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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.

CARLOS AGUIRRE,

Defendant and Appellant.

2d Crim. No. B285207
(Super. Ct. No. 17PT-00497)
(San Luis Obispo County)

Carlos Aguirre appeals from the judgment entered after the trial court determined that he was a mentally disordered offender (MDO). (Pen. Code, § 2960 et seq.)¹ Appellant contends that the evidence does not support the finding that his severe mental disorder was a cause of or an aggravating factor in the commission of the commitment offense. (§ 2962, subd. (b).) We affirm.

¹ All further statutory references are to the Penal Code.

Facts

Appellant suffers from schizophrenia, a severe mental disorder, manifested by auditory and visual hallucinations, paranoid ideas, and the delusional belief that other people can read his mind or hear his thoughts. In 2016 appellant was sentenced to state prison after he was convicted of two assaults (§ 245, subd. (a)(4)).

On June 2, 2017, the Board of Prison Terms determined that appellant was an MDO and committed him to Atascadero State Hospital (ASH) for treatment. (§ 2962, subds. (a) - (d).) Appellant petitioned the superior court for trial and waived jury. (§ 2966, subd. (b).)

Doctor Kevin Perry, a forensic psychologist at ASH, testified that appellant met all the MDO criteria and that the severe mental disorder was an aggravating factor in the commitment offenses. In an interview, appellant told the doctor that he was hearing voices and feeling paranoid when he committed the assaults.

Dr. Perry opined that the severe mental disorder could not be kept in remission without treatment. Appellant did not believe that he needed his medicine and had a history of alcohol and drug use that aggravated his symptoms. It was a concern because appellant had not completed his substance abuse treatment and lacked insight about the need for treatment.

Doctor Emily Ziegler, a forensic psychologist at ASH, opined that the mental disorder was not a substantial cause of the commitment offenses. Appellant told the doctor that the first victim tried to hit him with a rock and the second assault occurred in jail when the victim, a fellow inmate, called him a bitch. The arrest report indicated that appellant punched and

kicked the inmate multiple times in the face. Appellant told the deputy that the victim woke up late for food and “I got mad . . . and swung.” Appellant punched the victim in the face 12 times and kicked the victim one last time in the head after the victim was already on the ground.

Discussion

In order to find that appellant meets the criteria for treatment as an MDO, the trial court was required to find that appellant’s severe mental disorder “was one of the causes of, or was an aggravating factor in, the commission of a crime for which [appellant] was sentenced to prison.” (§ 2962, subd. (b).)² As in any substantial evidence case, we draw all reasonable inferences and resolve all conflicts in favor of the judgment. (*People v. Clark* (2000) 82 Cal.App.4th 1072, 1082-1083.) It is the exclusive province of the trial judge to determine the credibility of a witness and the truth or falsity of the facts on which the MDO determination depends. (*Ibid.*)

Appellant argues that Dr. Ziegler’s expert opinion testimony controls. On review, we are precluded from reweighing the evidence. The MDO statute only requires that the severe

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 danger of physical harm to others by reason of the disorder. (§ 2962, subd. (d)(1); *People v. Clark*, *supra*, 82 Cal.App.4th at pp. 1075-1076.)

mental disorder be one of the causes or an aggravating factor in the commitment offense. (§ 2962, subd. (b).) Dr. Perry's testimony and appellant's admission that he was hearing voices and feeling paranoid when he committed the assaults, support the finding that the mental disorder was an aggravating factor in the commission of the assaults. (See, e.g., *People v. Bowers* (2006) 145 Cal.App.4th 870, 879 [single psychiatric opinion constitutes substantial evidence].) Appellant had a long history of mental illness and substance abuse, was living in a group facility and took methamphetamine the day before the first assault. In an interview, appellant told Dr. Perry that he was hearing voices and feeling paranoid when he assaulted the victims.

Given appellant's mental health history and use of drugs, and his history of acting out violently when his symptoms were not controlled, it is reasonable to infer that appellant was experiencing paranoid, hostile thoughts when he assaulted the victims. Ample evidence supports the trial court's finding that the severe mental disorder was "one of the causes of, or was an aggravating factor in, the commission of a crime for which the prisoner was sentenced to prison." (§ 2962, subd. (b); *People v. Clark, supra*, 82 Cal.App.4th at p. 1083.)

Disposition

The judgment (MDO commitment order) is affirmed.
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YEGAN, Acting P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Jacquelyn H. Duffy, Judge

Superior Court County of San Luis Obispo

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