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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE, Plaintiff and Respondent, v. COREY JAMES HARRISON, Defendant and Appellant.	C101165 (Super. Ct. No. 22FE005488)

Defendant Corey James Harrison shot a man in the stomach in the middle of the afternoon on a public street after the victim accused defendant of mistreating a dog. Defendant petitioned for mental health diversion pursuant to Penal Code section 1001.36.[1] The trial court denied the petition because it found that, among other reasons, treating defendant in the community would pose an unreasonable risk of danger to public

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

safety. Defendant then pleaded no contest to assault with a semiautomatic firearm and admitted two sentence enhancement allegations. The court imposed a stipulated sentence of 13 years in prison.

On appeal, defendant contends the trial court abused its discretion by denying his petition. He argues, among other things that: (1) the court applied the wrong standard in finding that treating him in the community would pose an unreasonable risk of danger to public safety; and (2) the finding is not supported by substantial evidence. We disagree and thus need not reach defendant's remaining arguments to resolve this appeal, as we will explain. We affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

In accordance with the standard of review, we recite the facts underlying defendant's conviction in the light most favorable to the judgment. (See *People v. Edwards* (2013) 57 Cal.4th 658, 715.)

Defendant was walking a dog on a leash along the side of the road at approximately 3:00 p.m. The victim was walking on the other side of the road and told defendant to stop choking the dog. The two exchanged words, and the victim walked across to defendant's side of the street. Defendant then pulled out a handgun, pressed it to the victim's stomach and fired twice. One bullet went through the victim's abdomen, and the second jammed in the barrel of the gun. Defendant then ran from the scene, throwing the gun into the bushes.

The People charged defendant with attempted murder, assault with a semiautomatic firearm, and possessing a firearm as a felon, and alleged several sentencing enhancements. Defendant filed a petition pursuant to section 1001.36 seeking mental health diversion. He argued that he met all the statutory criteria for diversion and did not pose an unreasonable risk of danger to public safety. Defendant's brief specifically explained the law "defines 'unreasonable risk of danger to public safety' as 'an unreasonable risk that the petitioner will commit a new violent felony within the

meaning of clause (iv) of subparagraph ([C]) of paragraph (2) of subdivision (e) of Section 667.' " Defendant's brief then listed the so-called "super-strike" offenses in section 667, subdivision (e)(2)(C)(iv), though he omitted "any attempted homicide offense."

In support of his petition, defendant submitted a "crisis assessment" prepared by Cristina Rainwater, a mental health counselor working for Sacramento County. Defendant reported that he had previously been in a drug diversion program for approximately four to five years. The report noted that defendant was willing to enter drug treatment, "but report[ed] 'I can't be around people. I'll end up relapsing.' " Defendant's behavioral health records showed he had been admitted to behavioral health treatment facilities nine times since 1998. The report describes defendant as having a "history of suicide attempts, violence, or threats, which may be associated with a disorganized mental state or substance abuse." The report concludes by stating that defendant "presents with symptoms indicative of Unspecified Schizophrenia Spectrum and other psychotic disorder (F29); Posttraumatic Stress Disorder, complex (F43.10); Cannabis use disorder, moderate, in sustained remission, in a controlled environment (F12.21)."

The People opposed defendant's petition, arguing that defendant's mental health disorders were not significant factors in his shooting of the victim and that treating defendant in the community would pose an unreasonable risk of danger to public safety. The People agreed with defendant that the statute required a finding that defendant was "likely to commit a super-strike" offense. In support of their position, the People pointed to the facts of the shooting and defendant's prior convictions, which included possession of a firearm having been convicted of a felony and carrying a concealed firearm.

Neither party offered additional evidence at the hearing. After the parties' arguments, the trial court ruled as follows:

"The Court having considered the motions filed in this case, the thought process behind mental health diversion -- I am going to find that based on the totality of the circumstances, the Court has -- I find that there is clear and convincing evidence to overcome the presumption of nexus. I'm also going to find that the defendant does pose an unreasonable risk to public safety. The Court's considering both the opinions of counsel, district attorney's office, the mental health experts [*sic*] with Mr. Harrison's own criminal record and the current charged offenses and the facts in this case. And I am considering both versions of the facts.

"But I do find that he poses an unreasonable risk to public safety at this time. I do find the circumstances of the offense make him unsuitable for diversion at this time, and so I'm going to deny his mental health diversion application."

Defendant subsequently pled no contest to assault with a semiautomatic firearm and admitted personally using a semiautomatic firearm and personally inflicting great bodily injury in the commission of the offense. The trial court imposed a stipulated sentence of 13 years in prison, comprising the middle term of six years for assault, plus the middle term of four years for the firearm enhancement and three years for the great bodily injury enhancement.

Defendant filed a timely notice appealing from the judgment and requested a certificate of probable cause to challenge the denial of his mental health diversion petition. The trial court denied the request.

Defendant then requested a stay of this appeal to file a petition seeking a writ of mandamus overturning the trial court's decision to deny his request for a certificate of probable cause. We granted the request. Defendant filed his petition, and we sent notice to the trial court that we were considering issuing a peremptory writ of mandate without first issuing an alternative writ. (See *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171.) The trial court vacated its order denying the certificate of probable cause

and issued a new order granting the certificate. This court then lifted the stay and the parties filed their appellate briefs, with the case fully briefed on September 25, 2025.

DISCUSSION

Defendant contends the trial court abused its discretion in denying his petition for mental health diversion and asserts that he met all the statutory requirements to be eligible and suitable for diversion. With respect to the court's finding that treating defendant in the community would pose an unreasonable risk to public safety, defendant argues that: (1) the court applied the wrong legal standard; and (2) the court's finding is not supported by substantial evidence. We disagree with both arguments and conclude the court did not err in finding defendant was not suitable for diversion on this basis. Because this conclusion necessarily means that defendant does not meet all of the requirements for diversion, we need not and do not address the court's finding that defendant was not eligible for diversion.

Defendant first contends the trial court abused its discretion by applying the wrong legal standard for determining what is an "unreasonable risk of danger to public safety." We disagree.

One requirement to be suitable for pretrial diversion, is that the petitioner must "not pose an unreasonable risk of danger to public safety, as defined in [s]ection 1170.18, if treated in the community." (§ 1001.36, subd. (c)(4).) Section 1170.18, subdivision (c) defines "unreasonable risk of danger to public safety" as "an unreasonable risk that the petitioner will commit a new violent felony within the meaning of clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of [s]ection 667."

Both parties correctly set forth this legal standard in their trial court briefing, and the court did nothing to signal that it was applying a different standard. In fact, the court used the statutory language several times in making its finding "that the defendant does pose an unreasonable risk to public safety" and therefore was "unsuitable for diversion." "Absent evidence to the contrary, we presume that the trial court knew and applied the

governing law." (*People v. Gutierrez* (2014) 58 Cal.4th 1354, 1390.) Here, the evidence supports this presumption, so defendant's contention fails.

Defendant next contends that the court's finding that defendant will pose an unreasonable risk of danger to public safety if treated in the community is not supported by substantial evidence. Again, we disagree.

"The relevant question is whether there is substantial evidence to support a finding that [defendant] is likely to commit a super-strike offense if treated in the community." (*Gomez v. Superior Court* (2025) 113 Cal.App.5th 671, 690.) "Substantial evidence is evidence that is ' "reasonable in nature, credible, and of solid value." ' [Citation.] 'In reviewing the sufficiency of the evidence, we must determine "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." ' [Citation.] We must presume in support of the judgment the existence of every fact that the trier of fact could reasonably deduce from the evidence." (*People v. Medina* (2009) 46 Cal.4th 913, 919.) As noted above, the mental health diversion statute points to the list of super-strike offenses in section 667, which includes, as relevant here, "[a]ny homicide offense, including any attempted homicide offense, defined in Sections 187 to 191.5, inclusive." (§ 667, subd. (e)(2)(C)(iv)(IV).)

We conclude substantial evidence supports a finding that defendant is likely to commit an attempted homicide offense if treated in the community. Here, the evidence showed that defendant was not permitted to possess a firearm and yet had twice been convicted of unlawful possession. He had participated in a drug diversion program for four to five years and had received mental health treatment at least nine times. Yet, neither his prior treatment nor the law prohibiting him from possessing a firearm prevented him from shooting the victim twice in the stomach after a mundane verbal disagreement on a public street. This evidence sufficiently supports an implied finding that treating defendant in the community would pose an unreasonable risk that he might

attempt murder, despite any potential treatment. We also note the trial court was not alone in its skepticism of defendant's ability to rehabilitate safely; the counselor's report stated that defendant was willing to enter drug treatment, "but report[ed] 'I can't be around people. I'll end up relapsing.' "

Defendant relies on *People v. Whitmill* (2022) 86 Cal.App.5th 1138, but that case is distinguishable. In *Whitmill*, the defendant, whose criminal record "consist[ed] of possession and sales of drugs and theft" (*id.* at p. 1151), "negligently fired a single shot in the air away from those nearby and then threw the gun away and turned himself in to [law enforcement] with 'no incident' " (*id.* at p. 1155). The mental health expert testified that " 'any risk to the community could be mitigated by treatment.' " (*Ibid.*)

Here, by contrast, defendant shot a man at close range after a verbal disagreement and would have shot him again had the gun not jammed. Defendant possessed that gun illegally and had repeatedly been convicted of possessing guns illegally. The mental health professional in this case did not offer an opinion that defendant's risk to the public could be mitigated, stating only: "No recent history of elevated risk factors, yet does have a history of suicide attempts, violence, or threats, which may be associated with a disorganized mental state or substance abuse." And defendant has previously spent four to five years in a drug diversion program and been admitted to behavioral health facilities nine times. *Whitmill* is not comparable to this case.

Defendant also claims we should not make inferences in support of the trial court's finding that he posed an unreasonable risk to public safety: "In *People v. Whitmill* . . . , the Court reversed a denial of diversion, holding: 'We do not infer such findings from a silent record.' " But this quotation does not appear in the *Whitmill* opinion, nor in any opinion as far as we can tell. More importantly, such a quotation would be contrary to basic principles of appellate law. As noted above, when reviewing for substantial evidence, "[w]e must presume in support of the judgment the existence of every fact that the trier of fact could reasonably deduce from the evidence." (*People v.*

Medina, supra, 46 Cal.4th at p. 919; see generally 9 Witkin, Cal. Proc. (6th ed. 2025) Appeal § 375.)

In sum, substantial evidence supports the trial court's finding defendant will pose an unreasonable risk of danger to public safety if treated in the community. This means defendant does not meet the requirement in section 1001.36, subdivision (c)(4) and is therefore not suitable for mental health diversion. It follows that the trial court was not authorized to grant diversion under section 1001.36, subdivision (a), which requires a suitability finding. Accordingly, the court did not err in denying defendant's petition, and we need not address defendant's additional arguments.

DISPOSITION

The judgment is affirmed.

/s/
Duarte, Acting P. J.

We concur:

/s/
Krause, J.

/s/
Boulware Eurie, J.