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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

DINO DELUCA,

Defendant and Appellant.

B266708

(Los Angeles County  
Super. Ct. No. ZM016179)

APPEAL from a judgment of the Superior Court of Los Angeles County. Michael D. Carter, Judge. Affirmed.

Lori E. Kantor, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent

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The Los Angeles District Attorney filed an amended petition under the Sexually Violent Predators Act (SVPA) (Welf. & Inst. Code, § 6600 et seq.), for the commitment of appellant Dino Deluca. A jury found that appellant is a sexually violent predator (SVP), and the court ordered him committed to a state hospital for an indeterminate term. Appellant filed a notice of appeal, and we appointed counsel to represent him.

On July 12, 2016, counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, raising no issues on appeal and requesting that we independently review the record to determine if the lower court committed any error.

We directed appointed counsel to send the record in this appeal and a copy of the opening brief to appellant immediately and inform appellant that within 30 days from the date of the notice he could submit by brief or letter any grounds of appeal, contentions or argument he wished us to consider. Counsel has informed us that she has done so. We received no response from appellant.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

In accordance with *People v. Kelly* (2006) 40 Cal.4th 106, we provide the following brief description of the facts and procedural history of the case.

In June 2010, the District Attorney filed an amended petition for commitment alleging that appellant was an SVP and had been convicted of five sexually violent offenses. The amended petition further alleged that, based upon the evaluations of two psychologists, appellant suffered from a diagnosed mental disorder that caused him to be a danger to the health and safety of others and likely to engage in sexually violent predatory acts without appropriate treatment and custody. The court appointed counsel for appellant.

The court made a preliminary probable cause finding pursuant to Welfare and Institutions Code section 6601.5 in June 2010 and, following an evidentiary hearing in August 2012, found that there was a “strong suspicion” that appellant qualified for commitment under the SVPA and ordered that he remain in custody pending trial. The matter was tried before a jury in June 2015.

### **A. Prosecution Case**

Appellant was born in 1961. Beginning when he was about six years old, two men, who appellant referred to as Fred and Ralph, repeatedly sexually molested him over the course of several years.

In 1985, appellant was convicted of lewd and lascivious conduct upon a child under 14, based upon his act of ejaculating on the naked buttocks of a seven-year-old boy. (Former Pen. Code, § 288, subd. (a).) In November 1988, he was released from prison on parole on the condition that he not associate with minors. Less than one year later, appellant's parole was revoked based on allegations, which he did not contest, that he had sex with a 16-year-girl.<sup>1</sup> Appellant was released from custody in August 1990.

In June and July 1992, appellant molested two victims, a 10-year-old boy and an 11-year-old boy. Appellant coerced the younger boy into letting appellant give him a bath. During the bath, appellant inserted his finger into the boy's anus. Regarding the older boy, appellant got on top of him and was "dry humping" him while the boy was lying down on the carpet watching television. On another occasion, appellant reached over and groped the boy's penis while they were in appellant's car. On a third occasion, appellant had the boy sit on his lap as he had an erection. These acts led to appellant's convictions in 1993 for two counts of lewd and lascivious conduct upon a child under 14 (former Pen. Code, § 288, subd. (a)), one count of lewd and lascivious acts upon a child under the age of 14 by use of force or fear (former Pen. Code, § 288, subd. (b)); and one count of anal or genital penetration with a foreign object (former Pen. Code, § 289).

The prosecution presented two witnesses: Dr. Laljit Sidhu and Dr. Douglas Korpi. Dr. Sidhu is an evaluator for the sex offender commitment program with the California Department of State Hospitals (State Hospitals). To prepare his evaluation of appellant, he interviewed appellant, reviewed police reports, abstracts of judgment, probation reports, rap sheets, Department of Corrections records, Coalinga State Hospitals records, and prior evaluations prepared by other psychologists. Based on these records and

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<sup>1</sup> Appellant testified that the sex was consensual and that he believed the girl was 18 years old.

statements appellant made during his interview, Dr. Sidhua determined that appellant had been convicted of qualifying sexually violent offenses for purposes of the SVPA, and diagnosed him with pedophilic disorder and borderline personality disorder.

Dr. Sidhu explained that appellant engaged in “grooming” the victims of appellant’s 1992 convictions, as well as other alleged victims. Dr. Sidhu explained that grooming is a distorted courtship behavior, associated with pedophilic disorder, in which the pedophile believes he is caring for the child, and the child sees the pedophile as a friend and lowers his or her guard. Dr. Sidhu supported this diagnosis with evidence of recent polygraph and penile plethysmograph (PPG) tests, which indicated that appellant had sexual urges and interests in young boys and young children.

During Dr. Sidhu’s interview with appellant, appellant admitted that he molested children because he was a pedophile, and that he knew that his sexual attraction to children was wrong. He told Dr. Sidhu that he has participated in treatment for pedophilic disorder and has acknowledged that he “ ‘need[s] to take care of this problem.’ ”

Dr. Sidhu also explained that persons with borderline personality disorder (“BPD”) are very unstable emotionally and tend to be impulsive. Dr. Sidhu noted that appellant received a diagnosis of BPD when first seen by mental health providers in 1985 and had consistently been diagnosed with BPD by all of his mental health providers since then. According to Dr. Sidhu, both BPD and pedophilia are disorders of emotional and volitional instability and impairment that constitute mental disorders for purposes of the SVPA. As a result of these disorders, appellant’s emotional and volitional capacity has been impaired.

To evaluate the risk that appellant would reoffend if released, Dr. Sidhu administered the Static-99R actuarial risk assessment test. Appellant’s score was 5 on a scale of “minus 3” to 12, which put him in the moderate to high-risk group for reoffending. The Static-99R score indicated that appellant had a 21 percent statistical chance of reoffending within five years and a 32 percent chance of reoffending within 10 years.

Dr. Sidhu also used the SVR-20 (sexual violence risk checklist) to consider specific factors that contribute to a person's potential risk for sexual violence. Some factors were negative for appellant, and others were positive. After considering all factors and his mental disorders, Dr. Sidhu concluded that there was a serious and well-founded risk that appellant is an SVP and would reoffend if released from custody without supervision.

Dr. Korpi is a forensic psychologist, who has been conducting SVP evaluations since 1996. He conducted approximately 10 evaluations on appellant since 2000.

Dr. Korpi consistently diagnosed appellant with both pedophilic disorder and BPD. According to Dr. Korpi, appellant's molestation convictions provide a "real strong case" for his diagnosis of pedophilia because it showed a pattern of molestation not seen in "regular child molesters." Dr. Korpi also considered three additional possible victims (a 12-year-old girl, a 10-year-old girl, and 9-year-old girl) whose allegations of molestation contained in police reports did not lead to convictions. However, Dr. Korpi testified that his diagnosis of pedophilia would not change if he considered only the offenses that led to convictions.

Dr. Korpi further supported his diagnosis of pedophilic disorder on the following information: (1) the high percentage of appellant's arrests that involved child molestation; (2) appellant's statement to his probation officer in 1989 that he could not control his sexual urges towards little boys; (3) in 2002 appellant was given a PPG test indicating appellant was aroused by boys ages 6-17 and very young girls; (4) appellant admitted in a polygraph test in July 2014 that he fantasized about "bumping and grinding" with a 12-year-old boy; (5) appellant has expressed remorse for his actions, which indicates pedophilia; (6) appellant has been in treatment, trying to cure himself of his pedophilic behavior, since 2001; (7) appellant planned his crimes of molestation and enticed children to be at his residence by giving them candy and ice cream and playing games with them; and (8) appellant recently admitted to Dr. Korpi that he is a pedophile and that he clearly understands the difference between a simple child molester and a pedophile.

Dr. Korpi testified that appellant's combination of pedophilic disorder and BPD resulted in volitional impairment that made him incapable of controlling his sexual urge towards little boys. Appellant's strong pedophilic urge, when coupled with his lack of self-control, impulsivity, and impatience, resulted in a volatile combination that led him to act upon his urges.

In order to assess appellant's risk of reoffending, Dr. Korpi gave appellant the Static-99R actuarial test. Appellant's score was either high moderate or low moderate. Dr. Korpi also gave appellant the Static-2002R actuarial risk assessment test. The test scored appellant as a high moderate risk to reoffend. In addition, Dr. Korpi conducted a "Meta Analysis" on appellant that involved the consideration of 30 factors grouped into three categories: (1) how significant or extreme is the sexual deviance; (2) whether and how the person acts on his thoughts; and (3) how has the person changed since his last sex offense. Based on the results of the Meta-Analysis, the Static-99R test, and the Static-2002R test, Dr. Korpi determined that appellant was a high-moderate risk to sexually reoffend.

Dr. Korpi concluded that there was a serious and well-founded risk that appellant would reoffend as an SVP if released. Dr. Korpi thought that appellant's plan to not reoffend if released by never being around children was unrealistic. He also believed that appellant could not successfully function on his own outside the hospital because the stressors of the outside world would drive him to reoffend.

## **B. Defense Case**

Appellant testified that he has BPD, and that he is a pedophile attracted to young boys. "[T]hat's never going to change." He said, "For the rest of my life, I will be a pedophile." He attributed his disorders to the sexual abuse inflicted upon him as a child by Ralph and Fred. He admitted to molesting the seven-year-old boy in 1984 and to molesting children in 1992. The only thing appellant felt he could do to prevent reoffending was to avoid being near children.

While housed at State Hospitals in Atascadero and Coalinga, appellant participated in various treatments and groups to address his pedophilia, and used

meditation to relieve his stress. He said that he learned how to spot and avoid high-risk situations and could therefore stay out of trouble. He believed that if he was put in a situation with children around him, he would be able to simply walk away.

### **C. Verdict and Commitment**

The jury found that appellant is a sexually violent predator under the SVPA, that he has been convicted of a sexually violent offense against one or more victims, that he has been diagnosed with a mental disorder that makes him a danger to the health and safety of others, and that it is likely he will engage in sexually violent criminal behavior. The court committed appellant for an indeterminate term to the custody of the State Hospitals for appropriate treatment and confinement in a secure facility designated by the director of the State Hospitals.

### **DISCUSSION**

The SVPA provides for involuntary civil commitment of a person found to be an SVP. (*People v. Yartz* (2005) 37 Cal.4th 529, 534.) An SVP is “a person who has been convicted of a sexually violent offense against one or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.” (Welf & Inst. Code, § 6600, subd. (a)(1).) A “sexually violent offense” includes felony convictions of Penal Code sections 288 and 289 committed against a child under the age of 14. (Welf. & Inst. Code, §§ 6600, subd. (b), 6600.1.) “[D]anger to the health and safety of others” means “merely ‘the state of being exposed to harm’ [citation] or ‘the condition of being exposed to the *chance* of evil; *risk*; *peril*.’ ” (*People v. Superior Court (Ghilotti)* (2002) 27 Cal.4th 888, 920.)

If a jury finds that a person is an SVP, “the person shall be committed for an indeterminate term to the custody of the [California] Department of State Hospitals for appropriate treatment and confinement in a secure facility.” (Welf. & Inst. Code, § 6604.)

After reviewing the entire record, we are satisfied that appellant’s counsel has fully complied with her responsibilities and that no arguable appellate issue exists.

(*People v. Wende, supra*, 25 Cal.3d at p. 441; *People v. Kelly* (2006) 40 Cal.4th 106, 110.)

**DISPOSITION**

The order appealed from is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

LUI, J.