court, in companion cases Monday ruled that a trial judge must personally advise a mentally disordered offender of his or her right to a jury trial prior to extending the involuntary commitment of the offender.

Additionally, a trial judge must obtain the defendant's personal waiver of his or her right to a jury trial before holding a bench trial unless the court finds evidence the defendant lacks the capacity to make a voluntary waiver. The same applies to a person involuntarily committed after pleading not guilty by reason of insanity to a criminal offense. *People v. Blackburn* H037207 and *People v. Tran* H036977.

"Many persons who suffer from mental illness or related disorders can understand the nature of legal proceedings and determine their own best interests," wrote Justice Goodwin H. Liu.

Defendants Bruce Lee Blackburn and Dawn Quang Tran were convicted of separate crimes and committed to state hospitals for treatment.

In both cases the Santa Clara County district attorney filed petitions to extend their commitment and both men opposed extension and requested jury trials. Defense counsel in both cases requested bench trials, which were granted.

The court sustained the petitions for extension of commitment for both men and both appealed, arguing that the trial court prejudicially erred by failing to advise them of their right to a jury trial and by failing to obtain personal waivers.

The 6th District Court of Appeal found that the trial court failed to advise Blackburn and Tran of their right to a jury trial, but that this error was harmless.

"When a trial court errs in completely denying an MDO defendant his or her statutory right to a jury trial, the error constitutes a miscarriage of justice and automatically requires reversal," Liu wrote.

Chief Justice Tani G. Cantil-Sakauye and Justice Ming W. Chin dissented.

"I believe it is clear that the trial court errors were not prejudicial in this case," Cantil-Sakauye wrote. "The errors here do not in themselves constitute a 'miscarriage of justice' and are amenable to constitutionally mandated harmless error."

Rudy Kraft, counsel to Blackburn, said that prior to Monday's ruling, the interpretation of the law was that the decision between a jury trial and bench trial was entirely one for the attorney to make.

Santa Clara was waiving jury trials in favor of speedier bench trials, he said, in the interest of not keeping mentally disordered offenders overnight in local county jails.

"A more serious problem is that a lot of counties, including Santa Clara, are not set up to have mentally ill people in their facilities for a period of time," Kraft said.

Kraft said the decision limited the applicability of the Watson standard of reversal, in which an error is judged by whether it is "reasonably probable" a result more favorable to the defendant would have been reached had the error not occurred.

"This is one of the few areas in which the Supreme Court has held that it's not an outcome-focused thing, but the loss of the jury trial itself is the miscarriage of justice, and therefore requires reversal," Kraft said.

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"The Sixth Amendment right to a trial by jury is following the statutory scheme that shows that the person has the right to a trial by jury unless they waive -- not the lawyer," said Daniel Yeager, professor at California Western School of Law. "Nothing is supposed to change - it's just a correction of what the court found to be a misinterpretation of the statute."

Kraft said he expects an increase in jury trials in court as a result of Monday's decisions.

"How the local superior court in San Luis Obispo will deal with the sudden influx of people wanting jury trials, I don't know," he said.

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