

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

EARNELL HUNT,

Defendant and Appellant.

2d Crim. No. B236983
(Super. Ct. No. F464977)
(San Luis Obispo County)

Earnell Hunt appeals from an order committing him to the State Department of Mental Health (DMH) for treatment as a mentally disordered offender (MDO). (Pen Code, § 2962 et seq.)¹ Appellant claims that the evidence does not support the finding that his severe mental disorder (pedophilia) is not in remission, that he received 90 days of treatment during the year preceding his parole release date, or that he represents a substantial risk of harm to others. (§ 2962, subd. (d)(1).) We affirm.

Facts

In 1999 appellant was sentenced to state prison for lewd and lascivious act upon a child under the age of 14 by force and violence (§ 288, subd. (b)(1)), and dissuading a witness by force or threat (§ 136.1 subd. (c)(1)). Over an eight month period, appellant forced a seven-year-old girl to watch pornographic movies, held the victim down, and inserted his penis in her vagina. The victim reported that appellant

¹ All statutory references are to the Penal Code.

"busted open" her vagina and threatened to kill her if she told anyone. Appellant was sentenced to state prison for nine years and violated parole three times.

On July 21, 2011, the Board of Parole Terms (BPT), now known as the Board of Parole Hearings, determined that appellant was an MDO. Appellant petitioned the superior court for trial and waived jury and the matter was tried to the court.

Doctor J. V. Ruffman reported that appellant suffered from pedophilia, a severe mental disorder, and met all the MDO criteria. Appellant had little insight about his mental disorder, was not treatment compliant, and had a history of not keeping his mental illness in remission.

Doctor Joe Debruin testified that appellant met all the MDO criteria and received treatment at the Parole Outpatient Clinic in Stockton for more than six months.

Mental Disorder Not In Remission

Appellant argues that the evidence does not support the finding that his pedophilia is not in remission or cannot be kept in remission without treatment. (§ 2962, subd. (d)(1).)² As in every sufficiency-of-the-evidence case, we resolve all factual conflicts and draw all reasonable inferences in favor of the judgment. (*People v. Poe* (1999) 74 Cal.App.4th 826, 830.) The testimony of a single mental health professional is sufficient to support the MDO commitment. (*People v. Clark* (2000) 82 Cal.App.4th 1072, 1082-1083.)

Here three mental health experts opined that the severe mental disorder was not in remission. In a May 13, 2011 MDO evaluation, Doctor Dawn Starr reported that

² An MDO commitment requires that the trial court find that the prisoner meets six criteria, i.e., that the prisoner: (1) has a severe mental disorder; (2) used force or violence in committing the underlying offense; (3) the severe mental disorder was a cause or an aggravating factor in the commission of the underlying offense; (4) the disorder is not in remission or capable of being kept in remission without treatment; (5) the prisoner was treated for the disorder for at least 90 days in the year prior to his parole; and (6) the prisoner poses a serious danger of physical harm to others by reason of the disorder. (§ 2962, subd. (d)(1); *People v. Merfield* (2007) 147 Cal.App.4th 1071, 1075, fn. 2.)

pedophilia is "chronic and lifelong" and that appellant had no grasp of the concepts of sex offender treatment. Appellant had little insight of his mental disorder and was found with sexually explicit photos including a photo of his penis. California Department of Corrections MDO evaluator Doctor J. V. Ruffman reported that appellant was not in remission and "over the past year he has not been compliant with his mental health treatment plan (currently incarcerated on a parole violation for association with prohibited person - a 10 year old girl)."

Appellant claims that he displayed no overt symptoms of pedophilia but that is not dispositive. "The fact that defendant has not misbehaved in a strictly controlled hospital environment does not prove he no longer suffers from a mental disorder that poses a danger to others." (*People v. Sumahit* (2005) 128 Cal.App.4th 347, 353.) Doctor Debruin explained that pedophilia "is a disorder that sort of hangs on indefinitely. It can be managed, but it does not go into remission." Although appellant had no overt symptoms, it was "really [an] artifact of the fact that he is in a controlled setting without access to children"

Doctors Ruffman and Debruin opined that the mental disorder was not in remission because appellant, among other things, violated his parole by associating with a 10-year-old girl and was not treatment compliant. Appellant's failure to follow the treatment plan is one of many factors supporting the finding that the severe mental disorder was not in remission. (§ 2962, subd. (a); *People v. Beeson* (2002) 99 Cal.App.4th 1393, 1399.)

90 Days of Treatment

Appellant contends that he did not receive 90 days of treatment during the year preceding the BPT hearing. (§ 2962, subd. (c).) Appellant saw Doctor James Frank for sex offender treatment on a weekly basis for six months at the Parole Outpatient Clinic in Stockton. Appellant was also prescribed medication and received treatment from a staff psychiatrist, Doctor John Lindgren.

Appellant asserts that weekly treatment sessions over a span of six+ months totals only 30 days of treatment rather than the requisite 90 days. But the treatment

regimen does not have to be daily treatment so long as the treatment is approved by the Department of Mental Health through the Department of Corrections. (§ 2964, subd. (a); Cal. Code Regs, tit. 15, § 2577, subd. (a); see *People v. Achrem* (Jan. 29, 2013, B236100) ___ Cal.App.4th. __, __ (slip op. p. 1) [disapproving *People v. Del Valle* (2002) 100 Cal.App.4th 88 and *People v. Martin* (2005) 127 Cal.App.4th 970].) All the mental health experts agreed that appellant received the requisite 90 days of treatment.

Appellant argues that treatment must be conducted on an inpatient basis in a penal institutional setting unless the Department of Mental Health (DMH) agrees to treat the prisoner on an outpatient basis. (§ 2964, subd. (a); *People v. Superior Court (Salter)* (2011) 192 Cal.App.4th 1352, 1356; *People v. Superior Court (Myers)* (1996) 50 Cal.App.4th 826, 830.) But that is what happened here. Appellant was treated at the Parole Outpatient Clinic in Stockton. Doctor Debruin testified that the clinic was overseen by DMH and the California Department of Corrections and Rehabilitation, and that it was not a private clinic. MDO evaluators Doctors Starr and Ruffman agreed that the 90-day treatment criteria was satisfied. (Compare *People v. Dodd* (2005) 133 Cal.App.4th 1564, 1567-1568 [prisoner received required 90 days of treatment at state sanctioned parole outpatient clinic], with *People v. Del Valle, supra*, 100 Cal.App.4th 88, 93 [treatment at private clinic did not meet MDO criteria].)

Serious Danger to Others

Appellant finally contends that the evidence does not support the finding that he poses a substantial danger of physical harm to others. Under the MDO statute, " 'substantial risk of physical harm' does not require proof of a recent overt act" of violence. (§ 2962, subd. (f); *In re Qawi* (2004) 32 Cal.4th 1, 24; *People v. Buffington* (1999) 74 Cal.App.4th 1149, 1161.) A mental health professional may take into account the prisoner's entire history in making an MDO evaluation. This includes prior violent offenses as well as the prisoner's mental health history. (*People v Pace* (1994) 27 Cal.App.4th 795, 799.) Whether the prisoner "is mentally ill and dangerous either to himself or others . . . turns on the *meaning* facts which must be interpreted by expert

psychiatrists and psychologists." (*Addington v. Texas* (1979) 441 U.S. 418, 429 [60 L.Ed.2d 323, 333].)

The evidence shows that the severe mental order was not in remission and appellant was not treatment compliant. Doctors Ruffman and Debruin opined that appellant represented a substantial danger because of the severe mental disorder, the violent nature of the commitment offense, and appellant's parole violations. Two parole violations involved the destruction of a GPS tracking device and appellant's association with a 10-year-old girl. The commitment offense occurred over a time span of eight months in which appellant "busted-open" the victim's vagina and threatened to kill her. Appellant claimed that the victim "made it up."

Substantial evidence supports the finding that appellant met all the MDO criteria and posed a substantial danger of physical harm to others by reason of his severe mental disorder. (*People v. Bowers* (2006) 145 Cal.App.4th 870, 879 [single psychiatric opinion constitutes substantial evidence].) "The purpose underlying the MDO law is to protect the public by identifying those offenders who exhibit violence in their behavior and pose a danger to society. (§ 2960.)" (*People v. Dyer* (2002) 95 Cal.App.4th 448, 455.)

The judgment is affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Jacquelyn Duffy, Judge

Superior Court County of San Luis Obispo

Gerald Miller, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Scott A. Taryle, Supervising Deputy Attorney General, Eric J. Kohm, Deputy Attorney General, for Plaintiff and Respondent.