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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.

JERRY R. PITCOCK,

Defendant and Appellant.

2d Crim. No. B281927
(Super. Ct. No. 17PT-00109)
(San Luis Obispo County)

Jerry R. Pitcock appeals an April 11, 2017 judgment, entered after the trial court found appellant to be a mentally disordered offender (MDO) and recommitted him for further treatment. (Pen. Code, § 2972, subd. (c).)¹ Appellant contends, and the Attorney General agrees, that the trial court failed to obtain appellant's waiver of jury trial. (§ 2972, subd. (a).) We reverse and remand for new trial. (*People v. Blackburn* (2015) 61 Cal.4th 1113, 1130-1131 [decision to waive jury trial belongs to the defendant in the first instance; trial court must elicit waiver from the defendant on the record].)

¹ All statutory references are to the Penal Code.

Facts and Procedural History

In 2013, appellant pled no contest to obstructing or resisting an executive officer (§ 69) and was sentenced to two years eight months state prison.

On December 30, 2015, the Board of Parole Hearings (BPH) determined that appellant met the MDO criteria and required treatment. Appellant filed a petition challenging the BPH determination, was found to be an MDO, and appealed. In *People v. Pitcock* (Sept. 19, 2016, B271079) [nonpub. opn.], we reversed because, among other things, the trial court failed to obtain a jury waiver from appellant. (§ 2972, subd. (a); *People v. Blackburn*, *supra*, 61 Cal.4th at pp. 1130-1131.)

Before the matter was retried, the Board of Prison Terms recommitted appellant for further treatment on January 24, 2017. (§ 2966, subd. (c).) Appellant filed a petition challenging the recommitment and, on April 11, 2017, the trial court found that appellant was an MDO and not in remission, and recommitted appellant to the California Department of Mental Health for further treatment. (§ 2972, subd. (c).) The record, however, indicates that appellant did not personally waive his right to jury trial. Although the superior court “CASE SUMMARY” index reflects that appellant purportedly waived jury trial on February 28, 2017, the reporter’s transcript indicates that no jury waiver was taken. The absence of a personal waiver of jury trial requires that we reverse and remand for new trial. (*People v. Blackburn*, *supra*, 61 Cal.4th at p. 1135; *People v. Lin* (2017) 15 Cal.App.5th 984, 990; *People v. Blancett* (2017) 15 Cal.App.5th 1200, 1202.)

Disposition

The judgment is reversed and the matter is
remanded for new trial.

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YEGAN, Acting P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Michael L. Duffy, Judge

Superior Court County of San Luis Obispo

Gerald J. Miller, under appointment by the Court of
Appeal for Defendant and Appellant

Xavier Becerra, Attorney General, Gerald A. Engler,
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