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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.

THOMAS KING,

Defendant and Appellant.

2d Crim. No. B238940
(Super. Ct. No. F465204)
(San Luis Obispo County)

Thomas King appeals from an order denying his petition for a review of the determination of the Board of Prison Terms that he meets the criteria as a mentally disordered offender. (Pen. Code, § 2962 et seq.) We affirm.

FACTS

Underlying Offense

King was seen pacing back and forth when the victim came by with a bicycle. King punched the victim in the face and attempted to steal the bicycle. A struggle ensued in which punches were exchanged. The victim was able to escape with his bicycle. King then walked up to a woman who was feeding her baby. He punched the woman in the stomach and walked away.

Expert Testimony

Doctor Phylissa Kwartner, a forensic psychologist, testified that King suffers from schizophrenia, paranoid type. He has been in treatment since he was 18 years old. In Kwartner's opinion, the offense was caused or aggravated by King's mental disorder. Kwartner formed this opinion based on the unprovoked nature of the attack on the female victim, King's history of mental illness, that his pacing at the time of the offense was a symptom of that illness, and that King told an evaluator that his psychotropic medication was not effective. In Kwartner's opinion, King is not in remission and remains a substantial danger of physical harm to others by reason of his mental illness.

Defense

According to Psychologist Gary Goldberg, King does not suffer from schizophrenia. Instead, he suffers from antisocial personality disorder. Goldberg did not believe the underlying offense was caused by a mental disorder. King wanted the bicycle and probably punched the woman out of frustration because he did not get it.

DISCUSSION

King's counsel has declared that he has been unable to find any arguable issues for briefing. (*People v. Taylor* (2008) 160 Cal.App.4th 304; *People v. Wende* (1979) 25 Cal.3d 436.)

King has submitted a supplemental brief in propria persona. King appears to argue that a psychologist is not competent to testify that his criminal offense was caused or aggravated by his mental disorder. Instead, King claims the only admissible evidence on the issue is the court record of the underlying conviction and sentencing. King cites no relevant authority to support his argument.

Dr. Kwartner's testimony states the basis for her conclusion that King's offense was caused or aggravated by his mental disorder. The trial court

found her testimony credible. We have no power on appeal to judge the credibility of a witness. (*People v. Stewart* (2000) 77 Cal.App.4th 785, 790.)

Our review of the record discloses no arguable issues. We affirm.

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GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Jacquelyn H. Duffy, Judge
Superior Court County of San Luis Obispo

Thomas King, in pro. per., and Gerald J. 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, for Plaintiff and Respondent.