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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.

EDWARD LITTLEJOHN,

Defendant and Appellant.

2d Crim. No. B290183  
(Super. Ct. No. SA070874)  
(Los Angeles County)

Edward Littlejohn pleaded not guilty and not guilty by reason of insanity (NGI) to attempted murder and assault with a deadly weapon. (Pen. Code, §§ 664/187, subd. (a), 245, subd. (a)(1).)<sup>1</sup> A jury convicted him of both crimes. The trial court found him NGI and committed him to Metropolitan State Hospital (Metropolitan) in 2012. In 2014, he petitioned the court to determine his suitability for conditional release to an outpatient treatment program. (§ 1026.2.) The court summarily

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<sup>1</sup> Unlabeled statutory references are to the Penal Code.

denied his petition in 2018. He argues that the court erred by denying his petition without an evidentiary hearing. We agree. We reverse and remand the case for the trial court to hold a hearing in which appellant can testify, present evidence and cross-examine witnesses.

### **FACTS AND PROCEDURAL HISTORY<sup>2</sup>**

Appellant attacked Daniel Chavez at a gym in 2009. Chavez fled but appellant pursued him into the locker room and continued to throw punches. Asked what he was doing, appellant accused Chavez of spitting on him. Chavez replied, “I don’t even know you and I didn’t spit on you.” Appellant rejoined, “You’re going to get to know me.” Gym members who separated appellant from Chavez saw appellant hiding an object in a towel, which proved to be a knife. When police arrived, appellant showed them the knife. Chavez had stab wounds over his heart, neck and skull. Appellant testified that he had no recollection of striking Chavez. A psychiatrist opined that appellant suffers from delusional disorder, paranoid type. (*People v. Littlejohn*, *supra*, B241427.)

A jury convicted appellant of attempted murder while using a deadly weapon (§§ 664/187, subd. (a), 12022, subd. (b)(1)) and assault with a deadly weapon (§ 245, subd. (a)(1)). The jury found he inflicted great bodily injury and had a prior “strike” conviction. (§§ 667, subd (a)(1), 1170.12.). Appellant waived jury at the sanity phase. The court found appellant NGI and

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<sup>2</sup> We take judicial notice of appellant’s prior appeal from his conviction, *People v. Littlejohn* (Aug. 21, 2013, B241427) [nonpub. opn.]. (See *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 83, fn. 7 [reviewing court may recite facts from a prior appeal].)

committed him to Metropolitan, setting his maximum confinement time at 13 years. (*People v. Littlejohn, supra*, B241427.)

In 2014, appellant petitioned the superior court under section 1026.2, requesting a hearing to determine his suitability for placement in an outpatient program.<sup>3</sup> Trial court minute orders reflect years of delay after appellant filed his petition. During that period, appellant, in propria persona, sought his state hospital records and access to legal research. On June 17, 2015, the court appointed a psychiatrist for appellant, in connection with his section 1026.2 petition. Over the ensuing years, the court ordered the hospital to comply with appellant's discovery requests; gave him a defense investigator; and granted his request for funds to pay experts. In 2018, a different judge ordered that appellant be provided with medical records.

On March 13, 2018, Metropolitan submitted a progress report to the court, recommending that appellant remain hospitalized for further treatment. At a hearing on March 15, 2018, the court inquired if appellant was "arguing that you are restored to sanity and, therefore, should be released? Or are you arguing that you would like to be placed in a less restrictive environment . . . ?" Appellant replied that he wanted to transfer to a conditional release program. The court stated that it intended to follow the recommendation that he remain hospitalized. Appellant objected that he is entitled to a hearing

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<sup>3</sup> This Court deemed a motion appellant filed on October 19, 2018 to be his supplemental brief; it includes his petition to the superior court under section 1026.2. The superior court file shows that appellant filed his petition on June 11, 2014.

on his section 1026.2 petition, after years of coming to court. The court ruled that he is not entitled to a hearing. The court erred.

### DISCUSSION

A petition under section 1026.2 is a two-step process. (*People v. Soiu* (2003) 106 Cal.App.4th 1191, 1196 (*Soiu*).) “The first step in the release process requires the defendant, who has filed a release application, to demonstrate at a *hearing* that he or she will not ‘be a danger to the health and safety of others, due to mental defect, disease, or disorder, while under supervision and treatment in the community.’ (§ 1026.2, subdivision (e).)” (*Ibid.*) “This is commonly called the outpatient placement hearing.” (*Ibid.*)

At the outpatient placement hearing, an NGI defendant is entitled to “substantial procedural safeguards associated with trials, including, among other things, the right to counsel, to a detached and neutral judicial officer, to present evidence, and to cross-examine adverse witnesses.” (*People v. Tilbury* (1991) 54 Cal.3d 56, 69; *In re Reyes* (1984) 161 Cal.App.3d 655, 657-658 [due process protections apply]; *People v. Endsley* (2018) 28 Cal.App.5th 93, 101 [“NGIs have the right to appear and testify at the outpatient placement hearing”].) He may request an independent medical expert. (*Endsley* at pp. 105-106.)

If the court grants the petition, the defendant “is then placed in ‘an appropriate forensic conditional release program for one year.’ (§ 1026.2, subdivision (e).)” (*Soiu, supra*, 106 Cal.App.4th at p. 1196; *People v. Dobson* (2008) 161 Cal.App.4th 1422, 1433.) While in the program, the defendant may be subject to a hearing to determine if his dangerousness requires his return to a state facility. (§ 1609; *Dobson* at p. 1433.) An NGI defendant who meets the threshold test for placement in an

outpatient program may later apply for the second step, a restoration of sanity trial. (§ 1026.2, subd. (e); *Soiu* at p. 1196; *Dobson* at p. 1433.)

Appellant is at the first step of the process. He is in state hospital seeking placement in a conditional release program. His petition declares that he has not sought conditional release for a year. (§ 1026.2, subd. (j) [one year must elapse from a prior denial of conditional release].)

The Attorney General argues that appellant failed to prove he did not file two petitions in less than one year; i.e., he wants appellant to prove a negative. The Attorney General did not augment the meager record with evidence that appellant filed more than one petition, nor has he supplied evidence that the trial court resolved *any* petition appellant filed pursuant to section 1026.2 with a hearing that comported with due process requirements.

Instead of holding a hearing on appellant's petition seeking outpatient placement, the court ruled that appellant had no right to a hearing. The court's confusion is understandable, given that the section 1026.2 petition was followed by four years of discovery; it is possible the judge who heard the case in 2018 was unaware of the petition. Regardless of any confusion, appellant did not receive the procedures he is due, such as the right to testify, present evidence and cross-examine adverse witnesses. (*People v. Tilbury, supra*, 54 Cal.3d at p. 69; *Soiu, supra*, 106 Cal.App.4th at pp. 1200-1201; *People v. Endsley, supra*, 28 Cal.App.5th at p. 101.) The Attorney General concedes that if appellant was entitled to petition for conditional release, the trial court erred by denying his petition without a hearing.

### **DISPOSITION**

The order summarily denying defendant's Penal Code section 1026.2 petition for release is reversed. Upon issuance of the remittitur, the trial court must hold a hearing in which appellant can testify, present evidence and cross-examine witnesses.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Yvette Verastegui, Judge  
Superior Court County of Los Angeles

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