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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.

JOSEPH CANODY,

Defendant and Appellant.

2d Crim. No. B241669
(Super. Ct. No. F472786)
(San Luis Obispo County)

Joseph Canody appeals from the order committing him for treatment as a mentally disordered offender (MDO) (Pen. Code, § 2962).¹ He challenges the sufficiency of the evidence supporting the finding that the criminal offense upon which his commitment is based, arson of property (§ 451, subd. (d)), is a qualifying offense under subdivision (e)(2)(L) of section 2962. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In December 2009, appellant was convicted of arson of property and was sentenced to one year four months in prison. On April 6, 2012, the Board of Prison Hearings determined that appellant qualified as an MDO. Appellant petitioned for a hearing to challenge that determination.

¹ All statutory references are to the Penal Code unless otherwise stated.

At a court trial held in May 2012, Dr. Phylissa Kwartner testified that she met with appellant to determine whether he met all of the criteria for MDO treatment. She described the facts of his commitment offense, which she obtained from the probation officer's report. In November 2008, in the middle of the day, appellant lit a fire at the University of California Los Angeles (UCLA) campus, north of a loading dock near the health sciences center. The fire was "four feet tall with smoke extending higher than that." Appellant was warming his hands over the fire, which was consuming brush. An officer approached and arrested appellant after he admitted that he started the fire. Dr. Kwartner later asked appellant why he set the fire. He explained that he took out his lighter to light a cigarette, but could not find one. While he had his lighter out, he decided to light a piece of paper instead.

The prosecutor argued that any arson conviction would support an MDO commitment. The court agreed with the prosecutor but also rejected appellant's claim that his arson of property did not pose a substantial danger of injury to others. The court's finding follows: "He did start a fire at UCLA, . . . that reached four feet in height on the campus and certainly it doesn't take a lot to assume that that's dangerous to other people." The court further found that appellant met all of the criteria for MDO treatment and accordingly denied his petition. This appeal followed.

DISCUSSION

Appellant contends his MDO commitment must be reversed because the evidence is insufficient to support the finding that his commitment offense, arson of property, is a qualifying crime under subdivision (e) of section 2962. He argues that the facts underlying the conviction fail to sustain a finding that "appellant's act of arson created a danger of physical harm to persons, as opposed to property." We disagree.

In considering the sufficiency of the evidence to support MDO findings, we review the entire record in the light most favorable to the judgment to determine if there is any reasonable, credible evidence to support the challenged finding. (*People v. Beeson* (2002) 99 Cal.App.4th 1393, 1398.) We do not reweigh the evidence. (*People v. Clark* (2000) 82 Cal.App.4th 1072, 1082-1083.)

To commit a prisoner under the MDO law, the prosecution must prove among other things that he was convicted of a qualifying offense. Section 2962, subdivision (e)(2)(L) enumerates "[a]rson in violation of subdivision (a) of Section 451, or arson in violation of any other provision of Section 451 . . . where the act posed a substantial danger of physical harm to others."

Substantial evidence supports the finding that appellant's offense qualified him for treatment under section 2962, subdivision (e)(2)(L) of the MDO law. In *People v. Macauley* (1999) 73 Cal.App.4th 704, we concluded that "overwhelming" evidence supported the finding that the acts resulting in the prisoner's conviction under section 451, subdivision (d) posed a substantial danger of physical harm to others. In reaching that conclusion, we reasoned: "The record reveals that [the prisoner] poured gasoline over his wife's car and set it on fire while it was parked in a residential neighborhood 'very close' to the house where her boyfriend lived. The fire caused about \$2,000 in damage to the car. An expert witness on arson testified that car fires are inherently dangerous because they can get out of control very quickly and the flammable liquids create a risk of explosion. This risk was enhanced by the use of gasoline to set the fire. Appellant's arson offense posed a substantial danger to the occupants of nearby structures, and thus falls within section 2962, subdivision (e)(2)(L)." (*Macauley*, at p. 709.)

Appellant started a fire on the UCLA campus in the middle of the day. The fire was at least four feet tall and consumed brush as well as paper. Although no expert witness testimony on the subject of arson was presented, it is common knowledge that brush is highly flammable, and that brush fires spread quickly. The trier of fact could easily infer that the fire posed a substantial danger of spreading to areas occupied by students and faculty, and thereby posed a substantial danger of physical harm to others.

Citing *People v. Macauley*, *supra*, 73 Cal.App.4th at page 709, *People v. Baker* (2012) 204 Cal.App.4th 1234, 1244, and other authority, appellant also argues that the trial court erred by concluding that appellant's arson would support his commitment whether or not it posed a substantial danger of physical harm to others. Here, however,

the court stated that the commitment offense was simply an arson under section 451, subdivision (d) but that it was "dangerous to other people." That is all that is required. (See *People v. Singh* (1995) 37 Cal.App.4th 1343, 1381 [""[a] decision right in result will not be reversed even though the reason stated is wrong""].)

DISPOSITION

The judgment (order of commitment) is affirmed.

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PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Ginger Garrett, Judge

Superior Court County of San Luis Obispo

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

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