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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.

ROBERT GONZALES,

Defendant and Appellant.

2d Crim. No.B283186
(Super. Ct. No. 17PT-00201)
(San Luis Obispo County)

Robert Gonzales is 42 years old and a convicted pedophile. He had nearly concluded a prison sentence for child molestation when he struck a fellow prisoner breaking his jaw. Gonzales received a two year prison sentence for this offense and Mentally Disordered Offender (MDO) proceedings were instituted based on the diagnosis that he is also bipolar. The trial court made the requisite findings under the MDO act (Pen. Code, § 2960, et seq.)¹ and committed him for the latter offense. No finding was made

¹ Unlabeled statutory references are to the Penal Code.

on the child molestation convictions. Relying on *People v. Sheek* (2004) 122 Cal.App.4th 1606 (*Sheek*), Gonzales contends that because he did not also receive treatment as a pedophile he could not be declared an MDO. *Sheek* is inapposite.

We conclude that appellant was properly committed as an MDO. The trial court relied on evidence relating to bipolar disorder, the severe mental disorder linked to the prison assault for which appellant is currently incarcerated. It is of no moment that appellant is also a pedophile. The evidence supports the finding that appellant received treatment for bipolar disorder, which caused or aggravated appellant's assault crime. We affirm.

FACTS AND PROCEDURAL HISTORY

In 2003, appellant received a 12 year prison sentence after pleading guilty in San Bernardino County to lewd and lascivious conduct with a child under the age of 14, and continuous sexual abuse of a child under the age of 14. (§§ 288, subd. (a), 288.5, subd. (a).) The victims were youngsters in a daycare center. In 2014, before his impending release for the child molestations, appellant pled no contest in Kings County to assaulting an inmate with force likely to produce great bodily injury. (§ 4501.) He was sentenced to a two-year prison term for the assault.

In 2016, before his impending release for the assault on an inmate, appellant was referred for a mental health assessment for the act of "fighting." The Rules Violation Report states that appellant has a history of violent behavior, including convictions in 1995 (a stabbing) and 2014 for assault producing great bodily injury; while in prison, appellant was cited numerous times for assaults on inmates. Appellant made five suicide attempts in prison by jumping from a tier, hanging, asphyxiation, overdosing on hoarded psychotropic medication and cutting. He is

impulsive, and has poor coping skills, mania (characterized by “noticeable grandiosity, decreased need for sleep, flight of ideas”) and was anxious about being released from prison. Appellant was abused as a child.

Due to his mental health referral, appellant was examined by seven psychologists to determine if he met MDO criteria.² Each wrote a report. Six examiners diagnosed appellant with pedophilia and bipolar disorder. Dr. Hupka diagnosed appellant as bipolar alone because appellant’s file lacked information about pedophilia. All examiners agreed that these are severe mental disorders (SMDs).

The seven psychologists differed in their conclusions as to whether appellant’s SMDs caused or were an aggravating factor relating to his criminal offenses. Six believed that appellant’s pedophilia caused his sexual offenses. Four of the examiners believed that appellant’s bipolar disorder caused or aggravated the violent assault he committed in prison.

The psychologists agreed that appellant received more than 90 days of treatment for his bipolar disorder. All but one believed that the disorder is either (a) not in remission or (b) is in remission but cannot be kept in remission without continued treatment. Appellant resisted using medication and participating in treatment. The examiners agreed that appellant did not receive 90 days of treatment for pedophilia, a chronic disorder.

Five of the seven psychologists believed that appellant is dangerous. His history of repeated violence—both in the

² The examiners were Richard Lowenthal, John Hupka, Craig West, Stephanie Walsh, Zhanna Sapozhnikov, Kimberly Spitz Mares, and Angie Shenouda.

community and while incarcerated—presents a substantial danger of physical harm to others. Appellant shows little insight into his violent behavior.

The Board of Parole Hearings determined that appellant should be committed as an MDO. He petitioned the trial court for a hearing to decide whether the MDO Act applies to him. (§ 2966, subd. (b).) He waived his right to a jury.

At trial in 2017, the parties stipulated to have the court read the seven psychological reports to determine whether appellant should be released, or whether he met the criteria for continuing treatment as an MDO. A primary issue was whether appellant received 90 days of treatment for his SMDs during the year preceding his scheduled parole.

The People argued that appellant's disorders are inextricably linked to the abuse he was subjected to as a child. The lack of judgment and impulse control that characterize bipolar disorder overlap both his child molestation offenses and his assault conviction. Appellant denied culpability for his behavior, would not take his medications, and continued to be dangerous. Appellant argued that he was treated for bipolar disorder but not for pedophilia, and that the People cannot "bootstrap one mental disorder onto another mental disorder."

The court found that the MDO criteria are met because appellant: (1) has a SMD; (2) his violent crime is a listed MDO offense; (3) the SMD caused or was an aggravating factor in the qualifying crime; (4) the SMD is not in remission or cannot be kept in remission without treatment; (5) he has had treatment for more than 90 days in the past year for bipolar disorder, the SMD that caused the assault leading to his current confinement; and (6) he presents a substantial danger of physical harm to others by

reason of his SMD. The court ordered that appellant be committed for treatment.

DISCUSSION

The purpose of the MDO Act “is to protect the public while treating severely mentally ill offenders.” (*People v. Stevens* (2015) 62 Cal.4th 325, 332.) An offender convicted of specified felonies related to an SMD, who poses a danger to society, may be required to receive treatment until the disorder can be kept in remission. (*People v. Harrison* (2013) 57 Cal.4th 1211, 1218.)³ At trial, the People must prove beyond a reasonable doubt that the prisoner meets the criteria for continued treatment. (*Id.* at p. 1219.) The criteria include whether the SMD “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” and “[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, subds. (b), (c).)

Appellant contends that the People did not prove that he received 90 days of treatment for *both* of his diagnosed SMDs. The Attorney General responds that the MDO Act does not require proof of treatment for both disorders. We conclude that the MDO Act is satisfied because appellant received 90 days of treatment for the MDO linked to the crime for which he was about to be paroled; namely, the bipolar disorder that caused or aggravated his assault on an inmate. The law requires treatment for “*a* severe mental disorder.” (§ 2962, subd. (a), *italics added.*) It does not require treatment for “all” or “every” or “each” of his diagnosed disorders. This is especially true when only one

³ Appellant does not dispute that he was convicted of crimes of violence enumerated in the MDO Act.

disorder led to the violent felony conviction for which the prisoner is currently incarcerated.

Appellant's prison term for molesting children ran from 2003 to 2015. He was not released in 2015, however, because he assaulted an inmate and was sentenced in 2014 to two years in prison. At the time of his MDO commitment proceeding in 2016, appellant was to be paroled for one crime: assault on an inmate. (§ 4501.) The assault conviction is the commitment offense that concerns us. Appellant's sexual interest in children does not affect our determination that he should continue treatment for his acts of violence against adults.

A commitment under the MDO Act "occurs as a condition of parole." (*People v. Stevens, supra*, 62 Cal.4th at p. 332.) Here, appellant was about to be paroled after his conviction for assaulting an inmate when he was cited for "fighting." His continuing violence against inmates led to the MDO proceeding.

After reviewing the entire record in the light most favorable to the judgment (*People v. Valdez* (2001) 89 Cal.App.4th 1013, 1016), we conclude that substantial evidence supports the trial court's determination that appellant's bipolar disorder caused, or was an aggravating factor in, the commission of the assault for which he was in prison. Further, he had treatment for this SMD for 90 days or more within the year prior to his parole or release. (§ 2962, subds. (b), (c).) Appellant does not dispute that he received treatment for bipolar disorder.

All seven of the doctors who examined appellant agreed that he has bipolar disorder, an SMD. A majority concluded that the bipolar disorder caused or aggravated the assault he committed in prison. All but one doctor believed that the disorder is not in remission, or is in remission but requires

continued treatment. Among the examiners, a majority found that appellant presents a substantial danger of harm to others.

While incarcerated, appellant had numerous citations for attacking inmates, as recently as 2016. (See *People v. Butler* (1999) 74 Cal.App.4th 557, 559 [the defendant “engaged in aggressive behavior in prison that was consistent with a bipolar disorder”].) Appellant’s refusals to follow voluntary treatment by taking medication or participating in therapy is one way to establish that his SMD was not or could not be kept in remission. The evidence is sufficient to sustain the trial court’s judgment. (*People v. Harrison, supra*, 57 Cal.4th at p. 1223.)

Appellant relies on *Sheek, supra*, 122 Cal.App.4th 1606 and *People v. Garcia* (2005) 127 Cal.App.4th 558 (*Garcia*). Both cases are distinguishable.

In *Sheek*, the defendant had “mutually dependent” disorders (pedophilia and depression) that combined to cause a single criminal offense. (*Sheek, supra*, 122 Cal.App.4th at p. 1609.) That is not the case here. Instead, appellant’s pedophilia is linked to his 2003 child molestation offenses, but his 2014 assault on an inmate is linked only to his bipolar disorder. The SMD for which appellant received treatment is uniquely responsible for his assault conviction.

The *Garcia* case is not on point. Defendant Garcia was diagnosed with and treated for schizoaffective disorder, not pedophilia, yet the government sought to commit him for pedophilia. (*Garcia, supra*, 127 Cal.App.4th at p. 567 [the prosecutor “presented evidence of an entirely new mental disorder and therefore a mental disorder for which defendant had never received treatment”].) Unsurprisingly, the court declined

to commit Garcia for an SMD that he did not have, and for which he did not receive treatment.

Appellant's case is factually more akin to *People v. Coronado* (1994) 28 Cal.App.4th 1402. There, a prisoner convicted of battery on a peace officer was treated for diagnosed paranoid schizophrenia; the defendant repeatedly assaulted other inmates owing to an SMD that caused excessive fear of people and delusions. Coronado's violence in prison, despite treatment, was sufficient to show that he was not in remission and posed a substantial danger to others. (*Id.* at pp. 1405-1046.)

In sum, appellant's bipolar disorder was a causal or aggravating factor in his commission of the violent crime for which he was incarcerated—assault on an inmate with force likely to produce great bodily injury. Appellant was regularly treated for bipolar disorder but substantial evidence shows that the disorder is not in remission. There is no basis for overturning the trial court's judgment committing appellant as a MDO.

DISPOSITION

The judgment is affirmed.

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PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Gayle L. Peron, 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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