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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

THE PEOPLE, Plaintiff and Respondent, v. DONALD FRANKLIN PERKINS, Defendant and Appellant.	C066057 (Super. Ct. No. 088866)

Defendant Donald Franklin Perkins timely appeals from an order extending his mental health commitment, after he was previously found not guilty by reason of insanity of felony charges. Defendant contends no substantial evidence supports the finding that he has a serious difficulty in controlling his dangerous behavior. We disagree and shall affirm.

BACKGROUND

In 1986, defendant was found not guilty by reason of insanity of first degree burglary, assault with a firearm,

receiving stolen property, and battery against a peace officer, and was committed to a state hospital.

By statute, an insane person may be committed beyond the maximum period of criminal confinement for the underlying felony offenses "only if the person . . . by reason of a mental disease, defect, or disorder represents a substantial danger of physical harm to others." (Pen. Code, § 1026.5, subd. (b)(1).) A recommitment order lasts two years, whereupon the People may seek another recommitment order. (*Id.*, § 1026.5, subd. (b)(8).)

In addition to the statutory requirement that the People show the defendant represents a substantial danger to others, this court has concluded that due process requires that the People also show the defendant "has serious difficulty in controlling dangerous behavior." (*People v. Galindo* (2006) 142 Cal.App.4th 531, 537 (*Galindo*); see *People v. Sudar* (2007) 158 Cal.App.4th 655, 662-663 (*Sudar*); *People v. Bowers* (2006) 145 Cal.App.4th 870, 878 (*Bowers*).) It is solely to this required finding that defendant's attacks on appeal are directed.

In March 2010, the district attorney filed a petition to extend defendant's most recent commitment, and the matter was submitted for a court trial.

The trial court took judicial notice of the court file in defendant's underlying criminal case, and the parties stipulated defendant had "continuously been in treatment" within the state hospital system since 1986.

Dr. Shakeel Khan, a staff psychiatrist at Napa State Hospital, testified about his expert qualifications and

familiarity with defendant's case, both from reviewing defendant's psychiatric records and from personally treating defendant. Defendant is a longstanding schizophrenic with an antisocial personality disorder who suffers from delusions, and had been abusing illegal drugs at the time of the underlying offenses, which resulted from his belief terrorists were attacking his trailer, causing him to shoot at his family members and the police.

Defendant believes he is wealthy and does not believe he committed the offenses, or that he has a mental illness. He has not assaulted anyone or been aggressive for the past two or three years, and is on a ward for patients who have been compliant with staff. Although defendant takes two antipsychotic drugs to keep him stable, they do not control his delusions: He still believes he is wealthy, has no mental illness or substance abuse problem, and was framed by the police, and he still hears voices. A third drug appeared to help him, but he had a severe adverse effect--destruction of white blood cells--and therefore he can no longer use that drug.

Defendant is in "psychotic denial" and if he were released, "due to his [lack of] understanding of his mental illness or substance abuse, he poses risks for relapsing again either to substances or not receiving proper treatment. And [the] same circumstances can happen which resulted in [the] instant offense." While in the controlled environment of a state hospital, he does not have serious difficulty controlling his dangerous behavior, but because of his denial of any illness,

there is a “good possibility” he would have such difficulty if released.

After reviewing an evaluation prepared by a treatment team, Dr. Khan agreed defendant would have “serious difficulty” controlling his dangerous behavior “If he was released into the community in his current condition[.]”

The team evaluation confirmed by Dr. Khan is dated January 7, 2010, and was signed by both Dr. Khan and Dr. Morgan Kennedy, a treating psychologist, and was reviewed and approved by Dr. Anish Shah, the Acting Medical Director of Napa State Hospital, and Dr. Chad Woofter, Acting Chief of Forensic Psychiatry for the hospital. It states defendant’s condition has not had a significant change, he remains delusional, and he does not believe he has delusions. He has never had a “community release” and has “minimal social support if he were to be released. . . . [Defendant] would have a difficult time managing stressors, including the cultural marginalization of being a mentally ill individual with a criminal record.” “He is currently not amenable to therapy and treatment activities due to the severity of his symptoms. He does not believe he needs medication or that he has a mental illness. In addition, he continues to state that he acted in self-defense at the time of the instant offense.”

A more recent team evaluation dated July 7, 2010, was authored by Cara Rodriguez, a Staff Social Worker, and was signed by Dr. Kennedy and by Dr. Gerardo Manansala, a Staff Psychiatrist, and was reviewed by both Dr. Woofter and Dr. Shah.

This evaluation also concludes defendant "has a severe mental illness, continues to be a danger to others, and therefore cannot be treated in a lower level of care and/or a less secure facility at this time." At a session on April 20, 2010, defendant stated he did not want to be on any medication because he has no mental illness and he believed staff members lied when they said they did not hear the voices defendant claimed to hear. He believed he had access to billions of dollars and a cache of diamonds. Because defendant "does not think he has a mental illness, he is unable to recognize his personal warning signs and symptoms when he is decompensating, which can lead to future dangerous acts." The evaluation finds defendant, "by reason of a mental disease, defect, or disorder represents a substantial danger of physical harm to others. [He] is currently experiencing active symptoms of his mental illness, and requires the supervision and structure of the hospital to remain safe. If he were to be released in the community at this time, chances of his relapse of psychiatric symptoms and substance abuse would be high, which could result in similar behavior which resulted in [the] instant offense."

The trial court stated on the record that based on Dr. Khan's testimony and "portions of the file for up to 25 years of the defendant's involuntary confinement" the court had reviewed, defendant "would present an undue risk of harm to members of the public. [¶] The Court does find the defendant suffers from a mental condition that, if not confined in the hospital, there's a substantial likelihood the defendant would fail to take his

psychiatric medications because of his lack of insight into the existence of his mental illness." The written order signed by the trial court states that defendant "continues by reason of a mental disease, defect, or disorder to represent a substantial danger of physical harm to others and has serious difficulty in controlling his dangerous behavior."

DISCUSSION

Commitment extension proceedings, although arising from a criminal action, are essentially civil in nature. (*People v. Crosswhite* (2002) 101 Cal.App.4th 494, 503 (*Crosswhite*); *People v. Wilder* (1995) 33 Cal.App.4th 90, 99-100.) We apply the substantial evidence test and do not reweigh the evidence. (*Crosswhite*, *supra*, 101 Cal.App.4th at pp. 507-508; see *People v. Beard* (1985) 173 Cal.App.3d 1113, 1118.) We must view the evidence and reasonable inferences drawn therefrom in the light favorable to the trial court's order. (*People v. Zapisek* (2007) 147 Cal.App.4th 1151, 1165 (*Zapisek*); *Bowers*, *supra*, 145 Cal.App.4th at pp. 878–879.)

We presume the trial court's order is supported by the evidence, and it is the appellant's burden to show that it is not. (See *Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881 (*Foreman*); *People v. Toomey* (1984) 157 Cal.App.3d 1, 18-19.) "'A party who challenges the sufficiency of the evidence to support a particular finding must *summarize the evidence* on that point, *favorable and unfavorable*, and *show how and why it is insufficient*.'" (*Schmidlin v. City of Palo Alto* (2007) 157 Cal.App.4th 728, 738; see *In re S.C.* (2006) 138 Cal.App.4th 396,

402.) An appellant who fails to state the facts fairly *forfeits evidentiary claims*. (*Foreman*, *supra*, 3 Cal.3d at p. 881.)

Defendant fails to discuss the evidence in the voluminous record of the underlying case of which the trial court took judicial notice and on which it partly relied. In particular, there is no discussion in defendant's briefing of the January 7, 2010, team evaluation explicitly discussed by Dr. Khan at the trial, nor of the subsequent July 7, 2010, evaluation in the record, both of which we have summarized above.

Accordingly, we conclude that defendant has failed in his duty as the appellant to summarize the facts fairly, and has forfeited his contention that no substantial evidence supports the order. (See *Foreman*, *supra*, 3 Cal.3d at p. 881; *Estate of Palmer* (1956) 145 Cal.App.2d 428, 431 ["Instead of a fair and sincere effort to show that the trial court was wrong, appellant's brief is a mere challenge to respondents to prove that the court was right"].)

Moreover, viewing the record in the light favorable to the trial court's order, all of the psychiatric evidence in the record shows that defendant, who has been in state hospitals since 1986, suffers from serious delusions, *despite* taking medication, and that if released would *not* take medication because he does not believe he is mentally ill and believes staff members are lying to him when they say they do not hear the voices he claims to hear. He has no remorse for his crimes because he maintains the delusion that he acted in self defense.

This evidence shows defendant has a serious difficulty in controlling his violent behavior, because he cannot control his delusions and believes they are real. (See *Sudar*, *supra*, 158 Cal.App.4th at pp. 663-665 [error in failing to instruct jury on control element harmless beyond a reasonable doubt; evidence showed Sudar continued to believe his delusions, did not think he was mentally ill, and would reoffend]; *Zapisek*, *supra*, 147 Cal.App.4th at pp. 1165-1168 [Zapisek has "little, if any, control over potentially dangerous behavior when he is gripped by delusions"]; *Bowers*, *supra*, 145 Cal.App.4th at pp. 878-879 [long history of delusions and high risk of treatment noncompliance if released "clearly establish that Bowers's mental illness caused her to have serious difficulty controlling her violent impulses"].)

Defendant largely relies on an unduly expansive interpretation of a prior case. In *Galindo*, *supra*, 142 Cal.App.4th 531, after announcing the new control element, we concluded the record did not unequivocally show that the element had been met, and we could not say the error was harmless beyond a reasonable doubt. (*Galindo, supra,* at pp. 538-539.) We stated in part:

> "The foregoing adequately summarizes the abundant evidence that defendant's behavior was dangerous and that he did not, in fact, control it. However, the fact he *did not* control his behavior does not prove that he *was unable to do so*, thus making him 'dangerous beyond [his] control.' [Citation.] There was little, if any, evidence that he *tried* to control his behavior, that he encountered *serious difficulty* when trying to do so, or that his difficulty was *caused by* his mental condition. Rather, the evidence

> strongly suggested that defendant *did not try* to control his dangerous behavior, because he perceived no reason to do so. Thus, he angrily denied suffering from a bipolar disorder and denied needing treatment or medication. . . . Regarding the offense that resulted in his commitment, he claimed that he was attempting suicide, he shot his wife accidentally, and the police filed a false report.
>
> "No expert opined that defendant's scores on standardized tests, his pursuit of another patient, or any other evidence demonstrates that he tried to control his dangerous behavior but encountered serious difficulty in trying to do so. Presumably, no expert was aware of the need to address that issue. To the extent that defendant *did not try* to control his dangerous behavior, the evidence did not suggest that he would 'have serious difficulty controlling his dangerous behavior,' *were he to try to do so*." (*Id*. at p. 539.)

But we cautioned "that neither the parties, nor the witnesses, nor the court had the opportunity to consider the control issue." (*Galindo*, *supra*, 142 Cal.App.4th at p. 539.)

In *this* case we can be sure that the trial court applied the correct standards and *knew* it had to find defendant had serious difficulty in controlling his behavior, both because the trial took place after *Galindo*--and other cases--had announced the new required element (see *In re Fred J*. (1979) 89 Cal.App.3d 168, 175), and because the trial court's written order states that the new control element had been shown.

Further, Dr. Khan, who testified at trial, and the treatment team experts whose opinions we have summarized explained *why* defendant would have serious difficulty controlling his dangerous behavior: His longstanding schizophrenic condition persisted, he continued to have delusions even while medicated, and he would likely *stop* taking

medication if released because he does not think he is mentally ill or did anything wrong. That evidence was sufficient.

Accordingly, even if we did not find the contention of error to be forfeited, no basis for reversal has been shown.

DISPOSITION

The order extending defendant's commitment is affirmed.

DUARTE, J.

We concur:

BLEASE, Acting P. J.

NICHOLSON, J.