Filed 3/6/17 P. v. S.G. CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

S.G.,

Defendant and Appellant.

2d Crim. No. B271253
(Super. Ct. No. F198931001)
(San Luis Obispo County)

S.G. appeals an order extending his involuntary commitment because he represents "a substantial danger of physical harm to others" because of a mental disorder (Pen. Code, §§ 1026, 1026.5[1]), after having been found not guilty by reason of insanity for attempted murder (§§ 664, 187, 1026). We conclude, among other things, that S.G. has not shown that the trial court erred in making its evidentiary rulings. We affirm.

[1] All statutory references are to the Penal Code.

FACTS

On December 4, 2015, the San Luis Obispo County District Attorney filed a petition for extended commitment for S.G. (§ 1026.5, subd. (b)(2).) The district attorney alleged that S.G "was previously committed under Penal Code section 1026 having been found not guilty by reason of insanity" for attempted murder; and that S.G.'s current commitment was scheduled to expire on July 2, 2016; and that S.G., "by reason of mental disease, defect, or disorder represents a substantial danger of physical harm to others."

At a hearing on February 11, 2016, S.G. waived a jury trial. The parties agreed the trial court would decide the section 1026.5 petition by considering the parties' documentary evidence.

The People presented exhibit 1, a report by psychologist Brandon Yakush, who concluded that 1) S.G. has "several medical conditions that warrant ongoing treatment," and 2) S.G.'s commitment should be continued. S.G. suffers from a schizoaffective disorder, a cannabis use disorder, and "[o]ther [s]pecified [p]ersonality [d]isorder, with antisocial features." Yakush said that "[d]ue to a mental defect, disease, or disorder, [S.G.] remains a substantial danger to the health and safety of others." S.G. was found not guilty by reason of insanity of attempted murder in 1993. While at the Patton State Hospital, he "committed an act of attempted murder" in 2005. Yakush said in 2013 S.G became "a dual commitment" under "both [section] 1026 and [section] 2962, Mentally Disordered Offender (MDO)." S.G. has exhibited "antisocial traits," unwillingness to follow rules, lack of remorse, and "verbal and physical aggression." He believes his doctors are trying to kill him and that his medications are "toxins." S.G.'s doctor indicated that S.G.'s

"actions appeared paranoid." S.G. consistently denies "having a mental illness." He has "delusional and/or paranoid beliefs." In a July 2015 incident, he became "threatening" and had to be placed in wrist restraints.

Yakush said S.G. has a history of attacking medical staff and making threats. In 2006, S.G. "threatened to kill staff." In 2011, he "battered a psychiatrist." In 2012, he "made a vague threat to staff." In 2015, he was "placed in restraints and [a] Posey belt for about 10-1/2 hours." Yakush said S.G. has "little insight into his history of aggression." S.G. does not believe he needs medications.

S.G. presented four documents: 1) a letter from a woman who had a discussion with Doctor Calderon of the Atascadero State Hospital (ASH) about S.G. (exhibit A), 2) an article about the effectiveness of medications in treating schizophrenia (exhibit B), 3) a letter about the conditions at ASH (exhibit C), and 4) a ruling on a "*Qawi*" hearing (exhibit D).

The trial court reviewed the documentary evidence and granted the People's petition. It found S.G.'s documentary evidence did not refute the People's evidence. It explained why diminished weight must be given to S.G.'s evidence and denied S.G.'s motion to dismiss.

DISCUSSION

Rulings on the Evidence

S.G. contends the trial court denied him a fair trial because it applied inequitable standards of admissibility to the prosecution and defense evidence.

The People contend S.G. forfeited this claim by not raising it in the trial court. We agree. A defendant must first raise objections to evidentiary rulings in the trial court. (*People v. Houston* (2012) 54 Cal.4th 1186, 1213.) S.G.'s trial counsel did

not raise any objections after the court issued its decision. But even on the merits, the result does not change.

The trial court's rulings on the evidence are reviewed for an abuse of discretion. (*People v. Kopatz* (2015) 61 Cal.4th 62, 85.) "On appeal, presumptions favor the trial court's proper exercise of its authority." (*People v. Morton* (2003) 114 Cal.App.4th 1039, 1048.)

Here the parties stipulated that the trial court could decide this case based on documentary evidence. The stipulation did not limit the court's authority. It provided that "the exhibits as set forth *may be submitted* and the court will issue its ruling on the 1026.5 issue." (Italics added.) The weight and credibility of the submitted evidence was a matter for the trial court. (*People v. Gurule* (2002) 28 Cal.4th 557, 601; *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972; *Fininen v. Barlow* (2006) 142 Cal.App.4th 185, 189-190; *Betz v. Pankow* (1993) 16 Cal.App.4th 919, 923; *Consolidated Produce Co. v. Pieper* (1950) 100 Cal.App.2d 631, 635.)

S.G. contends the trial court initially admitted his documentary evidence and later erred by dismissing it as hearsay. But that is not correct. The court said S.G.'s exhibit A was "classic hearsay," but it also found it was "*not entitled to much (if any) weight*." (Italics added.) There was no abuse of discretion.

Exhibit A is a letter by a Sandra Lindsey-Sullivan concerning her conversation with Doctor Calderon of ASH about S.G. Admitting this letter did not preclude the trial court from "assessing its evidentiary value." (*People v. Charles* (2015) 61 Cal.4th 308, 331.) The court had discretion to give Calderon's opinions diminished weight. (*People v. Reeder* (1976) 65

Cal.App.3d 235, 243 [trier of fact may disregard "even uncontradicted expert opinion"].)

Moreover, many of Calderon's remarks do not support S.G. Calderon said he "believes that [S.G.] would function perfectly in society as long as he would take his medication." But he also said if he does not take his medication, he "*can become a danger to society*." (Italics added.) Calderon said he does not believe S.G. "would take his medication." S.G. "believes that the medications are toxins, and that the government poisons people." S.G. "has asked to be taken off his medications" and denies he has "a mental health diagnosis" despite being diagnosed "as Schizoaffective."

The trial court also gave little weight to S.G.'s exhibit B. This document purports to be an "affidavit" of Robert Whitaker. But it is not signed. It is only *a 2007 article* by a "*journalist*" about the alleged ineffectiveness of treating schizophrenia with "antipsychotic medications." It does not mention S.G., and S.G.'s counsel did not show its relevance. The court reasonably found this exhibit "is without adequate foundation to be received as an expert opinion" and is "dated and not necessarily directed at [S.G.'s] specific medical regimen." It properly gave it diminished weight. (*People v. Hernandez* (2011) 200 Cal.App.4th 953, 965-966; *In re Aguilar* (2008) 168 Cal.App.4th 1479, 1490; *People v. Morton*, *supra*, 114 Cal.App.4th at pp. 1047-1048.)

S.G.'s exhibit C is a letter from an assistant U.S. attorney general to the Governor of California about the conditions at ASH *in 2006*. It does not mention S.G. and his counsel did not show its current relevance. The court did not abuse its discretion by giving it diminished weight. It said this exhibit "is also dated and the criticisms directed at the hospital's

practices and conditions are not sufficiently connected to [S.G.'s] current situation."

Moreover, S.G. has not shown how his exhibit D would change the result. It was a trial court ruling on a *Qawi* hearing where the court found S.G. "*lacks the ability and competency* to make informed medical decisions about psychotropic medications." (Italics added.)

By contrast, the trial court found, "[The People's exhibit 1] discusses [S.G.'s] mental health history and issues and incidents related thereto. The report is authored by a state hospital psychologist who opines that [S.G.] continues to suffer from a significant mental illness and that the need for anti-psychotic medications continues. [The psychologist] recommends that [S.G.] be retained and treated at the hospital." S.G. has not shown the rulings were unfair or that the court abused its discretion.

S.G.'s 2007 Conviction

S.G. contends that the extended insanity commitment is invalid because he was convicted in 2007 and sentenced to prison, which vitiated an ongoing commitment based on insanity. His trial counsel suggested S.G. was entitled to a dismissal "based on estoppel principle[s]." But he *failed to mention* a prior court decision on this issue to the trial court.

The People claim: 1) in a 2014 appeal, S.G. challenged his prior extended involuntary commitment (§ 1026.5) by raising this issue; and 2) we ruled against him in a final decision on the merits and affirmed an extended commitment. (*People v. [S.G.]* (July 14, 2014, B243827) [nonpub. opn.].) The People contend S.G. is "collaterally estopped from raising" this issue again or attempting to relitigate it.

The People are correct. (*Hernandez v. City of Pomona* (2009) 46 Cal.4th 501, 510-511; *Calhoun v. Superior Court* (1958) 51 Cal.2d 257, 262; *Bernhard v. Bank of America* (1942) 19 Cal.2d 807, 810-814; see also *People v. Boyer* (2006) 38 Cal.4th 412, 441.) In that prior appeal, S.G. claimed the People were "judicially estopped from asserting his insanity after obtaining his conviction" for attempted murder in a 2007 San Bernardino case. (*People v. [S.G.]*, *supra*, B243827.) We disagreed.

We summarized the procedural history and said, "In 1993, a jury found [S.G.] not guilty of attempted murder by reason of insanity. (§ 1026) The San Luis Obispo County Superior Court committed him to a state hospital for a term of 13 years, with a maximum commitment date of July 2, 2012." (*People v. [S.G.]*, *supra*, B243827.) In 2007, he pled guilty to attempted murder in San Bernardino. The plea agreement provided that he serve 10 years in state prison concurrent with any other prison term. He served two years in state prison but he "was returned" to a state hospital in 2010. (*Ibid.*) In 2012, the San Luis Obispo County District Attorney filed a petition to extend S.G.'s "commitment beyond his maximum date of commitment pursuant to section 1026.5, subdivision (b)." (*Ibid.*) S.G. appealed the order extending that commitment.

We ruled that S.G.'s "sanity was not adjudicated in the San Bernardino case and his extended commitment is not inconsistent with the terms of the agreement that he serve 10 years in state prison concurrent with any other prison term." (*People v. [S.G.]*, *supra*, B243827.) We said, "The People did not take inconsistent positions concerning [S.G.'s] sanity. In the section 1026 proceedings, the People took the position that [S.G.] was insane. In the San Bernardino case, the People took no position concerning [S.G.'s] sanity. The issue was not

adjudicated. It is a defendant's burden to plead and prove insanity as a defense to criminal charges . . . . [S.G.] did not raise the issue." (*Ibid.*, citations omitted.) We rejected his claim that the 2007 conviction established "that his sanity has been restored," and we affirmed the order extending his commitment. (*Ibid.*)

Without mentioning our decision, S.G. again raised this same claim about the 2007 case in the trial court in the instant proceeding. We have reviewed his remaining contentions and conclude he has not shown grounds for reversal.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Roger T. Picquet, Judge

Superior Court County of San Luis Obispo

Jean Matulis, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris and Xavier Becerra, Attorneys General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Scott A. Taryle, Supervising Deputy Attorney General, David A. Wildman, Deputy Attorney General, for Plaintiff and Respondent.