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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. LAN THI HOANG, Defendant and Appellant.	B287164 (Los Angeles County Super. Ct. Nos. ZM038591, YA09663901)

APPEAL from an order of the Superior Court of Los Angeles County, Donna Q. Groman and Robert S. Harrison, Judges. Affirmed.

Christopher L. Haberman, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Stephanie C. Brenan and Wyatt E. Bloomfield, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Lan Thi Hoang appeals from an order of the superior court finding her incompetent to stand trial under Penal Code section 1368[1] and ordering her admitted to Patton State Hospital (Patton) for treatment. Appellant contends the finding of incompetency is not supported by substantial evidence and challenges the trial court's failure to hold a *Marsden* hearing. (*People v. Marsden* (1970) 2 Cal.3d 118.) We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant was charged in August 2017 with two counts of violating section 115, procuring or offering a false or forged instrument. On August 24, 2017, the court appointed Dr. Phani Tumu under Evidence Code section 730 to evaluate appellant for competency to stand trial within the meaning of section 1368.

Dr. Tumu submitted his report on September 28, 2017, concluding that appellant suffered from "delusional disorder, persecutory type," and was not competent to stand trial. Dr. Tumu based his report on his review of the records and his interview of appellant.

Dr. Tumu stated that appellant "spoke rapidly and had an accent, often times difficult to interrupt." Appellant told Dr. Tumu her age and correct date of birth. She stated that she stopped paying rent for her apartment in November 2016 because of problems that were not being fixed. She was evicted from the apartment on June 20, 2017, and "had

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1 Unspecified statutory references will be to the Penal Code.

made several attempts to reenter, including by saying she was the owner of the building." She also "applied for a business permit to rent out the apartments where she was living."

Appellant told Dr. Tumu she had received psychiatric treatment when she was in jail in 2010. She stated that her doctor "made a mistake" and sent her to Patton for treatment. She claimed that she was in Patton for two years and had filed a lawsuit alleging false imprisonment.

When Dr. Tumu asked appellant about the charges against her, she "stated '115(a)' but that she was not given a complaint form." Appellant asked Dr. Tumu for the complaint, but he advised her to ask her public defender. Appellant told Dr. Tumu that "115(a)" meant "forgery, filing documents that failed," and she said she would plead not guilty "because '[i]t's a civil matter[.] I sued them on July 11th.'" She showed Dr. Tumu "what appeared to be legal paperwork written in pencil and which had a court seal on it" and "explained that she is suing for '100 million dollars' for the 2010 incident," based on her suing 50 people for $2 million each.

Dr. Tumu stated that appellant "started pointing and spoke with conviction about what she believed was wrong. It was difficult to interrupt her once she started talking. She then said her current charge is 'PC 999' and that there is not any probable cause to hold her." Appellant told Dr. Tumu "the public defender cannot represent her due to a conflict of interest (since she is suing the county). [She] mentioned having lost $8000 on three private attorneys thus far; she reiterated a public defender could not help her." Appellant explained that "she is

not able to trust her public defender due to her assertion that the public defender works for Los Angeles County, the entity she is currently suing."

Dr. Tumu stated that appellant's "thought process was linear. Her thought content did not include auditory/visual hallucinations and grandiose delusions were not elicited. [Appellant] produced persecutory-sounding statements. Her mood was dysphoric and her affect was constricted. Her insight and judgment were impaired. Her memory and concentration were fair."

As evidence of appellant's delusions, Dr. Tumu cited evidence that, "prior to her eviction, she called the apartment to complain about mold but an inspection did not find any evidence of such. On 12/3/16, she called stating that '. . . someone had been shocked' but refused entry to those that came to investigate the claim." Dr. Tumu also stated that appellant described her 2010 involuntary hospitalization and forced medication at Patton as "being 'kidnapped.'" Dr. Tumu opined that, "[a]lthough being forced medications is reality-based, her descriptions of other events makes me believe that she perceives the actions/statements of others to be maliciously aligned against her."

According to Dr. Tumu, appellant "clearly understood the charge against her and the circumstances of the arrest, although it appeared to be clouded with persecutory themes. [Appellant] has a good understanding of the courtroom personnel and procedures; she was articulate in her descriptions." Nonetheless, Dr. Tumu questioned appellant's ability to assist her attorney because of her "paranoid beliefs which actually rise to the level of psychosis." Dr. Tumu recommended

the use of antipsychotic medication. The court received Dr. Tumu's report on October 5, 2017.

On October 1, 2017, prior to the competency hearing, appellant submitted a letter and petition to the court dated October 1, 2017, seeking her release and the return of her property. She challenged various aspects of her detention, including assertions that police officers and the Century Regional Detention Facility violated provisions of Welfare and Institutions Code sections 5150 and 5151.[2] She also stated that the public defender, among others (including employees of the City and County of Los Angeles and clerks of the court), had a conflict of interest because she had filed a claim against them in federal court.

The court held a competency hearing on October 19, 2017. The court acknowledged appellant's letter but stated that "[i]t doesn't really address what the proceeding is . . . I note you feel that there was some impropriety in your being incarcerated, but . . . you are basically arguing about being hospitalized and you are not being hospitalized right now. You are in a county jail." Appellant tried to ask if the court received her motion to dismiss, but the court told her that she had no right to speak because her competency was in question.

Appellant's public defender stated that she knew about appellant's petition but submitted on Dr. Tumu's report and requested a placement

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[2] These provisions address the detention for 72 hours of a person who "as a result of a mental health disorder, is a danger to others, or to himself or herself, or gravely disabled" for evaluation and treatment. (Welf. & Inst. Code, § 5150, subd. (a).)

report. The court relied on Dr. Tumu's report to find appellant incompetent within the meaning of section 1368.

Appellant wrote a second motion for dismissal dated October 13, 2017, but it was not received and filed by the court until October 24, 2017, after the competency hearing.

Efi Rubinstein, a forensic evaluator, prepared a placement report dated November 2, 2017, recommending that appellant receive restoration to competency services at the Department of State Hospitals. Based on his review of appellant's records, Rubinstein concluded that appellant required a locked inpatient setting because she repeatedly denied she suffered from a mental illness and refused to take medications.

At the November 16, 2017 placement hearing, appellant attempted to raise the issues she had raised in her second motion for dismissal, arguing that she was not allowed to present evidence at her competency hearing, but the court denied the motion. The court committed appellant to the Department of State Hospitals for treatment to restore competency and authorized involuntary medication "if necessary to do so in the opinion of the treating physician." Appellant timely appealed.[3]

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[3] "Our Supreme Court has established that an order determining a defendant to be incompetent and committing him to a state hospital is appealable as a final judgment in a special proceeding. [Citation.]" (*People v. Christiana* (2010) 190 Cal.App.4th 1040, 1045.)

DISCUSSION

Appellant challenges the sufficiency of the evidence to support the finding of incompetency. She also contends the trial court erred in failing to hold a *Marsden* hearing based on her assertions that the public defender could not represent her because of her lawsuit against Los Angeles County.

I. *Sufficiency of the Evidence*

Appellant contends the evidence is insufficient to support the finding that she was not competent to stand trial. "'A defendant is mentally incompetent . . . [if] the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner.' (§ 1367.) On appeal a finding of competency to stand trial 'cannot be disturbed if there is any substantial and credible evidence in the record to support the finding.' [Citation.] ¶ . . . ¶ However, a defendant is presumed mentally competent to stand trial 'unless it is proved by a preponderance of the evidence that the defendant is mentally incompetent.' [Citations.]" (*People v. Hightower* (1996) 41 Cal.App.4th 1108, 1111-1112 (*Hightower*).)

Appellant argues that Dr. Tumu's evaluation was insufficient because it was "based on one 45-minute interview and a review of 3 police reports and the felony complaint." She contends that Dr. Tumu failed to review her mental health records from prior cases and did not interview her public defender "to learn how or if appellant's mental state might render her unable to assist" in her defense. Appellant

further contends that Dr. Tumu's failure to discuss the current charges with her "insured that there would not be an intelligent inquiry into how appellant's mental disorder might have impacted her ability to assist in the conduct of a defense to these actual charges." She points out that Dr. Tumu's conclusion that she is not competent to stand trial is based on the "conclusory statement" that "she suffers from persecutory delusions, but the report does not set forth how these delusions render her unable to assist counsel in a rational manner."

"[T]he standard for competence to stand trial is whether a defendant has 'sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding' and has 'a rational as well as factual understanding of the proceedings against him.'" (*Hightower*, *supra*, 41 Cal.App.4th at p. 1112.) "On appeal, the finding of the trier of fact upon the issue of competency to stand trial cannot be disturbed if there is any substantial and credible evidence in the record to support the finding. [Citation.]" (*People v. Campbell* (1976) 63 Cal.App.3d 599, 608.) "Substantial evidence of incompetence exists when a qualified mental health expert who has examined the defendant states under oath, and 'with particularity,' a professional opinion that because of mental illness, the defendant is incapable of understanding the purpose or nature of the criminal proceedings against him, or of cooperating with counsel. [Citations.]" (*People v. Mai* (2013) 57 Cal.4th 986, 1032–1033 (*Mai*).)

Dr. Tumu opined that appellant suffered from "delusional disorder, persecutory type," stating that she believed that she was "somehow the target of malicious acts by others intended to harass or

suppress [her] in some way." Although she "clearly understood the charge against her and the circumstances of the arrest," Dr. Tumu believed she was not able to "rationally assist her attorney," citing her "persecutory delusional thinking" that she did not trust her public defender, should not have been in jail, and was "kidnapped" to Patton. Dr. Tumu further observed that appellant "presented as paranoid during my interview. Her answers were laced with a persecutory theme."

There is no evidence that Dr. Tumu was not a qualified mental health expert. (See *Mai*, *supra*, 57 Cal.4th at p. 1032.) Nor is there any evidence contradicting his opinion that appellant was "incapable of . . . cooperating with counsel." (*Id.* at p. 1033.) To the contrary, in appellant's October 1, 2017 letter to the court, appellant not only stated that the public defender had a conflict of interest because of her federal lawsuit, she also asserted that the public defender was engaged in a conspiracy with other employees of the City and County of Los Angeles. This alleged conspiracy consisted of the theft of appellant's business, home, car, and belongings, and the extortion of appellant by taking her passport and using it to obtain credit cards.[4] Appellant's belief that her public defender was engaged in a criminal conspiracy against her supports Dr. Tumu's conclusion that she would be unable to rationally assist in her defense.

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[4] We set forth appellant's specific statements below.

Dr. Tumu's report constitutes substantial evidence in support of the trial court's finding. (See *Mai*, *supra*, 57 Cal.4th at pp. 1032-1033; *In re John Z.* (2014) 223 Cal.App.4th 1046, 1058 [noting "[t]he centrality of expert reports" to the court's determination of competency].)[5]

II. *Marsden*

Appellant argues that the trial court was required to hold a *Marsden* hearing before adjudicating her competency. This might be true if the record showed that appellant clearly indicated she wanted substitution of counsel. However, we conclude that she did not inform the court that she wanted substitution of counsel.

Appellant cites Dr. Tumu's statement in his report that appellant told him "the public defender cannot represent her due to a conflict of interest (since she is suing the county)." She also cites the statement

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[5] Appellant also contends that the trial court failed to make findings in support of its order, either orally or in writing, in violation of California Rules of Court, rule 4.130(e)(4)(B). Although the court's comments were brief, when appellant asked the court why she was incompetent, the court replied, "You are not able to understand what's going on in trial and you are not able to help your attorney." The court stated that it was relying on Dr. Tumu's report for its finding. "[A] defense attorney may validly submit a competency determination on the available psychiatric reports [citation]," as occurred here. (*People v. Weaver* (2001) 26 Cal.4th 876, 905.) In addition, the trial court was entitled to rely on Dr. Tumu's report as the basis for its finding. (See *Mai*, *supra*, 57 Cal.4th at p. 1032 [opinion of qualified mental health expert who examined defendant can constitute substantial evidence of incompetence]; *People v. Young* (2005) 34 Cal.4th 1149, 1217 [same].)

that she "claimed [she] cannot work with any public defender due to her insistence it would be a conflict of interest secondary to her one hundred million dollar lawsuit against the County." Appellant also relies on her October 1, 2017 letter to the court prior to the competency hearing, in which she asserted the following.[6] "On 9/13/2017, I filed a complaint with community program director, district attorney, public defender and I proved evidence [of] 'conflict of interest' as a small group of employees of City of Los Angeles, City [of] Gardena, and County of Los Angeles, includes clerks of the court in Long Beach court and central court are my defendants in federal court[. They] have been [practicing] under color of law and conspiracy with my defendants to theft my business, my home[,] my car, my belonging includ[ing] my passport <my public defender extortion me must give her my passport>. Court ordered return passport to me on 04/12/13 but until now Ms. Daniel public defender did not return passport to me. I am a victim of identity theft crimes used my passport to obtain credit cards under my name."

"A criminal defendant's appointed attorney should be the embodiment of the defendant's Sixth Amendment right to the effective assistance of counsel. [Citation.] Accordingly, a court must appoint substitute counsel if either the current appointed attorney is providing inadequate representation [citation] or the attorney-client relationship has become embroiled in such an irreconcilable conflict that ineffective

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[6] We quote from her letter as written, with minor changes for clarity.

representation is likely to result. [Citations.] ¶ '[W]hen the defendant in some manner moves to discharge his current counsel' [citation] . . . 'the trial court must afford the defendant an opportunity to express the specific reasons why he believes he is not being adequately represented by his current counsel.' [Citation.]" (*People v. Vera* (2004) 122 Cal.App.4th 970, 978–979.)

In *People v. Sanchez* (2011) 53 Cal.4th 80 (*Sanchez*), our Supreme Court explained when a trial court has a duty to conduct a *Marsden* hearing. The court stated that "'a trial court's duty to permit a defendant to state his reasons for dissatisfaction with his attorney arises *when the defendant in some manner moves to discharge his current counsel.*' [Citation.] . . . 'We do not necessarily require a proper and formal legal motion, but at least some clear indication by defendant that he wants a substitute attorney.' [Citation.]" (*Id.* at pp. 87–88.)

"Even where a trial court has suspended criminal proceedings pending a hearing on a defendant's competency to stand trial [citation], a trial court 'may and indeed *must* promptly consider a motion for substitution of counsel when the right to effective assistance "would be substantially impaired" if his request were ignored. [Citation.]' [Citation.]" (*In re M.P.* (2013) 217 Cal.App.4th 441, 456 (*M.P.*).)

In *People v. Solorzano* (2005) 126 Cal.App.4th 1063, the defendant clearly told the trial court that he wanted to fire his attorney because he failed to obtain the defendant's medical records and school records "despite having had five weeks to do so, because his counsel was arguing with him, and because his counsel had a conflict of interest

with him." (*Id.* at p. 1070.) The defendant told the trial court he did not want the attorney to continue representing him, but the court refused to hold a *Marsden* hearing. The appellate court reversed, holding that the defendant's statement "straightforwardly invoked the court's duty to hold a hearing on his *Marsden* motion before adjudicating his competency." (*Ibid.*) The court rejected the argument that the failure to hold a hearing was harmless because "it could not find beyond a reasonable doubt that the failure to make an immediate *Marsden* inquiry had not contributed to the court's determination that the defendant was competent to stand trial. [Citation.]" (*M.P.*, *supra*, 217 Cal.App.4th at p. 456.)

By contrast, in *People v. Gonzalez* (2012) 210 Cal.App.4th 724, the defendant filed a motion that stated, "'I will [*sic*] like to go pro per . . . ,' and did not request a different appointed attorney." (*Id.* at p. 741.) The appellate court concluded that "[t]here was no clear indication that [the defendant] was requesting a substitute appointed attorney so as to require the court to conduct a *Marsden* hearing." (*Ibid.*)

Unlike in *Solorzano*, there was no "'clear indication'" here that appellant wanted a substitute attorney. (*Sanchez*, *supra*, 53 Cal.4th at p. 88.) Dr. Tumu's report indicated only that appellant believed the public defender had a conflict of interest because of her $100 million lawsuit against the county, but it does not indicate that she had named her public defender in a lawsuit or that she wanted a substitute attorney. Her October letter is unclear, but it seems to state that the public defender is a defendant in her federal lawsuit. However, she

continues by asserting implausible claims about a conspiracy by numerous government employees to steal her business, home, and car, and to extort her somehow by taking her passport. Neither Dr. Tumu's report nor appellant's letter indicates that appellant was seeking substitute counsel.

"[T]he trial court is not obliged to initiate a *Marsden* motion sua sponte. [Citation.] The trial court's duty to conduct a *Marsden* inquiry arises 'only when the defendant asserts directly or by implication that his counsel's performance has been so inadequate as to deny him his constitutional right to effective counsel.' [Citations.]" (*People v. Lara* (2001) 86 Cal.App.4th 139, 158.) "While the law does not require that defendant use the word '*Marsden*' to request substitute counsel, we will not find error on the part of the trial court for failure to conduct a *Marsden* hearing in the absence of evidence that defendant made his desire for appointment of new counsel known to the court. [Citation.]" (*People v. Richardson* (2009) 171 Cal.App.4th 479, 484.) The record here does not show that appellant made her desire for appointment of new counsel known to the court.

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DISPOSITION

The order appealed from is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, Acting P. J.

We concur:

COLLINS, J.

MICON, J.*

*Judge of the Los Angeles County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.