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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. JASON MICHAEL GORDON, Defendant and Appellant.	B279981 (Los Angeles County Super. Ct. No. YA079868)

APPEAL from an order of the Superior Court of Los Angeles County, Scott T. Millington, Judge. Affirmed.

Christopher L. Haberman, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, and Paul M. Roadarmel, Jr. and Tita Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

In 2012, Jason Michael Gordon pleaded not guilty by reason of insanity to the attempted murder of his aunt. He was found insane at the time of the offense and was committed to a state hospital for a maximum term of 13 years. Four years later, the state hospital and community release program recommended that Gordon be placed on outpatient status (Pen. Code,[1] § 1600 et seq.). Following a hearing on the matter, the trial court denied the request for outpatient status and ordered that Gordon remain in the state hospital for continued treatment. We affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

I. The Underlying Offense

On December 21, 2010, Gordon was with his aunt, Debra Bright, at her daughter's apartment. He was acting strangely, repeatedly sitting and standing, doing pushups, and taking off and putting on his shoes and jacket. He moved towards the front door several times as if to leave. Bright kept telling Gordon that she would give him a ride when her daughter got home. At some point, Gordon walked to the kitchen and returned with a fork in his hand. He stood near Bright, but did not say anything. Bright told Gordon to put the fork away, and he complied. Gordon then returned with a butcher knife and again stood silently near Bright. He did not seem to know who she was.

Frightened by Gordon's behavior, Bright walked to the front door and told him to leave. Bright then opened the door and ran from the apartment toward the exit of the building. Gordon chased after Bright with the butcher knife. As Bright

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[1] Unless otherwise stated, all further statutory references are to the Penal Code.

was running down the hallway, she slipped and fell. Gordon attacked Bright from behind, and they fell against a glass window or door, causing it to break. As Bright was lying face down on the ground, she felt the knife against her neck. Bright grabbed the knife with her right hand to keep Gordon from using it. As they struggled for the knife, Gordon punched Bright in her head three to four times. Gordon then picked up a piece of broken glass and pushed it into Bright's neck, cutting her. Bright grabbed the glass with her left hand as she heard someone yell at Gordon to get off of her. At that point, Gordon stopped the attack and stood up. After the police arrived, Bright sought medical attention and required stitches in both hands and in her neck.

II. Gordon's Commitment to Patton State Hospital

Gordon was charged with the attempted murder of Bright. In January 2012, Gordon was found not competent to stand trial within the meaning of section 1368 and was sent to Patton State Hospital (Patton) for treatment. In June 2012, after Patton certified that Gordon was now mentally competent to stand trial, criminal proceedings were reinstated.

On September 17, 2012, pursuant to a plea agreement, Gordon entered a plea of not guilty by reason of insanity to the attempted murder of Bright. As part of the plea, he admitted the special allegations that he used a deadly weapon and inflicted great bodily injury during the commission of the offense. After Gordon waived his right to a jury trial, the trial court found that Gordon was insane at the time of the offense within the meaning of section 1026 and ordered that he be committed to Patton for a maximum term of 13 years. The court ordered Patton to submit regular status reports on Gordon's progress.

Six-month reviews of Gordon's progress were conducted in March 2013, October 2013, April 2014, and October 2014. On each occasion, the trial court ordered Gordon to remain at Patton for continued treatment as Patton recommended in its status reports. In March 2015, Patton recommended for the first time that Gordon be placed on outpatient status. The trial court accordingly ordered Gateways Conditional Release Program (CONREP) to conduct an outpatient evaluation of Gordon. Based on CONREP's recommendation that Gordon not be placed on outpatient status at that time, the trial court ordered Gordon to remain at Patton for continued treatment. At the next six-month review in September 2015, Patton again recommended Gordon for outpatient treatment. After conducting another court-ordered outpatient evaluation, CONREP continued to recommend that Gordon not be treated on an outpatient basis because he remained a danger to himself and others. Based on CONREP's recommendation, the trial court ordered continued treatment for Gordon at Patton.

On September 9, 2016, the trial court received a report from CONREP recommending outpatient treatment for Gordon for the first time. The court then set the matter for a hearing to determine whether Gordon should be granted outpatient status in accordance with CONREP's recommendation.

III. Hearing on Gordon's Request for Outpatient Status

The trial court conducted a hearing on Gordon's request for outpatient status in November and December 2016. Dr. Krista Soto, a staff psychologist at Patton, and Dr. Anca Chiritescu, a staff psychiatrist at Patton, testified for Gordon. Gordon also testified on his own behalf. Dr. Chelsea Lucas, a forensic evaluator for CONREP, testified for the People.

A. Dr. Krista Soto, Patton Staff Psychologist

Dr. Krista Soto had been Gordon's psychologist since his placement at Patton in 2012. She met with him weekly in either individual or group sessions. Dr. Soto was familiar with Gordon's case, his underlying offense, and his current needs.

When Gordon arrived at Patton, his treatment team first focused on addressing his drug history. Gordon was placed in an intensive 18-week substance abuse recovery program. He then attended an aftercare program. Based on his participation in drug treatment, Gordon was able to better understand the impact that his prior drug use had on his psychiatric state.

After Gordon completed the substance abuse program, his treatment team began to address his history of psychiatric symptoms to determine the best diagnosis. Prior to his placement at Patton, Gordon had been diagnosed with paranoid schizophrenia. Once he was evaluated at Patton, however, his history of symptoms did not meet the criteria for this condition. After Gordon was taken off medication in January 2014, he remained symptom free, supporting the conclusion that paranoid schizophrenia had not been the proper diagnosis. In January 2015, Gordon's treatment team changed his diagnosis to cannabis-induced psychotic disorder. The team made this diagnosis based on Gordon's heavy use of marijuana prior to

committing the underlying offense. At some point, the treatment team again changed the diagnosis because Gordon reported he had experienced psychotic symptoms even after he was incarcerated and ceased his heavy drug use. The team ultimately diagnosed Gordon with undifferentiated schizophrenia spectrum disorder, also known as unspecified psychotic disorder, and marijuana and hallucinogen use. This diagnosis was made because Gordon did not meet the complete criteria for any specific psychiatric disorder. According to Dr. Soto, the changes in Gordon's diagnosis were not due to any changes in his symptoms because Gordon had not exhibited any psychotic symptoms since his placement at Patton. Rather, the changes in diagnosis were due solely to the treatment team's evolving understanding of Gordon's psychiatric history.

Following his diagnosis of undifferentiated schizophrenia spectrum disorder, Gordon's treatment included individual and group therapy to help him understand his past symptoms and learn to recognize when such symptoms began to recur. Because the treatment team believed life stressors could cause Gordon to become psychotic again, they worked with him to identify subtle symptoms, such as feeling isolated or more irritable, and to develop coping skills to deal with those stressors. Dr. Soto opined that Gordon had responded well to his treatment. She described him as forthright and willing to be introspective, "even more so than the typical patient" at Patton. In addition to therapy, Gordon voluntarily had participated in vocational training in video production and painting. He also had taken community college courses through a distance learning program.

Gordon's treatment team at Patton first recommended him for a community outpatient program in January 2015. Dr. Soto

recommended outpatient treatment at that time because Gordon understood his past psychiatric symptoms, had developed the skills to stay sober, and had learned how to cope with life stressors in a healthy way. After CONREP conducted an official outpatient evaluation and opined that Gordon was not ready for outpatient treatment, Patton worked with Gordon to address the concerns that CONREP had raised in its report. CONREP specifically had noted that Gordon would change his story when questioned, appeared to be evasive, and lacked clarity in his answers. In response to these concerns, Gordon's treatment team helped him develop a timeline of his psychiatric and drug history so that he could accurately identify when he had certain symptoms and was under the influence of certain drugs. The team also worked with Gordon to respond to questions in a clear and concise manner, and to admit when he could not recall the details of his prior symptoms or drug use. Dr. Soto believed Gordon had made progress in learning to communicate more effectively with CONREP about these concerns.

Another concern identified by CONREP was Gordon's history of malingering. Early in his placement at Patton, Gordon questioned whether he had been properly diagnosed with paranoid schizophrenia. Gordon admitted to his treatment team that he had feigned psychotic symptoms when he was in jail so that he could be transferred to the hospital unit. He also admitted that he had feigned symptoms during his initial competency evaluation so that he could stay at Patton for the full 90-day evaluation period rather than be sent back to the jail. These false statements by Gordon had contributed to the difficulty that Patton had faced in properly diagnosing him. While lying about psychiatric symptoms to secure better housing

was manipulative and one aspect of anti-social behavior, Gordon's treatment team did not believe he met the criteria for anti-social personality disorder. However, in an effort to address CONREP's concerns that Gordon's past malingering posed a risk that he would lie in the future, the team had stressed the importance of being honest about his symptoms. Dr. Soto believed Gordon had internalized these concerns.

Since January 2015, Dr. Soto had maintained her opinion that Gordon would do well in an outpatient program and would not pose an undue risk of harm to the community if released. Dr. Soto noted that she had discussed Gordon's prior crime with him, and he had shown remorse for his conduct. Dr. Soto also had discussed with Gordon the possibility that he could relapse while on outpatient status, and Gordon had indicated that he would inform CONREP if his symptoms returned and would take anti-psychotic medication if prescribed. Dr. Soto believed Gordon would comply with any future medication protocol because he had done so in the past and had shown a willingness to work with his team at Patton to determine the proper diagnosis and treatment. Dr. Soto also believed Gordon would be honest with CONREP despite his history of malingering because he had been open with Patton over the past four years about any stressful situations that arose.

Dr. Soto acknowledged that Gordon likely would face greater life stressors in an outpatient program than in the controlled environment of Patton. She also acknowledged that Gordon had made inconsistent statements about his psychiatric and drug history, such as telling CONREP that he had used LSD 25 times while reporting to Patton that he had used the drug only five to 10 times. Dr. Soto recognized that Gordon's inconsistent

statements about his symptoms could make supervising him on an outpatient basis more difficult. She nevertheless believed that Gordon could be safely monitored by CONREP. Dr. Soto noted that, during his four years at Patton, Gordon had never tested positive for illegal drugs, had never engaged in assaultive conduct, and had never been found in possession of contraband. Gordon also had no serious or violent criminal history apart from the commitment offense.

B. Dr. Anca Chiritescu, Patton Staff Psychiatrist

Dr. Anca Chiritescu had been Gordon's treating psychiatrist at Patton for the past four years. She met with him on a monthly basis. Prior to his arrival at Patton, Gordon had been diagnosed with schizophrenia. After reviewing Gordon's medical records, Dr. Chiritescu realized that a prior psychotic break suffered by Gordon had been due to his LSD use. Gordon also had admitted to his team at Patton that he had falsely claimed he was having hallucinations in jail so that he could be transferred to the hospital unit. Based on this information, Dr. Chiritescu suspected Gordon might not have schizophrenia, but rather a different psychotic disorder related to drug use. She gradually decreased his medication and eventually stopped it completely. Gordon had been off medication for more than two years and had not been symptomatic during that time.

Dr. Chiritescu participated in diagnosing Gordon throughout his commitment at Patton and agreed with his most recent diagnosis of unspecified psychotic disorder. In Gordon's case, the diagnosis reflected that he had been psychotic in the past, that he likely was not schizophrenic, and that his condition may have been related to his marijuana use.

Dr. Chiritescu opined that Gordon had been forthcoming since he started his treatment at Patton. She had not observed him trying to be deceitful. Gordon was able to approach his treatment team whenever he was feeling stressed or otherwise had a need. On each occasion that Patton changed his diagnosis, Gordon was accepting of the change and accurately described that diagnosis to the CONREP evaluators who interviewed him. Dr. Chiritescu acknowledged that Gordon feigned symptoms when he was in jail, and that he did so again when was evaluated by Patton for his competency to stand trial. Dr. Chiritescu also acknowledged that Gordon's history of feigning symptoms had contributed to the changes in his diagnosis. Dr. Chiritescu further agreed that CONREP could have difficulty supervising Gordon if he was not honest and forthcoming with their staff, but she believed Gordon had done his best in his CONREP interviews.

C. Gordon

Gordon testified that he had been placed at Patton because of the attempted murder of his aunt. Prior to committing the crime, he never had any problems with his aunt and did not have any animosity toward her. About a month before the offense, Gordon began having a "snowball of symptoms," including "sporadic thinking." He also had been using marijuana and a hallucinogen such as LSD. The last time Gordon used any illegal drugs was the day before he committed the crime.

Following his arrest, Gordon initially was placed in the psychiatric unit of the jail. After he was transferred to the jail's general population, other inmates began to extort items from him. Gordon lied about having psychotic symptoms because he wanted to be returned to the psychiatric unit. He also lied about

his symptoms when he was sent to Patton for a competency evaluation because he wanted to stay at the hospital for the full 90-day period. Gordon had difficulty coping in jail and felt he did not fit in well. He later regretted feigning his symptoms and had since learned that it was important for him to be honest about his mental health. Gordon understood that he had almost murdered someone because of his mental illness, and he did not want to hurt anyone else in the future.

When Gordon arrived at Patton, he participated in a five-month drug program at the recommendation of his treatment team. He then began taking college courses to improve his life. He had accumulated 21 college credits and had achieved high grades in all of his classes. Gordon also got a job at Patton so that he could help support himself rather than depend on his family. He first worked in video production and then in paint crew, and currently was working 20 hours per week. If Gordon were released on outpatient status, his plan would be to take more college courses and spend time with his family. Gordon had apologized to his aunt in person when she visited him in jail. As part of his drug program, he also sent written apologies to his aunt and other members of his family.

Gordon had reviewed all of CONREP's requirements for outpatient treatment and did not have any concerns about his ability to comply with them. He believed he had learned from his prior interviews with CONREP. Gordon understood he had a tendency to give detailed information, and he needed to provide more concise answers to the interviewer's questions. He did not realize he had made inconsistent statements about his prior drug use until it was brought to his attention. Because Gordon was continuously under the influence of drugs prior to committing the

offense, he could not accurately recall how many times he took LSD or other drugs in the past. He did not, however, intend to mislead CONREP about his drug history. Gordon understood he had a mental illness, and his symptoms could be triggered by drug use or life stressors. He believed he could safely be treated in an outpatient program as long as he had a support team around him. Gordon was willing to take medication as part of his outpatient treatment if his team decided that he needed it.

D. Dr. Chelsea Lucas, CONREP Evaluator

Dr. Chelsea Lucas was a forensic evaluator for Gateways CONREP and had been assigned to Gordon's case. Dr. Lucas's role as a forensic evaluator was to independently review each case by assessing the individual's history and risks, reviewing the relevant records, conducting an interview, and then integrating all of that information to determine the individual's suitability for discharge into the community. Dr. Lucas contrasted her role with that of the Patton treatment team, who act as advocates for the patient and are responsible for the patient's progress. Dr. Lucas explained that she reviews each case through a forensic lens and does not have an investment in any particular outcome.

Prior to meeting Gordon, Dr. Lucas thoroughly reviewed his legal record and composed a semi-structured interview. She first interviewed Gordon on September 25, 2015. She had a second interview with him on June 17, 2016. Dr. Lucas and the CONREP team also had telephone conferences with Gordon's treatment team at Patton. Following each interview with Gordon, Dr. Lucas prepared a written report evaluating his suitability for outpatient treatment. In her first report dated October 29, 2015, Dr. Lucas recommended that Gordon remain at Patton. In her second report dated August 23, 2016, Dr. Lucas

stated Gordon had not made measurable progress since the prior report. She nevertheless opined that Gordon could be supervised in the community and recommended outpatient treatment for him at that time.

According to Dr. Lucas, she changed her recommendation in her August 23, 2016 report due to a growing systematic problem between Patton and Gateways CONREP. Patton continued to recommend individuals with anti-social and psychopathic personality traits for outpatient treatment because they tended to excel in the controlled environment of a state hospital. CONREP disagreed with these recommendations and found that individuals with anti-social personality traits were much harder to supervise in the community. CONREP and Patton had come to an impasse with respect to Gordon's suitability for release, and Patton had made clear that it would continue to recommend Gordon for outpatient treatment every six months. In an effort to be more collaborative with Patton, Dr. Lucas and her team had been directed by CONREP management to be more flexible in their evaluation of Gordon's suitability for outpatient treatment. As a result, Dr. Lucas reweighed the risks of conditionally releasing Gordon into the community and concluded that he did not pose an imminent risk of dangerousness. In other words, Dr. Lucas did not believe Gordon would commit an egregiously violent act while under CONREP's supervision.

When asked for her honest opinion about whether Gordon was ready for outpatient treatment, Dr. Lucas answered, "No." She opined that supervising Gordon on an outpatient basis would be difficult given CONREP's limited resources and its therapists' heavy caseloads. Dr. Lucas explained that Gordon had given

many different accounts of his psychiatric history during his interviews, and that the CONREP team could not piece together a cohesive story from his evolving statements. Dr. Lucas was concerned that CONREP would not be able to monitor any symptoms that might arise in the future when it did not know the evolution and trajectory of Gordon's psychiatric condition. Dr. Lucas also believed Gordon's changing diagnosis was the direct result of the varying accounts he had given. It was difficult to know if Gordon had gained insight into his mental illness because the diagnosis kept changing, but his inability to provide a straightforward account indicated that he had not internalized his illness and the issues it had caused.

Dr. Lucas further explained that CONREP's ability to effectively supervise an individual and ensure the safety of the community depended on the individual's ability to be forthright, to come to CONREP with problems, and to give clear answers. Gordon repeatedly had shown, however, that he could not answer CONREP's questions in a straightforward manner. In describing her interviews with Gordon, Dr. Lucas stated that "it's striking to sit with somebody who is as high functioning as [Gordon] who takes you down rabbit holes, cannot be direct, [and] is evasive when you ask questions, [and] start inquiring about pieces that just don't fit." Dr. Lucas also opined that Gordon's inability to provide a consistent and coherent narrative of his history was indicative of someone who would be unable to detect stressors and early emergent symptoms, and to notify CONREP in a timely manner so that it could intervene to prevent dangerous behavior. Dr. Lucas believed that, while Gordon was intelligent and articulate, he lacked adequate insight into the factors that elevated his risk for future destabilization and dangerousness.

The fact that Gordon had feigned symptoms in the past also was a factor in determining whether he could be safely treated on an outpatient basis. Dr. Lucas was concerned that, if Gordon were released into the community, he might be deceitful or unwilling to disclose pertinent information about his condition out of fear of being returned to Patton.

Dr. Lucas testified that Gordon's inconsistent statements during his interviews also showed a "personality construct of manipulating information or having selective memory." She opined that this behavior was "consistent with anti-social personality and psychopathic tendencies," which are difficult to monitor in an outpatient program. Dr. Lucas further explained that, while Gordon had not exhibited any psychiatric symptoms at Patton, his overall history was indicative of a "parasitic type of manipulative" personality, which did not pose an imminent risk inside the locked facility of a state hospital, but was "the crux of what makes [Gordon] dangerous in the community."

IV. The Trial Court's Ruling

After hearing the argument of counsel, the trial court denied Gordon's request to be placed on outpatient status. The court noted that it had discretion to determine whether Gordon was suitable for outpatient treatment, and that it was "important that the court act as a buffer" in this case due to the "conflict between CONREP and Patton." The court stated that it believed Gordon had made good progress at Patton. The court was concerned, however, that Gordon had lied in the past "to get better housing," and questioned whether he was lying in the current proceedings "to get outpatient treatment." The court also noted that it valued Dr. Lucas's opinion and believed she had more experience than Dr. Soto and Dr. Chiritescu with respect to

supervising individuals on an outpatient basis. The court found that Gordon had not met his burden of proving that he should be granted outpatient status at that time and ordered that he remain at Patton for continued treatment. At the conclusion of the hearing, the court advised Gordon: "I would say this, Mr. [Gordon], I'm sure you're disappointed with the court's order, but I do have concerns for the public safety as well as yours, based on upon what I heard. I would recommend you keep up the great work that you did with regards to your schooling and work, and hopefully at some point you can be released outpatient, but at this point I don't believe the petitioner has met its burden." Following the trial court's ruling, Gordon filed a timely notice of appeal.

DISCUSSION

On appeal, Gordon contends the trial court abused its discretion in denying his request for outpatient status. Gordon specifically asserts there was substantial evidence to support a finding that he was suitable for outpatient treatment. He also argues the denial of his request was not based on proper factors. Based on the totality of the record in this case, we see no abuse of discretion in the trial court's ruling.

I. Summary of Relevant Law

Upon a finding that a defendant was insane at the time of the commission of a criminal offense, the trial court may commit the defendant to a state hospital. (§ 1026, subd. (a).) Subsequent release from the state hospital occurs upon (1) restoration of sanity pursuant to section 1026.2; (2) expiration of the maximum term of commitment pursuant to section 1026.5; or (3) approval of

outpatient status pursuant to the provisions of section 1600 et seq. (§ 1026.1; *People v. Cross* (2005) 127 Cal.App.4th 63, 72.) Before outpatient status may be granted, the state hospital or treatment facility must advise the trial court that the defendant will no longer be a danger to the health and safety of himself or others, and will benefit from outpatient status. (§ 1603, subd. (a)(1).) The community program director also must advise the court that the defendant will benefit from outpatient status, and must identify an appropriate program of supervision and treatment. (§ 1603, subd. (a)(2).) After providing notice to the relevant parties, the court must conduct a hearing to determine whether the defendant should be placed on outpatient status. (§ 1603, subd. (b), § 1604, subds. (c), (d).) In making this determination, the court "shall consider the circumstances and nature of the criminal offense leading to commitment and shall consider the person's prior criminal history." (§ 1604, subd. (c).)

At the hearing on a request for outpatient status, the "defendant has the burden of proving, by a preponderance of the evidence, that he is either no longer mentally ill or not dangerous." (*People v. Sword* (1994) 29 Cal.App.4th 614, 624, accord *People v. Cross*, *supra*, 127 Cal.App.4th at p. 72.) "A primary concern of a court called upon to decide whether to grant outpatient treatment to an individual committed to a state hospital as the result of a violent act caused by mental illness, is whether outpatient treatment will pose an undue risk to the safety of the community. [Citation.]" (*People v. McDonough* (2011) 196 Cal.App.4th 1472, 1490.) Outpatient status "'is a discretionary form of treatment to be ordered by the committing court only if the medical experts who plan and provide treatment conclude that such treatment would benefit the [offender] and

cause no undue hazard to the community.'" (*People v. Sword*, *supra*, at p. 620.) In evaluating whether a defendant would pose a danger to the safety of the community, the trial court may disregard the recommendations of the medical experts provided that it has non-arbitrary reasons for doing so. (*People v. McDonough*, *supra*, at p. 1490; *People v. Sword*, *supra*, at p. 629.)

We review a trial court's denial of a request for outpatient status for an abuse of discretion. (*People v. McDonough*, *supra*, 196 Cal.App.4th at p. 1489; *People v. Cross*, *supra*, 127 Cal.App.4th at p. 73.) "In determining whether the trial court abused its discretion, we look to whether the court relied on proper factors and whether those factors are supported by the record. [Citation.] In other words, we 'consider whether the record demonstrates reasons for the trial court's disregard of the opinion of the treating doctors and other specialists who [all] testified that defendant was no longer dangerous.' [Citation.]" (*People v. McDonough*, *supra*, at p. 1489.)

II. The Trial Court Did Not Abuse Its Discretion in Denying Gordon's Request for Outpatient Status

Gordon first contends the trial court abused its discretion in denying his request for outpatient status because each of the testifying experts, including CONREP's own evaluator, agreed that Gordon could be safely supervised in the community and would benefit from outpatient treatment. However, the trial court was not required to follow the recommendations of the experts in deciding whether to order outpatient treatment for Gordon. It is well-established that the court's "'role is not to rubber-stamp the recommendations of the [state hospital] doctors and the community release program staff experts. Those recommendations are only prerequisites for obtaining a hearing.

[Citation.]' [Citation.] In other words, a trial court is not required 'to follow the recommendations of the doctors and other expert witnesses' so long as the court's reasons for rejecting the recommendations are not arbitrary. [Citation.]" (*People v. McDonough*, *supra*, 196 Cal.App.4th at p. 1490, fn. omitted.)

Furthermore, contrary to Gordon's characterization, the experts who testified at the hearing did not unanimously agree that Gordon should be granted outpatient treatment. Dr. Lucas, the CONREP evaluator assigned to Gordon's case, specifically testified that she did not believe Gordon was ready to be released into a community outpatient program. Dr. Lucas explained that her written recommendation for outpatient treatment was the result of internal pressure from her superiors at CONREP to be more flexible in evaluating the patients at Patton for conditional release. Dr. Lucas also made clear that, notwithstanding the recommendation in her most recent report, she believed Gordon's inconsistent statements and persistent inability to provide a straightforward account of his history raised a number of serious concerns about his suitability for outpatient treatment.[2]

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[2] Gordon claims that, under principles of res judicata and collateral estoppel, Dr. Lucas was not permitted to change her recommendation for outpatient treatment without showing a change in circumstances. He also contends that he was unfairly prejudiced by the change in Dr. Lucas's position. Principles of res judicata and collateral estoppel do not apply in this case. CONREP's written recommendation for outpatient treatment merely entitled Gordon to a hearing before the trial court on whether he met the requirements for conditional release into a community outpatient program. That recommendation does not constitute a final determination on the merits of Gordon's request. Additionally, while Dr. Lucas recommended Gordon for outpatient treatment in her written report, she also made

Among other concerns, Dr. Lucas believed that Gordon's statements and conduct during his interviews demonstrated that he lacked insight into his mental illness, that he would have difficulty detecting stressors or early psychotic symptoms, and that he would not be forthright with CONREP if any issues were to arise during his treatment. Dr. Lucas also was concerned that Gordon had a history of feigning symptoms to secure better housing and that he might do so again to avoid being sent back to Patton. While Dr. Lucas did not believe that Gordon would pose an imminent risk of danger while under CONREP's supervision, she opined that his lack of insight into his psychiatric condition placed him at an elevated risk for future destabilization and dangerousness. Although Gordon's two experts, Dr. Soto and Dr. Chiritescu, disagreed with Dr. Lucas's opinion about Gordon's suitability for outpatient treatment, they acknowledged that his inconsistent statements about his psychiatric and drug history were a valid concern and could make supervising him on an outpatient basis more difficult. Based on this evidence, the trial court reasonably could conclude that Gordon continued to pose an undue risk to the safety of the community, and was therefore not suitable for outpatient treatment at that time.

Gordon also asserts the trial court abused its discretion in denying his request for outpatient treatment because its ruling was not based on proper factors. Gordon argues that the court instead relied on such factors as CONREP's alleged lack of

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clear in the report that Gordon had not made measurable progress since the last evaluation and that CONREP had ongoing concerns about his suitability for outpatient status.

resources and the mere fact that Gordon still had a mental illness at the time of the hearing. This argument lacks merit. There is no indication in the record that the trial court based its denial of Gordon's request for outpatient status on any improper factors. Rather, in ruling on the request, the court made clear that it had considered the testimony of each of the medical experts and "value[d] them all," but it ultimately found Dr. Lucas to be more credible and experienced in supervising individuals on an outpatient basis. The court also made clear that it was denying the request for outpatient status at that time due to its "concerns for the public safety" as well as the safety of Gordon.

It is true that Dr. Lucas testified that supervising Gordon "would be beyond taxing" given CONREP's limited resources and heavy caseloads. However, the record does not support Gordon's claim that the trial court based its ruling on an alleged lack of resources. Instead, the record shows that, at the conclusion of the hearing, the trial court briefly summarized the testimony of each witness, and noted that one concern Dr. Lucas had raised in her testimony was that it would "take considerable resources that they were not prepared for with regard to [Gordon's] supervision." While the court later stated that it "value[d] Dr. Lucas's opinion," it never suggested that it was denying outpatient treatment because CONREP lacked the necessary resources to supervise Gordon on an outpatient basis. Moreover, the totality of Dr. Lucas's testimony reflects that her concerns about releasing Gordon to outpatient status were not based on the adequacy of CONREP's resources, but rather on the risk that Gordon posed to the community given his evasive answers and evolving accounts about his psychiatric history. Additionally, while Dr. Lucas testified that Gordon had anti-

social personality traits that would be difficult to monitor on an outpatient basis, she never indicated that the mere fact that Gordon had a mental illness made him unsuitable for outpatient treatment. The record shows that the trial court likewise focused its evaluation of Gordon's suitability for outpatient status on whether he could be safely treated in an outpatient program without posing a danger to himself or the community.

Gordon further contends the trial court improperly relied on his history of feigning psychotic symptoms as a basis for denying his request for outpatient status. Gordon reasons that his past malingering was not relevant to proving his current dangerousness because he engaged in such conduct before he began his treatment at Patton, and he voluntarily disclosed it to his doctors after learning the importance of being honest about his symptoms. However, it was entirely proper for the trial court to consider Gordon's history of making false statements about his mental illness in evaluating his current suitability for outpatient treatment. As Dr. Lucas explained, CONREP could not supervise Gordon 24 hours a day, and thus, it was imperative that Gordon be forthright about the recurrence of any symptoms. Gordon's history of lying about his psychiatric condition indicated that he was capable of being deceptive about his symptoms to secure a desired placement and might do so again to suit his needs. Both Dr. Soto and Dr. Chiritescu acknowledged that Gordon's past malingering had contributed to the difficulty in diagnosing him, and that CONREP had expressed concern that Gordon might lie about his symptoms in the future. While Dr. Chiritescu testified that Gordon had been forthright throughout his treatment at Patton, she agreed that it would be difficult to supervise him on an outpatient basis if he could not be honest with CONREP about

his symptoms. Gordon's history of lying about his condition was therefore relevant to whether he would pose an undue risk to the safety of the community, and was properly considered by the trial court in ruling on his request for outpatient treatment.

In sum, the totality of the record reflects that the trial court understood the scope of its discretionary authority, carefully weighed the opinions of the testifying experts, and based its decision on non-arbitrary reasons that were supported by the record. The trial court accordingly did not abuse its discretion in denying Gordon's request to be placed on outpatient status and in ordering that he remain at Patton for continued treatment.[3]

DISPOSITION

The trial court's order denying Gordon's request to be placed on outpatient status is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J. SEGAL, J.

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[3] Gordon also claims that the denial of his request for outpatient status was a violation of his constitutional right to due process because he was entitled to outpatient treatment once it was determined that he was no longer dangerous. Because the trial court reasonably concluded that Gordon remained dangerous, Gordon's constitutional claim lacks merit.