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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

THOMAS D. BONA,

Defendant and Appellant.

2d Crim. No. B280555
(Super. Ct. No. 16PT-00896)
(San Luis Obispo County)

Thomas D. Bona appeals the order recommitting him to the California Department of Mental Health for further treatment as a Mentally Disordered Offender (MDO). (Pen. Code, § 2972.)[1] Appellant contends the evidence is insufficient to support the finding that his severe mental disorder cannot be kept in remission without treatment. We affirm.

FACTS AND PROCEDURAL HISTORY

In November 2016, the Board of Parole Hearings (BPH) determined that appellant met the criteria for recommitment as

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

an MDO. Appellant filed a petition challenging the BPH determination and waived his right to a jury trial.

Dr. Meghan Brannick, a psychologist at Atascadero State Hospital, testified that appellant met the criteria for an MDO recommitment. Dr. Brannick interviewed appellant, reviewed his medical records and prior MDO evaluations, and consulted with his treating psychiatrist and psychologist. Appellant suffers from schizophrenia, a severe mental disorder. Dr. Brannick concluded that although appellant's schizophrenia was in remission as of the date of the BPH hearing date, the disorder could not be kept in remission without treatment. Dr. Brannick explained: "During the year proceeding [*sic*] this hearing, [appellant] was not voluntarily treatment compliant. He was taking medication pursuant to a *Keyhea*[2] involuntary medication order while still in prison for a very brief time period during that year, a period totaling nine days. [¶] In addition to that, once arriving at the hospital, his group attendance was inconsistent and below reasonable standard. During the early part of that year, approximately five months, his attendance did not exceed 39 percent which is well below standard. He did make significant attempts to improve his percentage following that time, but the total for the entire year period did not exceed 69 percent, which is still below what I would consider to be reasonable group treatment participation."

In Dr. Brannick's opinion, "approximately 80 percent group attendance or greater" constituted a reasonable level of attendance. On cross-examination, the doctor explained that 80 percent is "a hospital standard used to determine reasonable

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2 *Keyhea v. Rushen* (1986) 178 Cal.App.3d 526.

treatment." The doctor also clarified that appellant's failure to meet the reasonable level of group attendance—even irrespective of the involuntary medication order—led her to conclude his mental disorder could not be kept in remission without treatment.

Dr. Brannick also concluded that appellant currently represented a substantial danger of physical harm to others by reason of his mental disorder. In so concluding, the doctor's primary concern was appellant's lack of insight into his disorder and its potential effect on his compliance with treatment. Dr. Brannick explained: "I've interviewed [appellant] on more than one occasion and he has repeatedly demonstrated poor insight, specifically an inability to describe his symptoms associated with his disorder and a number of statements that he does not believe ongoing mental health treatment is necessary or that he will manage his mental illness with marijuana rather than psychotropic medication."

Dr. Brannick noted that appellant's use of other substances could limit the efficacy of his medication, exacerbate the symptoms of his schizophrenia, or result in treatment noncompliance. During appellant's most recent interview, he expressed his belief that he could discontinue his medication without any negative effects. He also suggested that his schizophrenia was the result of being a "Southerner gang member who resides in Northern California." According to Dr. Brannick, appellant's belief that he could discontinue his medication "suggests that his ability to manage his medications in the community is limited. Poor insight is likely to adversely impact his ability to continue to manage medication in the community, and in [appellant's] case, if he does not manage his

medication indefinitely, his risk for decompensation and then association violence is quite high."

Dr. Brannick also took appellant's prior criminal and drug use history into account in concluding he currently represented a substantial danger of physical harm to others by reason of his mental disorder. Appellant's lack of an adequate discharge plan also supported that conclusion.

Appellant testified at the hearing on his own behalf. He acknowledged that he suffers from schizophrenia and stated his belief that the medication he took was effective. He represented that he actually enjoyed taking the medication and would continue taking it if released. He also represented that if he were released he would participate in treatment and comply with all the terms of his parole. He further offered that in the last quarter he achieved 100 percent attendance in several components of his group treatment.

On cross-examination, appellant acknowledged telling Dr. Brannick he would be "pretty much . . . the same" if he discontinued the medication. He also admitted telling the doctor he had not participated in his group treatment because he thought it was "'unhealthy to be so focused on mental illness every day.'"

DISCUSSION

Appellant contends insufficient evidence supports the court's finding that his schizophrenia was not in remission or could not be kept in remission without treatment. In reviewing his claim, "we view the entire record in the light most favorable to the judgment and determine whether it discloses substantial evidence—i.e., evidence that is reasonable, credible, and of solid value—to support the jury's finding." (*People v. Beeson* (2002)

99 Cal.App.4th 1393, 1398, fn omitted (*Beeson*); *People v. Clark* (2000) 82 Cal.App.4th 1072, 1075-1076.) We cannot reweigh the evidence or substitute our decision for that of the trier of fact. (*People v. Clark*, at p. 1083.)

For an MDO recommitment, the People must prove beyond a reasonable doubt "that the patient has a severe mental disorder, that the patient's severe mental disorder is not in remission or cannot be kept in remission without treatment, and that by reason of his or her severe mental disorder, the patient represents a substantial danger of physical harm to others[.]" (§ 2972, subd. (c).) As relevant here, a patient "'cannot be kept in remission without treatment' if during the year prior to the question being before the [BPH] or a trial court, he or she has been in remission and . . . has not voluntarily followed the treatment plan. In determining if a person has voluntarily followed the treatment plan, the standard shall be whether the person has acted as a reasonable person would in following the treatment plan." (§ 2962, subd. (a)(3); *Beeson*, *supra*, 99 Cal.App.4th at pp. 1398-1399.)

Substantial evidence supports the finding that appellant did not voluntarily follow his treatment plan during the year prior to the BPH hearing, such that his schizophrenia cannot be kept in remission without further treatment. Contrary to appellant's claim, Dr. Brannick properly relied on the fact he was briefly subject to an involuntary medication order during the one-year period. Although he was only subject to that order for nine days, it plainly supports a finding he had not voluntarily complied with his treatment "during the year prior to the" BPH hearing.

Appellant claims there is no proof that he actually refused to take his medication while the involuntary medication order was in effect, and that the order is essentially meaningless because there is nothing in the record "to indicate why the order was issued, what medications were affected, or why appellant refused to take such medications." These claims fail to account for the fact that Dr. Brannick testified as an expert and offered the involuntary medication order as support for her expert opinion. If there was evidence that appellant was voluntarily taking his medication while the order was in effect or that extenuating circumstances undermined the relevance of that order, he could have impeached the doctor with that evidence or presented it during his own testimony. On this record, there is no basis for a conclusion that Dr. Brannick's reliance on the involuntary medication order was misplaced.[3]

In any event, Dr. Brannick made clear that her opinion was independently based on appellant's failure to sufficiently participate in his group treatment. She also reasonably opined that appellant's failure to participate in at least 80 percent of his group treatment constituted a lack of voluntary compliance with

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[3] Appellant alternatively asserts that his alleged refusal to take his medication for a brief period during the year prior to the BPH hearing is irrelevant because "the issue of whether a person meets the criteria for commitment as an MDO must be determined based on the individual's current condition, as of the time of the BPH hearing." (Emphasis omitted.) This assertion ignores subdivision (a)(3) of section 2962. Although the question is whether appellant could be kept in remission without treatment as of the date of the BPH hearing, the answer to that question requires consideration of his behavior during the year prior to the hearing.

that treatment. Appellant characterizes the 80 percent figure as an "arbitrary benchmark," but Dr. Brannick explained that it was the medically-accepted standard and appellant offered nothing to dispute that explanation. Moreover, appellant's participation during the first five months of the year was only 39 percent. Dr. Brannick could reasonably conclude that a patient who had participated in less than half of his treatment for almost half of the year prior to his BPH hearing had not voluntarily complied with his treatment "during the year prior to" the hearing, as contemplated in section 2962, subdivision (a)(3). Appellant's remaining arguments on this issue essentially ask us to reweigh the evidence in his favor, which we cannot do. (*People v. Clark*, *supra*, 82 Cal.App.4th at p. 1083.)

In his reply brief, appellant faults the People for relying on Dr. Brannick's opinion that he lacked insight into his mental disorder as support for the finding that the disorder cannot be kept in remission without treatment. He complains that "lack of insight is nowhere mentioned as a factor that may be considered under section 2962, subdivision (a)(3) in determining that a prisoner may not be kept in remission without treatment, and was not considered by Brannick for that purpose."

Although "lack of insight" is not mentioned in the statute, it is plainly relevant to the determination whether a patient has failed to comply with his or her treatment plan, such that his or her mental disorder can be kept in remission without treatment. (*Beeson*, *supra*, 99 Cal.App.4th at p. 1399.) In *Beeson*, the court stated: "We apply a reasonable person standard in determining whether a person has followed his treatment plan. Although defendant argues that any lack of cooperation was well within what would have been expected of a reasonable person, the

People's evidence indicates that defendant was inconsistent in acknowledging his mental illness and his need for medication and treatment. A reasonable person, whose mental disorder can be kept in remission with treatment, must, at a minimum, acknowledge if possible the seriousness of his mental illness and cooperate in all the mandatory components of his treatment plan." (*Ibid.*, fn. omitted.)

We agree with this analysis. Appellant's lack of insight into his disorder is relevant to the determination whether his sporadic participation in his treatment plan constituted reasonable compliance with that plan. Although Dr. Brannick did not expressly offer appellant's lack of insight as support for her opinion that his disorder could not be kept in remission without treatment, in opining on his current dangerousness she stated that his lack of insight and its negative effect on his compliance with treatment were her "primary concern[s] in [his] case[.]" Moreover, appellant admitted telling the doctor he had not fully participated in his treatment because he thought it was "'unhealthy to be so focused on mental illness every day.'" This statement reflects that appellant fails to appreciate the gravity of his disorder or understand the need to fully comply with the treatment plan established by his doctors. A reasonable person in appellant's position would be able to "acknowledge . . . the seriousness of his mental illness and cooperate in all the mandatory components of his treatment plan." (*Beeson*, *supra*, 99 Cal.App.4th at p. 1399.) The court as trier of fact could thus reasonably consider appellant's lack of insight into his mental disorder in finding that the disorder could not be kept in remission without treatment, as provided in section 2972 and section 2962, subdivision (a)(3). (*Ibid.*)

DISPOSITION

The judgment (MDO recommitment order) is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Dodie A. Harman, Judge
Jacquelyn H. Duffy, 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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