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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.

DAVID STEPHENS,

Defendant and Appellant.

2d Crim. No. B264632
(Super. Ct. No. 15PT-00238)
(San Luis Obispo County)

David Stephens appeals from the judgment entered after the trial court found he was a mentally disordered offender (MDO) and committed him to the California Department of Mental Health for treatment. (Pen. Code, § 2960 et seq.)¹ Appellant contends the evidence does not support the finding that his severe mental disorder was not in remission or cannot be kept in remission without treatment. (§ 2962, subd. (a)(2).) We affirm.

Facts and Procedural History

On April 16, 2015, the Board of Prison Terms (BPT) certified that appellant was an MDO. Appellant filed a petition challenging the BPT finding and waived jury trial. (§ 2966, subd. (b).)

¹ All statutory references are to the Penal Code.

Doctor Kevin Perry, a psychologist at Atascadero State Hospital, testified that appellant suffered from schizophrenia, a severe mental disorder manifested by grandiose and persecutory delusions, paranoia, disorganized thinking, agitation, poor self-care, and flat affect. Appellant has received treatment for these symptoms since he was 18 years old when he was first hospitalized.

The evidence shows that appellant was committed to state prison after he was convicted of grand theft and aggravated assault. During the grand theft, appellant pepper sprayed his mother in the face, wrestled his sister to the ground, and pepper sprayed her as well. After the mother and sister escaped through a window, appellant stole their cell phones and left. In the July 2013 assault, appellant argued with his father and pushed and stabbed him in the back with a knife.

Doctor Perry testified that appellant's mental disorder was a cause or aggravating factor in the assault. Appellant stopped taking his antipsychotic medication before the assault and was using methamphetamine which exacerbated his symptoms. When appellant was arrested, he said that he had a talk show and was a celebrity superstar. Appellant claimed that the FBI and CIA were tracking him with a brain chip implant and that he could take photographs with his eyes.

Doctor Perry testified that appellant met all the MDO criteria.² Although appellant was in remission at the time of the BPT hearing (April 2015), Doctor Perry opined that the mental disorder could not be kept in remission without treatment based on appellant's physical aggression towards others and failure to voluntarily follow the treatment plan. Appellant threatened another with physical harm (lunged at a corrections

² The six criteria for an MDO commitment are: the prisoner (1) has a severe mental disorder; (2) used force or violence in committing the underlying offense; (3) had a mental disorder that caused or was an aggravating factor in the commission of the underlying offense; (4) the disorder is not in remission or capable of being kept in remission without treatment; (5) the prisoner was treated for the disorder for at least 90 days in the year prior to his parole or release; and (6) the prisoner poses a serious threat of physical harm to others by reason of the disorder. (§ 2962, subd. (d)(1); *People v. Clark* (2000) 82 Cal.App.4th 1072, 1075-1076.)

officer) within a year of the BPT hearing and, in November 2014, refused to take his prescribed psychotropic medication. The hospital records reflected that appellant suffered delusional beliefs when he declined to take his medication.

From December 2014 up to the time Doctor Perry interviewed appellant (May 26, 2015), appellant took his medication but displayed a flat affect and lack of emotional expression. Although appellant exhibited no overt symptoms, Doctor Perry opined that appellant would have to be symptom free for six months before a mental health professional could say that appellant was in remission. A six-month clinical remission is the "common benchmark in these kinds of cases" Doctor Perry was concerned that appellant would not take his prescribed medication if released and that it would pose a risk of harm to others. "[W]hen I spoke with [appellant] about his illness and need for medication, he wasn't able to identify any benefits of taking the medicine or any risks or consequences of discontinuing it."

The trial court found that appellant posed a substantial danger to others and would continue to do so "until he gets some insight into his . . . severe mental disorder and he shows full cooperation" in taking his medication. Appellant had not finished his drug treatment program and "it sounds like this methamphetamine, conjoined with his severe mental disorder, are a toxic brew"

Failure to Follow the Treatment Plan

Appellant argues that the evidence does not support the finding that the severe mental disorder could not be kept in remission without treatment. (§ 2962, subd. (a)(3).) Viewing the record in the light most favorable to the judgment, we resolve all evidentiary conflicts and draw all reasonable inferences in favor of the trial court's decision. (*People v. Poe* (1999) 74 Cal.App.4th 826, 830.) The testimony of a single qualified expert is sufficient to support the trial court's findings. (See e.g., *People v. Valdez* (2001) 89 Cal.App.4th 1013, 1017-1018.)

Section 2962, subdivision (b)(3) defines the phrase "cannot be kept in remission without treatment" to mean that one of four specific acts have occurred during

the previous year: a violent act except in self defense, a serious threat of substantial physical harm to another, intentional property damage, or failure to voluntarily follow the treatment plan. (*People v. Nelson* (2012) 209 Cal.App.4th 698, 706-707; *People v. Burroughs* (2005) 131 Cal.App.4th 1401, 1407.) Section 2962, subdivision (a)(3) provides: "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."

It is uncontroverted that appellant threatened another with physical harm, periodically refused to take his medication, relapsed when he stopped taking his medication, and lacked insight about his mental disorder and need to be treatment compliant. Doctor Perry testified that appellant was "unreasonably non-compliant." "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." (*People v. Beeson* (2002) 99 Cal.App.4th 1393, 1399.)

Appellant argues that he has a statutory right to refuse medication (*Keyhea v. Rushen* (1986) 178 Cal.App.3d 526, 530) and the exercise of that right does not support the finding that he is an MDO. Although appellant had a constitutional right to refuse antipsychotic medication (see *In re Qawi* (2004) 32 Cal.4th 1, 14), the trial court may consider appellant's refusal to voluntarily take his medication as evidence that the severe mental disorder is not in remission or cannot stay in remission without treatment. Stated another way, a prisoner's exercise of the right to refuse psychotropic medication does not exempt the prisoner from an MDO commitment if the prisoner poses a danger to others by reason of his or her severe mental disorder. (*Id.*, at p. 10.) Doctor Perry testified that it was unlikely appellant would take his medication if released and that the failure to do so would most likely cause appellant to be symptomatic and act out violently as he did in the past.

The MDO Act provides that a defendant's failure to voluntarily follow his treatment plan may be grounds for finding that he cannot be kept in remission without treatment. (§ 2962, subd. (a); *People v. Burroughs, supra*, 131 Cal.App.4th at p. 1405.) That is the case here. "Under section 2962, not voluntarily following the treatment plan is essentially an exception to the finding that the illness is in remission." (*People v. Beeson, supra*, 99 Cal.App.4th at p. 1400.) Substantial evidence supports the finding that appellant's mental disorder cannot be kept in remission without treatment.

The judgment (order of commitment) is affirmed.

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YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Donald G. Umhofer, Judge
Superior Court County of San Luis Obispo

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

Kamala D. Harris, Attorney General, Gerald A/ Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Scott A. Taryle, Supervising Deputy Attorney General, Eric J. Kohm, Deputy Attorney General, for Plaintiff and Respondent.