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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.

BOEH DAN SULDEN,

Defendant and Appellant.

2d Crim. No. B232518  
(Super. Ct. No. F449187)  
(San Luis Obispo County)

Boeh Dan Sulden has previously been adjudicated a mentally disordered offender (MDO) within the meaning of Penal Code, section 2960.<sup>1</sup> He appeals from an order authorizing Patton State Mental Hospital to involuntarily administer antipsychotic medications to him. Appellant contends there is no substantial evidence that he is incompetent to refuse treatment, that he is a danger to others within the meaning of Welfare & Institutions Code section 5300, or that the order for involuntary medication is in his best medical interests. We affirm.

*Facts*

In 1998, appellant was adjudicated a mentally disordered offender (MDO) (§ 2960, et seq.) after having been convicted of annoying or molesting a child under the age of 18. (§ 647.6.) Since that time, he has continuously been treated at either

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise stated.

Atascadero State Mental Hospital or Patton State Mental Hospital. On October 16, 2010, appellant consented to the entry of an order authorizing his continued treatment by the California Department of Mental Health for a period of one year. In February 2011, the medical director at Patton State Hospital petitioned for an order authorizing the continued involuntary administration of antipsychotic medication to appellant.<sup>2</sup>

At the hearing on the petition, a psychiatrist from Patton State Hospital, Viswanatha Reddy, testified that appellant meets the criteria for involuntary medication. He has been diagnosed with paranoid schizophrenia but believes that he is not suffering from a mental illness and does not need medication to manage that illness. Dr. Reddy further testified that appellant "has a history of acting very violently, including assaults. He has a history of disorganized thought process primarily characterized by paranoia. These are the triggers to his history of assaults. This is especially prominent when he's not taking medications. They're also present when he is taking medications to address this; however, they're significantly reduced." Appellant refused to give informed consent to medication because he does not believe that he is mentally ill. Dr. Reddy opined that appellant lacks the capacity to make decisions regarding his need for medication because "he has poor insight into the actual basis of the illness; he believes he's cured . . . ." In addition, appellant's "disorganized thought process makes him unable to appreciate the risks and benefits associated with the treatment."

Dr. Reddy testified that, within the past year, appellant had posed a serious threat of substantial physical harm to others. First, in January 2010, appellant "aggressively pointed his finger centimeters from his treating psychiatrist, Dr. Beth Chung. And this was something that was very concerning. She felt her safety was in jeopardy." In December 2010, he "became aggravated over a book which he felt that he

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<sup>2</sup> The petition is accompanied by affidavits from appellant's treating psychiatrist, Dr. Beth Chung, concerning appellant's competency to refuse treatment and his dangerousness. For reasons that are not explained in the record, these documents were never admitted into evidence at the hearing on the petition. As a consequence, we do not rely on their substance here.

owned, and he became aggressive and approached female staff on the unit and was making paranoid statements. He needed -- he needed a significant amount of redirection at that time as well and, fortunately, we were able to avoid any restraining use at that time." Finally, in March 2009, appellant assaulted another patient because he believed the patient was going to rape him. At the time, appellant was experiencing paranoia and "presenting with symptoms that he's presenting with now . . . ." Dr. Reddy concluded that appellant posed a significant threat of violence to others because of his paranoia and delusional thoughts, conditions which would be addressed by medication.

Appellant testified that he has refused to take medications because he is not mentally ill and does not need them. He believes that "the hospital has been sabotaging me and attacking me for trying to progress and speak out about improved conditions." Appellant repeated several times his claim that "they retaliate against me" because he tries to improve conditions at the hospital and because he has defended himself against sexual assaults. According to appellant, his "physical altercations" with other patients were "self-defense. I went to staff. I tried to talk with them. I did reports on paper to get people to stop harassing me sexually, violently, and grabbing my penis, my buttocks, grinding up against me sexually, to quit threatening me. They wouldn't do a thing." He also testified that he did not "commit the original charge of lewd act. My rights were badly violated. They wouldn't let me testify. They wouldn't let me present evidence. They wouldn't let me cross-examine. They wouldn't let me -- they give me -- give me a fair trial. Wouldn't let me bring paper and pen to the jail. Wouldn't let me shave. Kept me in the cell. No bars, just a door. They had an option of opening it, but they wouldn't, which is kind of cruel and unusual punishment."

Appellant insisted that he did not need medication and that hospital staff wanted him to take it so their jobs would be easier. "[I]f they would be fair, anything they want to do to alter my behavior, they can just verbally express to me. If they're fair, I'll be fair. And I'm adequate, I'm reasonable, but too often they're lazy. The medical staff is lazy . . . . [¶] And I've tried to fit in between the spaces and come up with solutions. And I've got this sabotage from Reddy and Chung and the staff in this case.

And anything they want to do to alter my behavior, I'm very fair; I'm very reasonable; I'm very communicative, very aware and smart. And they can just communicate fairly with me, but they retaliate against me. They lie."

At the conclusion of the hearing, the trial court granted the petition because it found that appellant was not competent to refuse treatment and was a danger to others. It entered an order authorizing his involuntary treatment with antipsychotic medication.

#### *Discussion*

Appellant contends the trial court's order is not supported by substantial evidence. We disagree.

As we recently explained, "We review an order authorizing involuntary administration of antipsychotic medication for substantial evidence. (*People v. O'Dell* (2005) 126 Cal.App.4th 562, 570.) In the case of the MDO, the order must be supported by evidence that either the MDO is incompetent to refuse medical treatment or that the MDO is a danger to others within the meaning of [Welfare & Institutions Code] section 5300. (*In re Qwai* [(2004) 32 Cal.4th 1, ] 27.) Section 5300 requires a particularized showing that the person is a demonstrated danger and that he or she was recently dangerous. (*In re Qwai*, at p. 21.) In the case of an MDO, the commitment offense may establish dangerousness and recent dangerousness consists of 'violent or threatening acts specified in section 5300 within the year prior to the commitment or recommitment.' (*In re Qwai*, at p. 28, fn. 7.)" (*People v. Fisher* (2009) 172 Cal.App.4th 1006, 1016.)

The determination of whether an MDO is competent to refuse medication "should focus primarily upon three factors: (a) whether the patient is aware of his or her situation (e.g., if the court is satisfied of the existence of psychosis, does the individual acknowledge that condition); (b) whether the patient is able to understand the benefits and the risks of, as well as the alternatives to, the proposed medication . . . ; and (c) whether the patient is able to understand and knowingly and intelligently evaluate the information required to be given patients whose informed consent is sought ([Welf. & Inst. Code,] § 5326.2) and otherwise participate in the treatment decision by means of

rational thought processes.' " (*In re Qwai, supra*, 32 Cal.4th at p. 18, quoting *Riese v. St. Mary's Hospital & Medical Center* (1987) 209 Cal.App.3d 1301, 1322-1323.)

Dr. Reddy's testimony constituted substantial evidence that appellant is not competent to refuse medication under *Qwai*. First, Dr. Reddy testified that appellant suffers from paranoid schizophrenia but does not accept that he is mentally ill and believes that he does not require medication. The illness causes appellant to have "disorganized" thought processes which make him "unable to appreciate the risks and benefits associated with the treatment." Appellant corroborated these conclusions when he testified that he is not mentally ill, does not require medication, and believes the hospital staff are "sabotaging" him. The evidence thus satisfies the *Qwai* criteria for determining that appellant is incompetent to refuse medical treatment.

Dr. Reddy's testimony also constituted substantial evidence that appellant is dangerous within the meaning of Welfare and Institutions Code section 5300. Appellant had physically assaulted a fellow patient within the previous six years, supporting the finding that he was a "demonstrated danger" to others. (§ 5300.5; *In re Qwai, supra*, at p. 20.) In addition, he had threatened violence against his treating psychiatrist and another patient within the previous year. Again, appellant corroborated Dr. Reddy's opinion regarding his dangerousness when he testified that he has had "physical altercations" with other patients who attempted to sexually assault him. Substantial evidence supports the trial court's finding that appellant is a danger to others.

Relying on *Sell v. United States* (2003) 539 U.S. 166, appellant contends that the order for involuntary medication violates his due process rights because there is no substantial evidence that the proposed treatment is medically necessary and in his best medical interest. We are not persuaded. First, *Sell* is distinguishable because it considered only the practice of involuntarily medicating a person for the sole purpose of rendering that person competent for trial. (*Id.* at p. 180.) Appellant, by contrast, is being medicated to treat a serious mental illness, not for the purpose of facilitating a trial. In any event, Dr. Reddy testified that appellant had previously been prescribed zyprexa and had shown improvement while taking the medication. The medication eases appellant's

paranoia and reduces his threatening behavior. This testimony is substantial evidence that the order for involuntary medication would be in appellant's best medical interests.

The order is affirmed.

NOT TO BE PUBLISHED.

YEGAN,.J.

We concur:

GILBERT, P. J.

PERREN, J.

Charles S. Crandall, Judge  
Superior Court County of San Luis Obispo

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Jean Matulis, under appointment by the Court of Appeal, or Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie Weng-Gutierrez, Senior Assistant Attorney General, Richard T. Waldow, Supervising Deputy Attorney General, Julie T. Trinh, Deputy Attorney General, for Plaintiff and Respondent.