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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.

JOSE CARMONA,

Defendant and Appellant.

2d Crim. No. B237510
(Super. Ct. No. F463639)
(San Luis Obispo County)

Jose Carmona appeals from an order committing him to the Department of Mental Health (DMH) for treatment as a mentally disordered offender (MDO) after a court trial. (Pen. Code, § 2960 et seq.)¹ Appellant contends that his treatment at a parole outpatient clinic (POC) did not satisfy the MDO requirement that he receive 90 days treatment in the year preceding his June 11, 2011 parole or release date. (§ 2962, subd. (c).) We affirm. (§ 2964, subd. (a); *People v. Achrem* (Jan. 29, 2013, B236100) __ Cal.App.4th __, __.)

Procedural History

Appellant suffers from a severe mental disorder (schizophrenia) and was sentenced to 16 months state prison following his 2010 conviction for grand theft of a

¹ All statutory references are to the Penal Code.

person. Appellant was paroled in August 2010 and received treatment at a POC but returned to prison in March 2011 after he broke car windows and claimed he was Lucifer.

Two psychologists evaluated appellant and certified that he met the MDO criteria. So did a California Department of Corrections and Rehabilitation (CDCR) Senior Psychiatrist who issued a June 9, 2011 MDO certification. On August 4, 2011, the Board of Parole Hearings (BPH) determined that appellant met all the MDO criteria and certified him for treatment at Atascadero State Hospital (ASH). Appellant challenged the BPH determination in superior court and waived jury trial.

DMH Psychologist Brandon Yakush opined that appellant met all but one MDO criteria: that "[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, subd. (c).) Doctor Yakush stated that appellant received 87 days treatment in prison (March 17, 2011 to June 11, 2011) and 203 days POC treatment (August 10, 2010 to March 11, 2011) but was not sure that POC treatment counted. Doctor Yakush explained that mental health professionals at ASH disagree on whether POC treatment satisfies the 90-day treatment requirement.

CDCR Psychiatrist Christopher Miller-Cole testified that POCs are a network of clinics that provide mental health treatment to parolees and that there is a "significant overlap" between treatment offered a prisoner and treatment offered at POCs.

Parole Outpatient Treatment

Appellant concedes that he received more than 90 days treatment but claims that POC treatment does not count because it was not custodial treatment in a DMH facility, i.e., a state hospital such as ASH. Reading section 2962, subdivision (c) in isolation, one could argue that a "parolee" is not a prisoner and that a prisoner can never receive out-patient treatment. The folly of this logic is the product of *People v. Del Valle* (2002) 100 Cal.App.4th 88 and *People v. Martin* (2005) 127 Cal.App.4th 970, which we disapproved in *People v. Achrem, supra*, __ Cal.App.4th at p __. Statutory language

should not be given a literal meaning if it results in absurd consequences that the legislature never intended. (*Younger v. Superior Court* (1978) 21 Cal.3d 102, 113.)

Although POC treatment is under the auspices of CDCR, section 2964, subdivision (a) provides that the treatment satisfies the 90-day treatment requirement if the outpatient program was "specified" by DMH. (See Cal. Code Regs., tit. 15, § 2570, subd. (f). POC treatment is non-custodial treatment but qualifies provided the treatment plan was reviewed and approved by DMH prior to the prisoner's parole. (§ 2964, subd. (a).)

That is what happened here. The record on appeal includes a MDO certificate signed by CDCR Senior Psychiatrist Cheryl Piazis that was submitted to the BPH. (See *Lopez v. Superior Court* (2010) 50 Cal.4th 1055, 1064; § 2962, subd. (d)(1); 15 Cal. Code Regs., §§ 2570 & 2572, subd. (a) [describing MDO certification and hearing procedure].) Doctor Piazis certified that appellant was in treatment for 90 days or more in the year prior to his scheduled parole or release date.

Appellant argues that the 90-day treatment requirement was not satisfied because there is a conflict in the expert opinion testimony. Not so. Doctor Yakush stated: "I don't have an opinion one way or another on this. . . . [A]t this moment in time, I believe it is a legal issue that I really myself see both sides of. I don't believe I can state a certain opinion one way or the other." Doctor Yakush admitted that it was not his function to opine about what the MDO Act means.² Kudos to him. An expert who has no opinion on a factual issue offers "zero evidence." The evidence " "is wholly without value to the trier of fact in reaching a decision." ' [Citation.]" (*People v. Killebrew* (2002) 103 Cal.App.4th 644, 651.)

We take the MDO as we find it, (See e.g., *Unzueta v. Ocean View School Dist.* (1992) 6 Cal.App.4th 1689, 1699 [rejecting "dictionary school of jurisprudence"].)

² Doctor Yakush stated that MDO evaluators at ASH have discussed "this issue on and off for as long as any of us have been doing this work." "I really wish we had more clear case law on [this] because I d[o]n't feel that there was real guidance. [¶] . . . Nobody ha[s] ever laid out for me [the] reasoning as to why POC was excluded. . . . [T]here was never a black-and-white reason why?"

As in any sufficiency of the evidence appeal, we draw all reasonable inferences in favor of the judgment. Two mental health experts opined that the 90-day treatment criteria was satisfied. A third mental health expert, Doctor Yakush, had no opinion. The trial court did not err in finding that appellant was an MDO. (See *People v. Bowers* (2006) 145 Cal.App.4th 870, 879 [single mental health expert opinion constitutes substantial evidence].)

The judgment (MDO commitment order) is affirmed.

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YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Barry T. LaBarbera, Judge
Superior Court County of San Luis Obispo

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