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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.

SAMUEL QUINONES,

Defendant and Appellant.

2d Crim. No. B237473
(Super. Ct. No. F463942)
(San Luis Obispo County)

Samuel Quinones appeals a judgment committing him to the California Department of Mental Health (CDMH) for treatment as a mentally disordered offender (MDO) (Pen. Code, § 2962),¹ following his conviction of assault with a deadly weapon (§ 245, subd. (a)(1)).

We conclude, among other things, that Quinones received 90 days of treatment for his disorder. (§ 2962, subd. (c).) We affirm.

FACTS

On August 15, 2011, Quinones filed a petition to challenge a Board of Parole Hearings' determination that he met the requirements for commitment as an MDO. (§ 2962.) He waived a jury trial.

Kevin Perry, a psychologist at Atascadero State Hospital, testified that Quinones has a history of schizophrenia. Quinones has "persecutory delusions," hears

¹ All statutory references are to the Penal Code.

voices, has "thought disorganization," paranoia, and "psychomotor agitation." His commitment offense involved assault with a deadly weapon. He struck a man at a bus stop with a metal rod and his mental disorder was an aggravating factor.

The prosecutor asked, "[H]as Mr. Quinones been in treatment for his mental disorder for 90 days or more in the year prior to his scheduled parole or release date?"

Perry: "In my opinion, no." Quinones received 14 days of inpatient treatment. He also received outpatient services from the Parole Outpatient Clinic (POC) for 169 days. Perry said the CDMH has determined that parole outpatient clinic services do not constitute treatment in determining the 90-day treatment requirement. (§ 2962, subd. (c).)

Christopher Miller-Cole, a POC forensic psychologist, testified that services available at POC are equivalent to services provided within the state's correctional medical system.

Trayci Dahl, a CDMH doctor and Quinones's expert, said parole outpatient treatment does "not count" for determining the 90-day treatment requirement. The CDMH instructs its doctors "only to look at days of treatment that are inpatient." Quinones did not receive 90 days of treatment.

The trial court found Quinones "received the requisite treatment." It said the CDMH policy of not considering the POC outpatient services as "treatment" in its medical assessments for MDO commitments was incorrect.

DISCUSSION

90 Days of Treatment

Quinones claims the trial court erred by including his POC outpatient services as "treatment" in determining the 90-day treatment requirement. We disagree.

The People must prove "[t]he prisoner has been in treatment for the severe mental disorder for 90 days or more within the year prior to the prisoner's parole or release." (§ 2962, subd. (c).)

Quinones contends that in a prior decision we precluded the inclusion of POC outpatient treatment. We disagree. In *People v. Del Valle* (2002) 100 Cal.App.4th 88, 93, we held that private outpatient services could not be included within the 90-day

treatment period. We also said, "It is consistent with the statutory scheme that a prisoner must receive *90 days of inpatient treatment* before he can qualify as an MDO." (Italics added.) This language was overly broad dicta. In *Del Valle*, we did not reach the issue of whether POC outpatient treatment is included within the 90-day treatment requirement. (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 620 [language in appellate decisions is not authority for issues that were never raised or decided].)

Our holding in *People v. Achrem* (Jan. 29, 2013, B236100) __Cal.App.4th __ decides the issues here. POC treatment satisfies the 90-day treatment criterion for an MDO commitment.

As we say in *Achrem*, sections 2962 and 2964, when read together, provide that the 90-day treatment requirement can be satisfied by inpatient treatment (i.e., treatment in prison or a custodial setting after the defendant is sentenced to state prison on the commitment offense), or by POC treatment providing DMH screened the prisoner and certified to the BPH that the prisoner can be safely and effectively treated at the POC. Although mental health professionals may disagree on whether POC treatment counts in satisfying the 90-day treatment criteria, we take the MDO Act as we find it. (*People v. Achrem*, *supra*, __ Cal.App.4th at p. ____.)

The judgment is affirmed.

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GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

John A. Trice, 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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