Filed 9/18/18 P. v. Rowland CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. ROCK ANTHONY ROWLAND, Defendant and Appellant.	2d Crim. No. B288634 (Super. Ct. No. 18PT-00035) (San Luis Obispo County)

Rock Anthony Rowland appeals the trial court's order committing him for treatment as a mentally disordered offender (MDO; Pen. Code,[1] § 2962 et seq.). Appellant contends the evidence is insufficient to support the court's order. We affirm.

FACTS AND PROCEDURAL HISTORY

In May 2016, appellant was convicted of cruelty to an animal (§ 597, subd. (a)). The court also found true an allegation that appellant used a dangerous or deadly weapon in committing

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

the offense (§ 12022, subd. (b)(1)). Appellant was sentenced to four years in state prison.

In September 2017, the Board of Parole Hearings (BPH) determined that appellant met the MDO criteria and should be committed for MDO treatment as a condition of his parole. Appellant petitioned for a hearing pursuant to section 2966, subdivision (b), requested the appointment of counsel, and waived his right to a jury.

Dr. Dia Gunnarsson, a forensic psychologist at Atascadero State Hospital, testified that appellant met the criteria for an MDO commitment. Dr. Gunnarsson interviewed appellant, reviewed his medical records and prior evaluations, and consulted with his treatment team. Appellant suffers from schizophrenia spectrum disorder or an unspecified psychotic disorder, both of which are severe mental disorders. Dr. Gunnarsson opined that appellant's severe mental disorder was a cause or aggravating factor in his commission of the commitment offense. His behavior at the time of the offense was "odd and bizarre" and was "disproportionate to what he had talked about being the trigger for his actions." When Dr. Gunnarsson spoke to appellant about the offense, "his recall of the incident seemed a little vague and disjointed" and "there was also an illogical or repetitious sort of element to his explanation." The doctor also noted that appellant was not taking any medication for his severe mental disorder when he committed the offense.

Dr. Gunnarsson also opined that appellant's severe mental disorder was in remission at the time of the BPH hearing, but could not be kept in remission without treatment. Although appellant was currently taking his medications, "he had shown less than what the hospital considers reasonable engagement" in

other aspects of his treatment, such as group therapy sessions. The hospital considers an attendance rate of at least 75 percent to be a reasonable level of compliance with group therapy treatment, and Dr. Gunnarsson agreed with this conclusion. Appellant's attendance rate, however, was only 65 percent.

Dr. Gunnarsson also concluded that appellant currently represented a substantial danger of physical harm to others by reason of his severe mental disorder. Appellant does not believe he suffers from a mental disorder and did not understand his need for medication. Within the past year, he had asked the hospital to discontinue his medication and stated his belief that "nothing would happen if he stopped his medication." Due to appellant's lack of insight into his mental disorder, there was an elevated risk that he would not continue to take his medication if he were released.

Dr. Gunnarsson also took into account appellant's prior history of substance abuse and his previous head trauma, the latter of which could impact his ability to comply with any discharge plans or "be aware of when he needs to be somewhere." The doctor also considered appellant's prior history of violence related to his mental disorder, i.e., his commission of the commitment offense. In light of these factors, Dr. Gunnarsson concluded that "if [appellant] were to decompensate in the community, he would be at an elevated risk of similar behavior again."

Appellant offered no evidence. At the conclusion of the hearing, the court found that the People had met their burden of proving beyond a reasonable doubt that appellant qualified as an MDO, denied appellant's petition, and ordered that he be committed for MDO treatment as a condition of his parole.

DISCUSSION

I.

Appellant contends the evidence is insufficient to support the finding that his severe mental disorder was in remission but could not be kept in remission without treatment. In deciding this claim, "we view the entire record in the light most favorable to the judgment and determine whether it discloses substantial evidence -- i.e., evidence that is reasonable, credible, and of solid value -- to support the jury's finding." (*People v. Beeson* (2002) 99 Cal.App.4th 1393, 1398, fn omitted (*Beeson*); *People v. Clark* (2000) 82 Cal.App.4th 1072, 1075-1076.) We cannot reweigh the evidence or substitute our decision for that of the trier of fact. (*Clark*, at p. 1083.)

For an MDO recommitment, the People must prove beyond a reasonable doubt "that the patient has a severe mental disorder, that the patient's severe mental disorder is not in remission or cannot be kept in remission without treatment, and that by reason of his or her severe mental disorder, the patient represents a substantial danger of physical harm to others." (§ 2972, subd. (c).) As relevant here, a patient "'cannot be kept in remission without treatment' if during the year prior to the question being before the [BPH] or a trial court, he or she has been in remission and . . . has not voluntarily followed the treatment plan. In determining if a person has voluntarily followed the treatment plan, the standard shall be whether the person has acted as a reasonable person would in following the treatment plan." (§ 2962, subd. (a)(3); *Beeson*, s*upra*, 99 Cal.App.4th at pp. 1398-1399.)

Substantial evidence supports the finding that appellant's severe mental disorder, although in remission, could not be kept

in remission without treatment. Dr. Gunnarsson reasonably opined that appellant's failure to participate in at least 75 percent of his group therapy treatment constituted a lack of compliance with that treatment. Appellant characterizes the 75 percent figure as a "totally arbitrary numerical threshold," but Dr. Gunnarsson asserted that this was the medically-accepted standard and appellant offered nothing to prove otherwise.[2]

In any event, appellant's lack of insight into his severe mental disorder was sufficient by itself to support the finding that his disorder could not be kept in remission without treatment, as provided in section 2962, subdivision (a)(3). Although "lack of insight" is not expressly referred to in the statute, it is relevant to the determination whether a patient has not fully complied with his or her treatment plan, such that his or her severe mental disorder cannot be kept in remission without treatment. (*Beeson*, supra, 99 Cal.App.4th at p. 1399.) In *Beeson*, the court stated: "We apply a reasonable person standard in determining whether a person has followed his treatment plan. Although defendant argues that any lack of cooperation was well within what would have been expected of a reasonable person, the People's evidence indicates that defendant was inconsistent in acknowledging his mental illness and his need for medication and treatment. A reasonable person, whose mental disorder can be kept in remission with treatment, must,

---

[2] Contrary to appellant's assertion, Dr. Gunnarsson's conclusion also took into account his prior head trauma. Although the doctor could not state with "absolute certainty" that appellant's memory loss had not contributed to his sporadic group therapy attendance, she noted that the hospital had a standard practice of reminding patients when it was time for them to attend their sessions.

at a minimum, acknowledge if possible the seriousness of his mental illness and cooperate in all the mandatory components of his treatment plan." (*Ibid.*, fn. omitted.)

Although Dr. Gunnarsson did not expressly offer appellant's lack of insight as support for her opinion that his severe mental disorder could not be kept in remission without treatment, she did so in opining that he currently represented a substantial danger of physical harm to others by reason of his disorder. Moreover, appellant stated his belief that he does not suffer from a mental disorder and that he has no need for medication. A reasonable person in appellant's position would be able to "acknowledge . . . the seriousness of his mental illness and cooperate in all the mandatory components of his treatment plan." (*Beeson*, *supra*, 99 Cal.App.4th at p. 1399.) The court could thus reasonably consider appellant's lack of insight into his severe mental disorder in finding that the disorder could not be kept in remission without treatment, as provided in section 2962, subdivision (a)(3). (*Ibid.*)

II.

Appellant also contends the evidence is insufficient to support the finding that he currently represented a substantial danger to others by reason of his severe mental disorder, as provided in section 2962, subdivision (d)(1). Viewing the evidence in the light most favorable to the judgment (*Beeson*, *supra*, 99 Cal.App.4th at p. 1398), we conclude otherwise.

In opining that appellant currently represented a substantial danger of physical harm to others by reason of his mental disorder, Dr. Gunnarsson "took into consideration several different factors, including his level of insight, his discharge plans, . . . his history of substance abuse and history of mental-

illness-related violence." In challenging this opinion, appellant complains that his history of violence consisted solely of the conduct underlying his commitment offense. He asserts that an MDO's commitment offense "cannot alone justify a finding of dangerousness" and that "a single act of violence against an animal has little or no probative value as to whether he represented a substantial danger of physical harms to other persons, as required by . . . section 2962, subdivision (d)(1)."

But Dr. Gunnarsson's challenged opinion was not based solely upon the conduct underlying appellant's commitment offense. Moreover, "[i]t does not take a leap in logic to conclude that an individual who violently or forcefully injures an animal might be dangerous to people." (*People v. Dyer* (2002) 95 Cal.App.4th 448, 455.) Given appellant's belief that he does not suffer from a mental disorder, his lack of an adequate discharge plan, his history of substance abuse, and the prior act of violence that resulted in the commitment offense, Dr. Gunnarsson reasonably opined that he currently represented a substantial danger to others. The court, as trier of fact, could thus make such a finding beyond a reasonable doubt. (See *People v. Ward* (1999) 71 Cal.App.4th 368, 374 ["In civil commitment cases, where the trier of fact is required by statute to determine whether a person is dangerous or likely to be dangerous, expert prediction may be the only evidence available"].)

DISPOSITION

The judgment (MDO commitment order) is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Matthew G. Guerrero, 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, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Michael C. Keller, and Eric J. Kohm, Deputy Attorneys General, for Plaintiff and Respondent.