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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.

ROSS WOLLSCHLAGER,

Defendant and Appellant.

2d Crim. No. B224508
(Super. Ct. No. PS020616)
(Ventura County)

In exchange for conditional release, Ross Wollschlager admitted the allegations of a petition to extend his commitment as a sexually violent predator (SVP) for an indeterminate term. (Welf. & Inst. Code, §§ 6600 et seq., the SVPA.)¹ Within a few weeks of release, Wollschlager violated a term of his release that required him to stay away from children. The court revoked his release. He challenges the revocation and the underlying commitment.

We conclude that substantial evidence supports the revocation order. We reject Wollschlager's contentions that the underlying commitment is invalid. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Wollschlager suffers from voyeurism and paraphilia. In 1983, he entered the rooms of two women he did not know and raped them. (Pen. Code, § 261, subd.

¹ All statutory references are to the Welfare & Institutions Code unless otherwise stated.

(a)(2) & (5).) A jury convicted him of two counts of rape. He served a prison term and was released on parole in 1987. In 1989, he entered the bedrooms of several children and forcibly molested one of them. A jury convicted him of committing lewd acts on a child and he served another prison term. (Pen. Code, § 288, subd. (b).)

Upon release from prison in 1996, he was involuntarily committed to the custody of the department of mental health (DMH) as an SVP. The court periodically extended his commitment for two year increments upon petitions by the district attorney. (§ 6604.)

The First Conditional Release in 2006

In March, 2006, the trial court granted Wollschlager conditional release on outpatient status under the supervision and treatment of a forensic treatment program (CONREP), pursuant to section 6608. (The first conditional release.) Liberty Health Care (Liberty) took responsibility for his placement and supervision under contract with the state.

In 2006, the SVPA was amended to authorize an indeterminate commitment per Proposition 83. But in 2006, Wollschlager remained under the conditional release program.

Liberty could not find housing for Wollschlager. He remained confined for another year and a half. We issued an alternative writ and the trial court ordered his release.

The 2007 Petition to Extend Commitment

Wollschlager was released in August 2007, 24 days before expiration of the underlying term of his commitment. Two days before his release, the district attorney filed a petition to extend the commitment for an indeterminate term under the amended SVPA. (The 2007 petition.) Two evaluations supported the petition. The evaluators were unanimous in their opinion that Wollschlager should be committed. Counsel advised the court that the 2007 petition would be tolled by operation of law during the period of conditional release. The court took no action on the 2007 petition until 2009.

Revocation of the First Conditional Release in 2009

As a condition of his release, Wollschlager agreed to numerous conditions. He initially performed well. In the first year of release, he found housing for himself, trained as a welder, and got a job. He befriended an elderly woman with whom he spent all of his free time.

In the second year, his friend's health declined, putting him "under great stress." He began to "decompensate" and to violate conditions of his release. His early violations were minor. But in October 2009, he was returned to custody after his supervisor found him disheveled in his home with pornographic material and all of his personal possessions scattered around the floor. He tested positive for amphetamine.

The court revoked Wollschlager's release on August 9, 2009. At the evidentiary hearing, Wollschlager admitted most of the violations and explained that they resulted from stress due to his friend's deteriorating condition.

Revived Proceedings on the 2007 Petition

Immediately after revoking Wollschlager's first conditional release, the court set the 2007 petition for an indefinite term of commitment for a probable cause hearing. The court ordered updated evaluations pursuant to section 6603, subdivision (c)(1). At the request of the parties, the court continued the probable cause hearing.

The updated evaluations reflected differing opinions on whether Wollschlager met the criteria for SVP commitment. (§ 6603, subd. (c)(1).) One evaluator concluded that Wollschlager met the criteria for commitment as a SVP, but the other evaluator had changed his initial opinion and now thought Wollschlager did not meet the criteria. The court ordered two independent evaluations. (§§ 6603, subd. (c)(1), 6601, subd. (f).) The independent evaluators were also divided in their opinions.

Wollschlager moved to dismiss the 2007 petition because it was not supported by a concurring set of evaluations. (§ 6601, subs. (e) & (f).) The court denied the motion.

The parties appeared for the probable cause hearing on January 25, 2010, but asked for a continuance to February 8 to explore the possibility of renewed

conditional release. Wollschalger waived time to March 22. On February 16, Wollschlager admitted the allegations of the 2007 petition and waived objections, thereby agreeing to re-commitment for an indeterminate term.

Second Conditional Release in 2010

In exchange for his admission to the allegations of the 2007 petition, the court granted Wollschalger a second conditional release. Wollschalger agreed to additional conditions that prohibited "contact" with his elderly friend and required increased therapy and testing. He said, "I not only have read [the conditions] but I agree with them and feel they're suitable." Wollschalger agreed not to initiate, establish or maintain contact with any minor, directly or indirectly, without prior written permission from the program director.

Revocation of Second Conditional Release

The court released Wollschalger to his previous home, a studio in a converted garage on a large property. Other people lived in a separate house on the property, including a new property manager, K.C. Riddle, whose young grandchildren regularly visited.

Liberty's regional coordinator, Kym Caudle, cautioned Wollschalger about this new situation. She told him to call Liberty staff whenever the children visited and to separate himself from the children. On three occasions he complied by calling Caudle to report that the children were present and to describe his efforts to avoid them. She also told him not to call the family members of his elderly friend.

Two and a half weeks after his release, he learned that his elderly friend had been placed in a psychiatric ward. She called him on his cell phone, but he did not return her call. He was very upset. He called her adult stepdaughter.

That Friday evening, Wolschlager had contact with Riddle's grandchildren. As he returned from a support group meeting, Riddle asked him to help move wood to a clearing where the children intended to build a fort. Wollschlager loaded the wood into a truck in which the children were riding with their mother and her female friend. Riddle

introduced him to the children. He followed the truck to the clearing and unloaded the wood.

The next morning, he went to another meeting to avoid the children but when he returned Riddle was helping the children plant flowers in beds along the front and side of his studio. She asked him to build a fence for the beds and he did so in the presence of the children. He and the children did not work on the same flower bed at the same time, but he did have the girl hold a measuring tape for him.

The children entered a garage where he was cutting fence stakes. They saw a kite and asked if they could fly it. He told them to ask Riddle. They flew it without his help. But when the string broke, he fixed it at Riddle's request. And when the kite got loose and flew into a ravine, he retrieved it for them at Riddle's request.

Wollschalger did not report these events in telephone calls with a Liberty staff person who was covering for Caudle on Saturday. On Monday, Wollschlager called Caudle and told her that a "good thing" had happened because he had been introduced to Riddle's grandchildren. Caudle admonished Wollschlager for having contact with children. She said it created a risk because they could think he was "a safe, good person." He disagreed.

Later that day, Wollschlager called Caudle back and fully disclosed his interactions with the children. He said the granddaughter had told Riddle that Wollschlager seemed, "nice." Wollschlager told Caudle she, "may need to "violate" him.

At Caudle's request, the district attorney filed a petition to revoke the second conditional release. At an evidentiary hearing, the court heard the testimony of Caudle, Riddle, and Wollschalger. There was little dispute about the facts. Caudle expressed concern that Wollschalger had engaged in the children's activities and that his renewed stress about his elderly friend could lead him to decompensate again.

Riddle testified that she did not know Wollschalger had restrictions concerning children. She did know he was an SVP. Riddle assumed he was permitted to interact with children because he was living at a residence where they visited. She said he never initiated contact or touched the children.

Wolschlager testified that he did not feel he needed to report the interactions to the weekend supervisor because they were "incidental." He said he was surprised when Caudle gave him the "third degree" about it because he did not play with the children. He testified Caudle told him he could be outside when the children were present so long as he kept his distance from them. But he said he understood he should have anticipated and avoided the contact and that he made a mistake.

The court revoked Wolschlager's second conditional release, and ordered him returned to inpatient treatment for an indeterminate term. The court expressed concern that Wolschlager was unaware of the danger he poses. He told Wolschlager, "I think that you believed it was a good thing. That's what troubles me." "For two hours while you're in Miss Riddle's proximity, small children associate and take clues from the adults that they rely upon. And your close association that being relatively close physically, it kind of legitimates you to the children. That's inconsistent with what you were obligated to do in paragraph D-4. This is like a bell [that] should be going off in your mind"

DISCUSSION

Substantial Evidence Supporting Revocation of Second Conditional Release

We reject Wolschlager's contention that there was insufficient evidence to support revocation of his second conditional release. Substantial evidence supports the trial court's determination that Wolschlager required extended inpatient treatment. (§ 6608; *People v. DeGuzman* (1995) 33 Cal.App.4th 414, 420.)

Wolschlager violated his agreement not to contact children when he interacted with Riddle's grandchildren. He agreed, "I will not initiate, establish or maintain contact with any minor without prior written permission from the community program director. I understand that this means that I will have no direct or indirect contact with any minor, whether personally, by telephone, Internet, letter or through another person. This includes any attempted contact with an adult when I am reasonably aware of the possibility that a minor is likely to be present, as well as being in the immediate proximity of any minor."

He did not initially disclose the violation to his supervisor, and his testimony demonstrated that he refused to accept the need for strict compliance with the conditions of outpatient treatment and supervision. His supervisor testified that he could no longer be maintained on outpatient status and the trial court was entitled to rely upon her recommendation. (*People v. DeGuzman, supra*, 33 Cal.App.4th at p. 420.)

Wolschlager contends that Liberty did not give him a fair chance when it placed him where children would be present, but the trial court expressly found to the contrary. We will not interfere with the trial court's determination of credibility issues or evidentiary conflicts where its decision is supported by substantial evidence. (*People v. DeGuzman, supra*, 33 Cal.App.4th at p. 420.)

The evidence supports an inference that Liberty acted in good faith. Placement options were extremely limited, as the procedural history of this case demonstrates. Caudle testified that she told Wolschlager the children would visit and they discussed the challenges that this would create. Wolschlager assured her that he could comply with her instructions to walk away from the children and to call Liberty staff whenever they visited. The trial court acknowledged that Riddle made things difficult when she "suckered" Wolschlager into the situation through her "cluelessness," but it pointed out that Riddle did not work for Liberty and "there are clueless people everywhere in our community." The court concluded that it was Wolschlager's responsibility to recognize risky situations and appreciate his own dangerousness. The court's decision that he was unable to do so in an outpatient setting is supported by substantial evidence and we will not disturb it.

Validity of Agreement to Admit the Allegations of the 2007 Petition

Wolschlager contends he was improperly induced to admit the allegations of the petition in exchange for conditional release because (1) the prosecutor did not tell him that release could be revoked based solely on his supervisor's opinion and (2) he did not receive the benefit of a good faith chance to succeed on release. We consider the claim on the merits because it is a challenge to the legality of the proceedings. (*People v. Sanders* (2012) 203 Cal.App.4th 839, 848.)

In exchange for his second conditional release, Wollschlager admitted the allegations of the 2007 petition. He agreed to an indeterminate term of commitment and knew his release could be revoked if the court found he had not complied with the conditions of his release. That the court agreed with the supervisor's opinion does not mean the court ceded its authority to the supervisor. (§ 6608.) Wollschlager violated the terms of his release. The court based its revocation decision on its finding that Wollschlager required inpatient treatment, and his violations supported the trial court's finding. Wollschlager had been through the revocation process one year earlier, and was aware that, if his supervisor was of the opinion that he required inpatient treatment, a revocation petition would be filed. Wollschlager received the benefit of his bargain when the court granted conditional release. The record supports the trial court's finding that Liberty gave Wollschlager "a fair chance."

Consensus of Opinions to Support 2007 Petition

Wollschlager contends that the court should have granted his motion to dismiss the 2007 petition because it was not supported by a consensus of opinions as required by section 6601. Wollschlager forfeited this claim when he admitted the allegations of the 2007 petition. (*People v. Medina, supra*, 171 Cal.App.4th at p. 817.) Wollschlager argues for the first time on appeal that the petition must be dismissed because the pre-filing evaluations were based on invalid assessment protocols. (*In re Ronje* (2009) 179 Cal.App.4th 509.) The claim is forfeited.

Due Process, Ex Post facto, Double Jeopardy,

First Amendment, and Equal Protection

Wollschlager contends that the revised SVPA violates due process by placing the burden on the committed person to prove that he is no longer an SVP; violates the prohibition against ex post facto laws by increasing the punishment for a crime to an indeterminate term after its commission; violates the double jeopardy clause by imposing multiple punishments for the same offense; violates the first amendment right to petition for redress of grievances by limiting his ability to petition for release; and violates the equal protection clause because all other civilly committed people in the state are entitled

to limited confinement and periodic jury trials where the government has the burden of justifying extended commitment. Wollschlager forfeited each of these constitutional claims when he admitted the allegations of the 2007 petition. (*People v. Medina, supra*, 171 Cal.App.4th at p. 817.)

Disposition

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

WOODS, J.*

*Fred Woods, Associate Justice, Court of Appeal, Second District, Division 7 assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Kent Kellegrew, Judge
Superior Court County of Ventura

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