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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.

BOBBY MOOREHEAD,

Defendant and Appellant.

2d Crim. No. B290854  
(Super. Ct. No. 18PT-00176)  
(San Luis Obispo County)

Bobby Moorehead appeals an order committing him to the California Department of Mental Health as a mentally disordered offender (MDO). (Pen. Code, § 2962 et seq.)<sup>1</sup> Appellant claims the evidence is insufficient to support the finding that his severe mental disorder was not in remission. (§ 2962, subd. (a)(1).) We affirm.

*Facts and Procedural History*

In 2009, appellant was convicted of forcible sexual penetration (§ 289, subd. (d)(4)) and sentenced to state prison for

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<sup>1</sup> All further statutory references are to the Penal Code.

56 years. In 2017, the Board of Prison Terms determined that appellant had a severe mental disorder that was not in remission or could not be kept in remission without treatment. Appellant filed a superior court petition challenging the Board of Prison Terms determination. (§ 2966, subd. (b).)

Doctor Caroline Goldsmith a forensic evaluator at the Department of State Hospitals, Atascadero, testified that appellant suffered from unspecified paraphilia disorder, a severe mental disorder.<sup>2</sup> The doctor opined that appellant met all the MDO criteria. On the issue of lack of remission, Dr. Goldsmith stated that appellant minimizes his past sexual offenses and lacks insight about his sexually deviant behavior. When interviewed about the commitment offense, appellant said that he had prostate cancer and had his 17-year-old daughter massage his prostate. Appellant then had the daughter's boyfriend perform anal intercourse on appellant. Appellant believed it would provide pain relief and help cure his cancer. When appellant was asked if he had sexual desires towards children, appellant denied he was sexually attracted to children.

At trial, appellant was aware of the paraphilic disorder diagnosis and said that he first started showing signs and symptoms when he was abused as a ten-year-old. Appellant said his "triggers" are public humiliation, fear, and being surrounded by a particular race of people. In 2007, at the time of the commitment offense, the fear of dying of cancer was the psychological trigger. Dr. Goldsmith opined that appellant used

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<sup>2</sup> Dr. Goldsmith stated that appellant's mental disorder was "most consistent with a pedophilic disorder, but because I had insufficient information, I had to go with an unspecified paraphilic disorder."

the cancer diagnosis to get sympathy and prey upon his victims. It was a concern because appellant was currently diagnosed with brain cancer. Appellant admitted that he has difficulties with fear “still to this day” and it makes him want to “eliminate the pain, . . . like getting drunk or getting high or whatever.”

The trial court found that appellant met all the MDO criteria. “Unspecific paraphilic disorders are to the most difficult ones to make determinations about. However, despite any questions that I had after the presentation of the People’s case, I find that [appellant’s] testimony affirmed the opinions of Dr. Goldsmith and that he does have a severe mental disorder that is not in remission; that he’s lacking insight into his severe mental disorder, and that he’s significantly denying what happened . . . . His testimony did establish that he does continues to pose a significant risk to the public.”

#### *Mental Disorder Not In Remission*

A prisoner is subject to involuntary treatment as an MDO if the prosecution proves, among other factors, that the prisoner has a severe mental disorder that “is not in remission or that cannot be kept in remission without treatment.” (§ 2962, subd. (a)(1).) “The term ‘remission’ means a finding that the overt signs and symptoms of the severe mental disorder are controlled either by psychotropic medication or psychosocial support. A person ‘cannot be kept in remission without treatment’ if during the year prior to the question being before the Board of Parole Hearings . . . he or she has not voluntarily followed the treatment plan.” (§ 2962, subd. (a)(3).)

Dr. Goldsmith testified that “[w]hen examining remission status for an individual with a paraphilic disorder, we typically like to see that the patient has gained an insight into triggering

stimuli . . . , so that they [sic] can appropriately manage those urges in the community.” Appellant’s insight was “minimal to none” in that appellant denied what happened and distorted the facts of his past offenses even though they involved minor victims.<sup>3</sup> Dr. Goldsmith did not observe overt symptomology of the mental disorder because appellant was interviewed in a controlled hospital setting and no children were around.

Appellant argues that the clinical signs and symptoms must be “overt,” and that Dr. Goldsmith ignored the clear meaning of the MDO statute in opining that appellant was not in remission. But appellant’s own trial testimony shows that on-going fear stressors cause him to get drunk or high and engage in opportunist sexual behaviors. Pursuant to MDO statute, the trial court could consider appellant’s lack of insight in finding that the disorder could not be kept in remission without treatment. (§ 2962, subd. (a)(3); *People v. Beeson* (2002) 99 Cal.App.4th 1393, 1398-1400 (*Beeson*).)

Although appellant attended 89 percent of his group therapy sessions, Dr. Goldsmith testified that appellant had “[l]imited engagement in the treatment.” The MDO statute requires that the patient follow the treatment plan and actively engage in the prescribed treatment. Woody Allen’s observation that “showing up is 80 percent of life” is not good enough. “A reasonable person, whose mental disorder can be kept in remission with treatment, must, at a minimum, acknowledge if

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<sup>3</sup> Appellant denied that his prior offenses (sexual penetration with a foreign object, sodomy with a victim under 18 years of age, oral copulation with a victim under the age of 18, annoying or molesting a child under the age of 18, and meeting with a minor to engage in lewd and lascivious behavior) were driven by sexual desires for victims under the age of 18.

possible 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.)

“Under section 2962, not voluntarily following the treatment plan is essentially an exception to the finding that the illness is in remission. The Legislature [has] listed several circumstances that would indicate that a person’s illness could not be kept in remission by treatment. Even when a person does not exhibit violent or threatening behavior, his failure to participate in his treatment plan also may reveal whether he can reenter society without the constraints and protections afforded in a structured environment. *In other words, rather than relying on the presence of overt symptoms, the Legislature provided additional factors in gauging a person’s current condition.* Such factors are not intended to be superfluous or meaningless. As stated above, the statute clearly provides that a person’s failure to voluntarily follow his treatment plan may be grounds for a finding that he cannot be kept in remission without treatment.” (*Beeson, supra*, 99 Cal.App.4th at p. 1400, fns. omitted, italics added.)

Although “lack of insight” is not expressly stated in the MDO statute, it is relevant to the determination of whether appellant was following his treatment plan and whether the severe mental disorder can be kept in remission without treatment. (§ 2962, subd. (a)(3); *Beeson, supra*, 99 Cal.App.4th at p. 1399.) The trial court found that the severe mental disorder was not in remission. Even if the trial court’s rationale concerning “insight” was erroneous, “[A] ruling or decision, itself correct in law, will not be disturbed on appeal merely because given for a wrong reason. . . .” [Citation.]” (*People v. Zapien*

(1993) 4 Cal.4th 929, 976.) The evidence supports the trial court's finding that appellant meets all the criteria of an MDO. (See *People v. Bowers* (2006) 145 Cal.App.4th 870, 879 [single psychiatric opinion constitutes substantial evidence].)

The judgment (MDO commitment order) is affirmed.

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YEGAN, Acting P.J.

We concur:

PERREN, J.

TANGEMAN, J.

Matthew G. Guerrero, Judge

Superior Court County of San Luis Obispo

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