Filed 8/28/12 P. v. Anderson CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. BERNARD L. ANDERSON, Defendant and Appellant.	B232653 (Los Angeles County Super. Ct. No. YA079547)

APPEAL from a judgment of the Superior Court of Los Angeles County. Steven R. Van Sicklen, Judge. Affirmed.

Robert Booher, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Yun K. Lee and Margaret E. Maxwell, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Bernard L. Anderson of arson of an inhabited structure (Pen. Code, § 451, subd. (b)) and arson of the property of another (§ 451, subd. (d)).[1] On appeal, Anderson contends: (1) the trial court erred in failing to order and conduct a competency hearing; (2) the trial court erred in permitting him to represent himself; and (3) the trial court abused its discretion in sentencing Anderson when it failed to consider his mental illness as a mitigating factor. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In November 2010, Anderson was living under a bridge with several other people. On November 7, Anderson accused his neighbors of breaking into his tent and stealing his bank or debit card. He placed a can of butane on one man's sleeping bag, then set it on fire. He slashed another group's tent, and engaged in a physical altercation with one of the tent's inhabitants. Later that day, Anderson returned and poured gasoline on the tent and the man and woman inside. Despite a physical altercation with the man, Anderson managed to set the tent on fire. Both the man and woman left the tent before Anderson set it on fire, but their possessions were burned.

The People charged Anderson with two counts of attempted willful, deliberate, and premeditated murder, two counts of assault with caustic chemicals, arson of an inhabited structure or property, and arson of the property of another. As to all counts, the People alleged Anderson had been convicted of two prior serious felonies (§ 667, subd. (a)(1)), had served two prior prison terms (§ 667.5, subd. (b)), and had two prior serious or violent felony convictions within the meaning of the Three Strikes law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)).

At the beginning of the November 2010 preliminary hearing, defense counsel stated she was "proceeding with this preliminary hearing 1368.1."[2] In January 2011,

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[1] All further statutory references are to the Penal Code.

[2] Under section 1368, subdivision (a), if a doubt arises in the mind of the trial judge as to the defendant's mental competence, the judge is to state the doubt in the record and ask defense counsel's opinion as to whether the defendant is mentally competent. Under subdivisions (b) and (c), "[i]f counsel informs the court that he or she believes the

defense counsel filed a motion under seal seeking appointment of an expert under Evidence Code sections 730, 952, and 1017. In February 2011, defense counsel sought a continuance. In a motion filed under seal, counsel declared she wished to have additional time to secure Anderson's medical and psychiatric records for review for "possible mitigation and potential [not guilty by reason of insanity] defense." The court granted the motion over Anderson's objection and placed two prosecution witnesses on call.

In March 2011, on the day set for trial, defense counsel declared a conflict. Replacement counsel reported he had just taken on the case and was not ready to start trial. Anderson objected to a continuance. He told the court he wished to represent himself if he could proceed that day. He indicated he needed only five minutes to prepare his case, and, based on the evidence available to him, "all it would take is cross-examination of who the State has as their witnesses." Anderson admitted he did not know who was on the prosecution's witness list, but he was making his assessment based on witnesses who appeared when the case was previously called for trial in February.

In response to the trial court's questions, Anderson said he understood the possible penalties he faced and had represented himself before on an unlawful camping charge. Anderson and the court then had an exchange about the "fool for a client" adage. Defense counsel interrupted to request that the court review records ex parte before ruling on Anderson's self-representation request. The records included a confidential defense psychiatric report titled "Confidential Competency Evaluation." Counsel also informed

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defendant is or may be mentally incompetent, the court shall order that the question of the defendant's mental competence is to be determined in a hearing which is held pursuant to Sections 1368.1 and 1369 . . . . [¶] . . . Except as provided in Section 1368.1, when an order for a hearing into the present mental competence of the defendant has been issued, all proceedings in the criminal prosecution shall be suspended until the question of the present mental competence of the defendant has been determined." Section 1368.1, subdivision (a) provides, in relevant part: "If the action is on a complaint charging a felony, proceedings to determine mental competence shall be held prior to the filing of an information unless the counsel for the defendant requests a preliminary examination under the provisions of Section 859b." In this case, the trial court did not declare a doubt about defendant's mental competence.

the court that Anderson had been incarcerated at a forensic psychiatric hospital. The defense psychiatric report indicated there was evidence that Anderson had received significant treatment for a mental illness, although he denied symptoms and minimized the seriousness of any illness. The psychiatrist opined that "based on the description of events leading to current charges, there is a potential for delusions, and possibly other psychotic symptoms and thought disorder." The psychiatrist reported: "I am left with a rather default opinion that based on his history, he likely has a mental disorder, but I am unable to confirm that at this time."

As to competency, the psychiatrist concluded: "The defendant is well versed in the nature of the proceedings. He fully understood complex legal issues, courtroom participants, expected outcomes, challenging witnesses, available pleas, the plea bargaining process, and other crucial parts of the court process. [¶] Additionally, I saw no data to suggest a psychotic, mood, thought disorder, or other psychiatric symptoms, which would interfere with his ability to cooperate with counsel at this time. [¶] . . . [¶] Therefore, it is my opinion that Mr. Anderson likely has a major mental disorder, and is competent at this time. There is significant data to suggest that there may be at least mitigating factors due to symptoms of a mental disorder, which could be investigated once the data is uncovered from prior psychiatric treatment."

The court also reviewed a September 2009 discharge summary from the Atascadero State Hospital. The summary indicated Anderson's final diagnosis was schizoaffective disorder, posttraumatic stress disorder—in remission, and polysubstance dependence. However, the summary reported Anderson's mental status at the time of discharge as follows: "Alert and oriented to person, place, time and situation. He was cooperative. He made good eye contact. His speech has normal rate, volume, tone and prosody. He had no movements abnormalities, no evidence of extrapyramidal symptoms or tardive dyskinesia. He had no tics or tremors. Mood—euthymic, affect—mood congruent and full range. He did not endorse suicidal or homicidal ideation. He did not endorse auditory or visual hallucinations. He did not discuss paranoid or delusional content. Thought process –linear, logical, coherent, and goal directed. Insight—fair,

judgment—fair, these being demonstrated by his understanding that he has a mental illness which requires medications for its treatment."

After reviewing the documents, the trial court noted the most recent document regarding Anderson's psychiatric history was from September 2009, and questioned whether the gap in time was material. The court continued: "And the issue is whether you're competent to go to trial. Nobody has declared a doubt. But I want to make sure that you're competent also to make a decision that is in my opinion a stupid decision, but one you're allowed to make if you are competent." The court gave Anderson a *Faretta* waiver to review.[3] Following a recess, Anderson said he had read and understood all parts of the form. The court offered additional warnings about the dangers of self-representation. The court also noted Anderson had "potential issues in a case like this relating to a mental defense. [¶] . . . [¶] . . . Because you've got crimes involving specific intent. And if you have underlying mental disorders that might have affected your ability to form the intent to do certain things, that's a defense that you can utilize through experts and so forth. [¶] As far as I know, there are no experts on board. There haven't been any subpoenaed. You don't have any experts available to you. [¶] So if you elect to represent yourself and you want to go to trial in the next ten days, you're not likely to have any expert witnesses." Anderson said he understood and was willing to take that risk. In response to further advisements, Anderson continued to insist he understood the disadvantages of self-representation and still wished to proceed. The

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3 *Faretta v. California* (1975) 422 U.S. 806 (*Faretta*). The waiver is a judicial council form. The form advises the defendant of his constitutional rights, requests information about the defendant's educational background and prior self-representation, warns of the dangers and disadvantages of self-representation, seeks confirmation that the defendant understands the charges and consequences of not having an attorney, and informs the defendant the court recommends against self-representation. In addition to initialing each advisement, the defendant must sign the following statement: "I hereby certify that I have read, understood and considered all of the above warnings included in this petition, and I still want to act as my own attorney. I freely and voluntarily give up my right to have a professional attorney represent me." Anderson completed all sections of the form.

court granted the request, noting: "I'm going to tell you that I have discretion to hold hearings on whether you are competent to represent yourself. Based on what we've just discussed, I think you're competent to represent yourself. I still think it's a bad idea. [¶] But you have the right, and so you're now representing yourself." The court later noted it had reviewed in camera the documents provided by defense counsel and "based my decision not to have a hearing, to allow Mr. Anderson to represent himself in part on those reviews."

Before the trial, Anderson unsuccessfully attempted to exclude evidence found at the crime scene by means of a section 1538.5 motion. He also made a section 995 motion, which the court denied. He arranged for civilian clothing for himself for the trial. He raised the issue of using prior convictions to impeach certain prosecution witnesses. He opposed the prosecution's motion to introduce section 1101, subdivision (b) evidence, claiming the evidence was irrelevant because he was only charged with a similar crime but not convicted. Anderson also argued there were questions regarding whether the section 1101, subdivision (b) evidence reflected his acts, given inconsistencies in the spelling of the name "Anderson." He additionally argued: "[I]f the prosecution is going to use past conduct, I still believe it will taint the jury in not concentrating on the present as opposed to the past." The court subsequently excluded one of the instances of Anderson's past conduct.

Anderson made a brief opening statement at trial indicating he would reveal the prosecution's version of events to be invalid through cross-examination. He concluded by noting he had not "given a statement" because he was representing himself. He also reminded the jury to "remember one premise and one premise only, the burden of proof is on the prosecution." He cross-examined witnesses. During his cross-examination of a fire inspector, he attempted to elicit testimony suggesting the fire could have been started by a cooking grill visible in a photograph introduced into evidence. He made two successful objections to prosecution witness testimony. He offered two witnesses in the defense case, the investigating police officer, and an employee from the Los Angeles County Sheriff Department's crime lab. During his direct examination of the

investigating police officer, Anderson asked many questions regarding the police response to 911 calls reporting the fire. Eventually, the trial court sustained a prosecution objection to the continued line of questioning under section 352. In his closing statement, Anderson questioned some of the prosecution evidence because the witnesses did not report Anderson's behavior to the police; he suggested inconsistencies in the evidence labels were significant; he pointed out that the prosecution did not establish how or from where Anderson procured a red gasoline can witnesses had described; and he asked the jurors to "glean the truth."

The jury found Anderson not guilty of attempted murder and assault with caustic chemicals. It found him guilty on the two arson charges. Following a bench trial, the court found the prior strikes allegation true. When the court asked if there was any reason Anderson could not be sentenced, he replied that there were mitigating circumstances to be considered. Anderson quoted statements from a probation report: "Mr. Anderson has performed satisfactorily on probation and parole, that mental diagnosis as well as physical condition does support a significantly reduced culpability of the present crimes, and also the defendant has discharged his parole officially as of Saturday, April 9th of this year."

The trial court noted Anderson had completed his parole while in custody for the instant offenses, and that Anderson had several parole violations, including the offenses of which he had just been convicted. The court also stated it had "no information other than a statement [Anderson] made to the probation officer that [he] had suffered from schizophrenia in the past." Anderson disputed this characterization. The court found the aggravating circumstances outweighed the mitigating circumstances. The court sentenced Anderson to an aggregate prison term of 22 years four months. This appeal followed.

DISCUSSION

I. The Trial Court Did Not Err in Failing to Hold a Competency Hearing

Anderson contends the trial court should have ordered a competency evaluation and held a hearing to determine whether he was competent to stand trial. We find no error.

"The United States Supreme Court has 'repeatedly and consistently recognized that "the criminal trial of an incompetent defendant violates due process." ' [Citation.] A defendant is deemed incompetent to stand trial if he lacks ' " 'sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding . . . [or] a rational as well as factual understanding of the proceedings against him.' " ' [Citation.] 'Even when a defendant is competent at the commencement of his trial, a trial court must always be alert to circumstances suggesting a change that would render the accused unable to meet the standards of competence to stand trial.' [Citation.] State constitutional authority is to the same effect. [Citation.] [¶] The applicable state statutes essentially parallel the state and federal constitutional directives." (*People v. Lightsey* (2012) 54 Cal.4th 668, 690-691 (*Lightsey*); see also §§ 1367, 1368; *People v. Ary* (2011) 51 Cal.4th 510, 517-518.) Under section 1367, subdivision (a), "[a] defendant is mentally incompetent . . . if, as a result of mental disorder or developmental disability, 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."

"[A] trial court is obligated to conduct a full competency hearing if substantial evidence raises a reasonable doubt that a criminal defendant may be incompetent. This is true even if the evidence creating that doubt is presented by the defense or if the sum of the evidence is in conflict." (*Lightsey, supra,* 54 Cal.4th at p. 691; see also § 1367.) "The court's decision whether to grant a competency hearing is reviewed under an abuse of discretion standard." (*People v. Ramos* (2004) 34 Cal.4th 494, 507 (*Ramos*).) " 'A trial court's decision whether or not to hold a competence hearing is entitled to deference, because the court has the opportunity to observe the defendant during trial. [Citations.] The failure to declare a doubt and conduct a hearing when there is substantial evidence of

incompetence, however, requires reversal of the judgment of conviction. [Citations.]' [Citation.]" (*People v. Lewis* (2008) 43 Cal.4th 415, 525 (*Lewis*).)

The trial court in this case did not declare a doubt as to Anderson's competency. We must therefore determine whether there was substantial evidence of incompetence. Substantial evidence in this context "means evidence that raises a reasonable doubt about the defendant's ability to stand trial." (*Ramos, supra,* 34 Cal.4th at p. 507.) Anderson contends his competence was repeatedly called into question. For example, he points to his counsel's statement at the preliminary hearing that she was proceeding pursuant to section 1368.1, the defense request that the court appoint a psychiatric expert, and Anderson's history of mental illness as reported in the defense psychiatric report and hospital discharge summary. Anderson further asserts his own behavior evidenced his incompetence to stand trial, including his statement that he only needed five minutes to prepare his case; his suggestion that he could prevail by cross-examination alone, despite not having seen the prosecution's witness list; his colloquies with the court in which he argued about the provenance of the "fool for a client" adage; and his "muddled, illogical," and irrelevant questions of witnesses.

Despite Anderson's history of mental illness and his lack of skill in representing himself, we conclude the trial court was not presented with substantial evidence that Anderson was incompetent. "[A] defendant must exhibit more than bizarre, paranoid behavior, strange words, or a preexisting psychiatric condition that has little bearing on the question of whether the defendant can assist his defense counsel." (*Ramos, supra,* 34 Cal.4th at p. 508.) Here, defense counsel mentioned section 1368.1, but did not explicitly express a doubt about Anderson's competence to stand trial. (*People v. Howard* (1992) 1 Cal.4th 1132, 1164 [counsel's doubt about defendant's competence is relevant but not determinative of whether court must hold competency hearing].) And, while defense counsel retained a psychiatrist to evaluate Anderson, the psychiatrist concluded he was competent to stand trial. The psychiatrist further detailed Anderson's apparent comprehension of the legal process, including complex legal issues. Anderson had a history of mental illness, but both the 2009 hospital discharge report and the defense

psychiatric report described Anderson as exhibiting logical, rational thinking. A history of mental illness alone does not automatically trigger a need for competency proceedings. (*People v. Rogers* (2006) 39 Cal.4th 826, 848-849 [long-standing mental problems alone were not substantial evidence of incompetence].)

Similarly, Anderson's conduct once he began representing himself did not provide substantial evidence that he was unable to understand the nature of the proceedings or, theoretically, to assist defense counsel in a rational manner. Unlike the defendants in the cases Anderson cites on appeal, he did not exhibit extreme, paranoid, or delusional behavior at trial. (See, e.g., *Odle v. Woodford* (9th Cir. 2001) 238 F.3d 1084; *Torres v. Prunty* (9th Cir. 2000) 223 F.3d 1103; *People v. Bolden, Jr.* (1979) 99 Cal.App.3d 375.) Anderson filed pretrial motions, made a relatively coherent opening statement, cross-examined witnesses, made appropriate objections, and gave a closing statement. Anderson asked many questions about the police response to 911 calls and labeling of evidence. These questions did not produce any particularly helpful testimony. But the record does not support Anderson's argument that these lines of questioning established he suffered from paranoid and delusional thinking and was trying to prove a police conspiracy. Anderson's questions on these issues were consistent with his strategy of discrediting the prosecution evidence in any way possible to raise a reasonable doubt of his guilt.

It is clear that Anderson experienced difficulties in representing himself. He did not present a coherent defense, and instead attempted to characterize the prosecution evidence as inconsistent or improbable, using minor or unpersuasive points. His questions of witnesses were not always easy to understand, and did not always elicit relevant or helpful testimony. But Anderson's trial conduct and strategy did not betray an inability to understand the proceedings or thinking that was necessarily irrational. Instead, his ineffectiveness appeared to arise largely from his lack of legal training and his focus on legally irrelevant points. (*People v. Koontz* (2002) 27 Cal.4th 1041, 1065.) The nature and extent of Anderson's participation in the proceedings demonstrated that he understood their purpose, and did not provide substantial evidence he was incompetent

to stand trial. (*Lewis, supra,* 43 Cal.4th at pp. 525-526; *People v. Halvorsen* (2007) 42 Cal.4th 379, 406-407.) We find no error in the trial court's failure to conduct competency proceedings.

II. The Trial Court Did Not Err in Allowing Anderson to Represent Himself

Anderson contends the trial court violated his rights under federal and state law by granting his request to represent himself. He asserts that under *Indiana v. Edwards* (2008) 554 U.S. 164 (*Edwards*), and *People v. Johnson* (2012) 53 Cal.4th 519 (*Johnson*), the trial court failed to exercise its discretion to employ a higher standard of competence when determining whether to grant his self-representation request than when determining his trial competency. We find no error.

In *Edwards*, "the United States Supreme Court held that states may, but need not, deny self-representation to defendants who, although competent to stand trial, lack the mental health or capacity to represent themselves at trial—persons the court referred to as 'gray-area defendants.'" (*Johnson, supra,* 53 Cal.4th at p. 523, quoting *Edwards, supra,* 554 U.S. at p. 174.) In *Johnson,* the California Supreme court agreed California courts "have discretion to deny self-representation to gray-area defendants," and held "trial courts may deny self-representation in those cases where *Edwards* permits such denial." (*Id.* at p. 528.)

Anderson's trial took place before *Johnson* was decided. However, by time of the trial, our high court had considered a case in which the trial court allowed a defendant to represent himself although there were questions about his mental competence. In *People v. Taylor* (2009) 47 Cal.4th 850 (*Taylor*), the trial court held a hearing to determine whether the defendant was competent to stand trial. (*Id.* at pp. 859, 861.) Based on the reports of two appointed psychologists, the court determined the defendant was competent to stand trial. (*Id.* at p. 861.) The court also allowed the defendant to waive his right to counsel. (*Id.* at p. 868.) The court believed the test used to determine trial competency was the same test it was required to apply to determine whether the defendant was competent to represent himself. (*Id.* at pp. 868, 871.) On appeal, the defendant relied on *Edwards* to argue "he was incompetent to represent himself, and the

trial court, acting under the mistaken belief his request to represent himself could not be denied once he had been found trial competent, erred in failing to exercise its discretion to deny self-representation on grounds of mental incompetence." (*Taylor,* at p. 866.) This is essentially Anderson's claim here.

In *Taylor*, our high court concluded *Edwards* did not *mandate* a higher standard of mental competence for self-representation than for trial competence. Instead, the *Edwards* court "held only that states *may*, without running afoul of *Faretta*, impose a higher standard . . . ." (*Taylor*, *supra*, 47 Cal.4th at pp. 877-878.) The *Taylor* court thus concluded: " '*Edwards* did not alter the principle that the federal constitution is not violated when a trial court permits a mentally ill defendant to represent himself at trial, even if he lacks the mental capacity to conduct the trial proceedings himself, if he is competent to stand trial and his waiver of counsel is voluntary, knowing and intelligent.' " [Citation.] *Edwards* thus does not support a claim of federal constitutional error in a case like the present one, in which defendant's request to represent himself was granted." (*Id.* at p. 878; see also *Johnson*, *supra*, 53 Cal.4th at p. 527.) This reasoning is equally applicable here.

There was also no error under state law. Under *Johnson*, trial courts may deny a self-representation request when "the defendant suffers from a severe mental illness to the point where he or she cannot carry out the basic tasks needed to present the defense without the help of counsel." (*Johnson*, *supra*, 53 Cal.4th at p. 530.) However, the *Johnson* court explained that "[a] trial court need not routinely inquire into the mental competence of a defendant seeking self-representation. It needs to do so only if it is considering denying self-representation due to doubts about the defendant's mental competence." (*Ibid*.) There is no indication the trial court had doubts about Anderson's mental competence to represent himself. Instead, the court stated: "I have discretion to hold hearings on whether you are competent to represent yourself. Based on what we've just discussed, I think you're competent to represent yourself." The trial court understood that competence to stand trial and competence to defend without counsel were two separate questions. What test the court would have used to determine Anderson's

competence to represent himself never became an issue because it did not doubt Anderson's mental competence to conduct the trial proceedings himself.

The *Johnson* court also explained that "[a]s with other determinations regarding self-representation, we must defer largely to the trial court's discretion. [Citations.] The trial court's determination regarding a defendant's competence must be upheld if supported by substantial evidence." (*Johnson, supra,* 53 Cal.4th at p. 531.) We find no abuse of discretion in the trial court's failure to inquire into Anderson's mental competence in connection with his self-representation request. The defense psychiatric report concluded Anderson was "well versed in the nature of the proceedings" and fully understood complex legal issues. In discussions related to his waiver of the right to counsel, Anderson answered questions coherently and rationally. The record offers no evidence that Anderson was a "gray-area" defendant, such as evidence of " ' "[d]isorganized thinking, deficits in sustaining attention and concentration, impaired expressive abilities, anxiety, and other common symptoms of severe mental illnesses." ' " (*Id.* at p. 527, quoting *Edwards, supra,* 554 U.S. at p. 176.) Although Anderson's lack of legal skills was evident during the trial, he conducted a basic, if tactically ineffective, defense. The trial court did not err in failing to conduct additional proceedings to assess Anderson's competence to represent himself, or in granting Anderson's self-representation request.

III. The Trial Court Did Not Err in Exercising its Sentencing Discretion

Anderson acknowledges that "[t]he choice of sentence is within the sound discretion of the trial court." However, based on the trial court's statement that it only had Anderson's own statement that he suffered from schizophrenia, Anderson contends the trial court abused its discretion by not considering his mental illness as a mitigating factor. We disagree.

As explained in *People v. Sandoval* (2007) 41 Cal.4th 825, 847, "[t]he trial court's sentencing discretion must be exercised in a manner that is not arbitrary and capricious, that is consistent with the letter and spirit of the law, and that is based upon an 'individualized consideration of the offense, the offender, and the public interest.'

[Citation.] . . . . [A] trial court will abuse its discretion under the amended scheme if it relies upon circumstances that are not relevant to the decision or that otherwise constitute an improper basis for decision."

At the sentencing hearing in this case, Anderson argued, based on the probation report, that one mitigating factor was his mental or physical condition that significantly reduced culpability for the crime. The court and Anderson had the following related discussion:

> "COURT: Okay. . . . I have no information other than a statement you made to the probation officer that you had suffered from schizophrenia in the past.
>
> "DEFENDANT: No, sir. That was taken from a former – excuse me – that was –that statement was taken from the parole officer, Your Honor. That would be on page – that would be on page 18, sir, Mr. Michael's statement.
>
> "COURT: On page 15, in a pretrial service report, dated April 3, 2006, the defendant stated he suffers from schizophrenia.
>
> "[PROSECUTOR]: Your Honor, there had been a request to have him evaluated as a mentally disordered offender and then he was evaluated, according to the C.D.C. report, and that on 9-18-2009 he was found not to meet the criteria of an M.D.O. and so that condition was lifted.
>
> "DEFENDANT: Thank you.
>
> "COURT: So it's only your statement.
>
> "DEFENDANT: No, sir, that was not my statement. That was taken, again, from a report while I was incarcerated at Delano . . . .
>
> "COURT: Well, the circumstances in aggravation clearly outweigh the circumstances in mitigation."

There was evidence from several sources indicating Anderson had a history of mental illness. But the relevant issue was not simply whether Anderson suffered from a mental illness, but whether that illness significantly reduced culpability for his crimes. (Cal. Rules of Court, rule 4.423(b)(2).) The trial court was correct that there was no evidence Anderson's mental illness was a factor in the crimes he committed, or that his mental illness reduced his culpability for those crimes. The probation report noted only

that Anderson had a history of mental illness, he was receiving treatment through a parole outpatient clinic, and he was using medication for "paranoia schizophrenia." The probation report thus concluded: "It appears that perhaps the defendant is suffering from mental health issues which might have contributed to the current matter before the court." But there was no expert or medical evidence supporting this statement or Anderson's assertion of the same. The defense psychiatric report indicated there was significant data "to suggest that there may be at least mitigating factors due to symptoms of a mental disorder," but also noted further investigation was necessary to confirm this statement. The reporting psychiatrist also noted that at the time of the interview he "saw no data to suggest a psychotic, mood, thought disorder, or other psychiatric symptoms, which would interfere with his ability to cooperate with counsel at this time." The 2009 hospital discharge assessment reported Anderson was receiving treatment for mental illness. At the time of the discharge, it appeared that Anderson's illness was controlled. The assessment noted Anderson did not "endorse auditory or visual hallucinations," he did not "discuss paranoid or delusional content," and his thought process was "linear, logical, coherent, and goal directed." Further, the circumstances of the crime did not establish Anderson's actions were necessarily the result of mental illness, rather than a mistaken belief that his neighbors stole from him.

We do not understand the trial court's comments at sentencing to indicate it felt it did not have evidence that Anderson had a history of mental illness. Instead, the court appeared to accurately state that, aside from Anderson's arguments, there was no evidence showing mental illness reduced his culpability for the crimes. The evidence available to the trial court failed to do more than suggest Anderson's mental illness *could have* played a role in his crimes. The court was entitled to rely on the evidence before it and its own observations of Anderson during the trial to reject a mitigating factor of mental illness. (*People v. Steele* (2000) 83 Cal.App.4th 212, 226; *People v. Hubbell* (1980) 108 Cal.App.3d 253, 259-260.)

DISPOSITION

The trial court judgment is affirmed.

BIGELOW, P. J.

We concur:

FLIER, J.

SORTINO, J.*

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