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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.

OMAR GRANADOS MARTINEZ,

Defendant and Appellant.

2d Crim. No. B283717
(Super. Ct. No. 17PT-00328)
(San Luis Obispo County)

Omar Granados Martinez appeals an order committing him for treatment as a mentally disordered offender (MDO). (Pen. Code, § 2962.)¹ Substantial evidence supports the order. We affirm.

FACTS

In 2011, Martinez was convicted of attempted murder (§§ 664, 187, 189) and abuse/endangerment of a child (§ 273a, subd. (a)). In April 2017, the Board of Parole Hearings (BPH)

¹ All statutory references are to the Penal Code.

determined Martinez met the qualifications to be committed for treatment as an MDO.

Martinez filed a petition for appointment of counsel and a hearing to challenge that determination. (§ 2966, subd. (b).) The trial court appointed counsel and Martinez waived his right to a jury trial.

At trial Dia Gunnarsson, Ph.D., testified Martinez suffers from schizophrenia, a severe mental disorder. Martinez has a history of “auditory” and “visual” hallucinations. He has “persecutory delusions” believing someone placed a “device in his head” to control his movements. He has the paranoid belief that “others are trying to harm him.” His severe mental disorder was an “aggravating factor” in his commitment offense of attempted murder.

At the time of the BPH hearing, Martinez was in remission in that he did not “express any delusional beliefs,” and medical records confirmed that he was “psychiatrically stable.” But he cannot not be kept in remission without treatment. There were “three instances” during his current “hospitalization” where he had to be “placed in restraints.” He was having “thoughts of hurting other people.”

In 2015, when he was “in C.D.C.R.,” Martinez said that “if someone didn’t return his property, he was going to stab [them].” He made an accompanying “stabbing motion with his hand.”

Gunnarsson testified Martinez represents “a substantial danger to others.” His insight is “ambivalent” about his mental disorder. “On one hand, [Martinez] thought maybe he had a mental illness; on the other, he wasn’t quite sure if he did.” He told Gunnarsson he did not have any auditory hallucinations for eight months. But the medical records show he “intermittently

hears voices.” Gunnarsson said there are “concerns about his ability to recognize when he’s starting to experience symptoms and may require assistance or seeking help to manage them.” Martinez has a “severe” substance abuse history. He has not received treatment for his substance abuse problem.

Martinez testified he believes he suffers from schizophrenia. He did not suffer from paranoia. He does not “hear voices” now. The “voices” stopped nine months ago. He said “maybe” he was “still hearing voices earlier this year.” He said if he stopped taking his medications, “[he] would not hear voices.”

The trial court ruled Martinez met the requisite criteria to be committed for treatment as an MDO. It found he had made threats and he lacked sufficient insight as to his mental disorder. It said evidence of his lack of insight was shown by his belief that if he stopped taking his medications, “nothing would happen.”

DISCUSSION

Substantial Evidence

Martinez contends there is insufficient evidence to support a finding that he was not in remission or “could not be kept in remission without treatment, within the meaning of the MDO statute.” He claims the trial court consequently erred by committing him for MDO treatment. We disagree.

“In considering the sufficiency of the evidence to support MDO findings,” we “must determine whether . . . a rational trier of fact could have found that defendant is an MDO beyond a reasonable doubt, considering all the evidence in the light which is most favorable to the People, and drawing all inferences the trier could reasonably have made to support the finding.” (*People v. Clark* (2000) 82 Cal.App.4th 1072, 1082.) We do not weigh the

evidence. The trier of fact alone decides the credibility of the witnesses. (*Id.* at pp. 1082-1083.)

Remission means a person's "overt signs and symptoms of the severe mental disorder are controlled either by psychotropic medication or psychosocial support." (§ 2962, subd. (a)(3).) "A person 'cannot be kept in remission without treatment' if during the year prior to the question being before the Board of Parole Hearings . . . [1] he or she has been in remission and . . . has been physically violent, except in self-defense, or [2] he or she has made a serious threat of substantial physical harm upon the person of another so as to cause the target of the threat to reasonably fear for his or her safety or . . . [3] he or she has intentionally caused property damage, or [4] he or she has not voluntarily followed the treatment plan." (§ 2962, subd. (a)(3).) In deciding compliance with 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).)

Martinez contends the statements he made were too general to be considered threats. But Gunnarsson testified he had to be placed in restraints on three occasions and he said he was thinking of hurting other people. He said he was "going to hit somebody." Martinez had been convicted of attempted murder, and while in prison, he threatened to stab someone. The trial court could reasonably infer the medical staff could reasonably fear for their safety because his statements showed an intent to hurt people. Moreover, Gunnarsson testified Martinez had a "severe" substance abuse history. But Martinez had not received treatment for that problem. She said substance abuse can "exacerbate mental health symptoms."

Lack of insight is also a relevant factor in determining whether a disorder can be kept in remission without treatment. (*People v. Beeson* (2002) 99 Cal.App.4th 1393, 1399.) “A reasonable person, whose mental disorder can be kept in remission with treatment, must, at minimum, acknowledge if possible the seriousness of his mental illness and cooperate in all the mandatory components of his treatment plan.” (*Ibid.*)

From Gunnarsson’s testimony, the trial court could reasonably infer Martinez lacked insight regarding his mental disorder. She said he had made statements indicating that he was not sure if he had a mental disorder and his statements about not having auditory hallucinations were in conflict with the medical records. She said there are “concerns about his ability to recognize when he’s starting to experience symptoms.”

The evidence is sufficient. We have reviewed Martinez’s remaining contentions and we conclude he has not shown grounds for reversal.

DISPOSITION

The order is affirmed.

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GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Dodie A. Harman, Judge

Superior Court County of San Luis Obispo

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