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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY SALAS AGUON,

Defendant and Appellant.

D060325

(Super. Ct. No. MH101627)

In re ANTHONY SALAS AGUON on
Habeas Corpus.

D061460

CONSOLIDATED APPEAL and petition for writ of habeas corpus following a judgment of the Superior Court of San Diego County, Leo Valentine, Jr., Judge.

Judgment affirmed; petition denied.

INTRODUCTION

In late 2003 Anthony Salas Aguon was civilly committed to the custody of the California Department of Mental Health (DMH) under the Sexually Violent Predator Act

(Welf. & Inst. Code, § 6600 et seq., hereafter the SVPA or the Act) (undesigned statutory references will be to the Welfare and Institutions Code) after he was found to be a sexually violent predator (SVP). In 2008 he was again found to be an SVP and was recommitted for an indeterminate term.¹

Aguon's section 6608 petition

In August 2010 Aguon filed a petition under section 6608 (discussed, *post*) seeking either (1) an order conditionally releasing him from Coalinga State Hospital (CSH) and the custody of DMH and placing him with "an appropriate forensic conditional release program operated by the state for one year"; or (2) an order unconditionally discharging him from his civil commitment. In support of his petition, Aguon claimed he is "terminally ill" and, as a result of his medical condition and "poor" prognosis, it is "not likely that he would engage in sexually violent criminal behavior, due to his diagnosed mental disorder, while under supervision and treatment in the community," and it is "unlikely [he] would be a danger to the community if he were unconditionally discharged" from his civil commitment.

Aguon's first habeas corpus petition

In mid-June 2011, while his section 6608 petition was pending, Aguon filed a petition for writ of habeas corpus in the Superior Court of Fresno County, seeking an unconditional discharge from the custody of the DMH. In support of his habeas corpus petition, Aguon claimed he was no longer an SVP because he was "dying" and, as a result

¹ San Diego County Superior Court case No. MH101627.

of various specified "medical complications" that "have decimated his overall physical condition," he "does not currently have a diagnosed mental disorder that makes him a danger to the health and safety of others, in that it is *not* likely he will engage in sexually violent predatory criminal behavior unless confined and treated." In August 2011 the habeas corpus proceeding was transferred to the Superior Court of San Diego County.

Denials of Aguon's section 6608 petition and his first habeas corpus petition

In August 2011, following a two-day evidentiary hearing, the court² denied Aguon's section 6608 petition. Aguon challenges this ruling in his pending appeal (D060325).

In October 2011—in a ruling not directly challenged in the current appellate proceeding—the court³ denied his habeas corpus petition, finding he had "failed to make a prima facie showing that he [no] longer meets the requirement for civil commitment."

Aguon's current habeas corpus petition

In February 2012 Aguon filed in this court his pending habeas corpus petition (D061460) in which he again claims (as more fully discussed, *post*) that his confinement is unlawful because he no longer meets the criteria for commitment as an SVP.⁴ The Attorney General thereafter filed an informal response to that petition.

² The Honorable Leo Valentine, Jr.

³ The Honorable Margie G. Woods.

⁴ By order dated March 25, 2009, this court ordered that Aguon's habeas corpus petition (D061460) be considered concurrently with his appeal (D060325). For purposes of disposition, these cases are consolidated by separate order dated September 13, 2012.

Aguon's contentions

In case No. D060325 Aguon appeals the denial of his section 6608 petition, contending the court prejudicially erred and denied him due process in making that ruling because (he asserts) the court applied an incorrect legal standard by "constru[ing] that section as permitting release only if the individual [committed] is *amenable to treatment* for the mental disorder that was the basis for his commitment to the state hospital." (Italics added.)

In his consolidated habeas corpus petition (case No. D061460), Aguon contends he no longer meets the constitutional and statutory criteria for civil commitment as an SVP because "he is not now a danger to the health and safety of others as a result of a mental disorder," as shown by the declaration of Peter L. LaValle, M.D., who is his treating psychiatrist, and by the January 28, 2012 report of another psychiatrist, Alan A. Abrams, M.D., J.D., FCLM. Aguon also contends he should be granted habeas corpus relief because (as he asserted in his appellant's opening brief) the court prejudicially erred and denied him due process in denying his section 6608 petition by applying an incorrect legal standard when it "construed that section as permitting release only if the individual is *amenable to treatment* for the mental disorder that was the basis for his commitment to the state hospital." (Italics added.)

We affirm the denial of Aguon's section 6608 petition and deny his petition for writ of habeas corpus.

FACTUAL BACKGROUND

A. Aguon's Sexual Offenses

Aguon committed sexual offenses against five known victims during a 13-year period from 1971, when he was 19 or 20 years old, to 1984, when he was 32 or 33 years old. Those crimes include rape, oral copulation, and sodomy. Aguon has been incarcerated or institutionalized since 1984.

In 1971 Aguon kidnapped, raped, and robbed Margaret G. and Annette M. Although Aguon was arrested, he was found incompetent to stand trial. He was hospitalized and never convicted of these offenses.

In 1975 Aguon raped Sybel R. in her home after threatening to kill her and her sleeping son with a pair of scissors. He was convicted of rape by threats of great bodily harm.

In May 1984 Aguon went to Lorraine W.'s apartment, put her in a choke hold, forced her to orally copulate him, orally copulated her, and then raped her while repeatedly hitting her in the face. He threatened to kill her if she called the police. Aguon blamed his crimes on his use of drugs and alcohol and claims he thought she liked him.

The next day, Aguon got into Venilda W.'s car with her and told her he had just killed two people and he would kill her if she did not have sex with him. He forced her to orally copulate him, raped her, sodomized her, slapped her for screaming, and then raped her again. He pleaded guilty to one count of oral copulation and two counts of rape for his crimes against Lorraine and Venilda. He was sentenced to 37 years in prison.

B. Evidence Presented at the Hearing on Aguon's Section 6608 Petition

1. Aguon's evidence

At the August 2008 hearing on his section 6608 petition, Aguon, who is now 61 years of age, presented the testimony of four witnesses. Perlita McGuinness, M.D., testified she is Aguon's treating physician at CSH, the state hospital where he is civilly confined. She had seen him many times in the urgent care unit. In early 2010 Aguon was sent to a hospital in Fresno, the Community Regional Medical Center (CRMC), where he underwent a kidney biopsy, had a heart attack, and then underwent open heart surgery. After the surgery, he suffered complications that required cardiovascular resuscitation, and he developed pneumonia.

Aguon was discharged from CRMC in mid-2010 and returned to CSH. According to Dr. McGuinness, Aguon was diagnosed with rapidly progressive glomerulonephritis, an incurable inflammation that affects the cells of the kidneys. This condition eventually will cause Aguon's kidneys to cease to function. He was also diagnosed with poly angitis vasculitis, an inflammation usually seen in immunological diseases. Aguon was treated with immunosuppressive medications and was in remission at the time of the hearing.

Aguon was again hospitalized at CRMC. He had bleeding from the internal tract, requiring transfusion, and developed severe colitis. Although Aguon was diagnosed with kidney failure, his kidneys were working at the time of the hearing. He has become anemic as a result of his kidney problems. Aguon is also diabetic and has high blood pressure. His testosterone level is very low for a man of his age. Dr. McGuinness stated

that a low level of testosterone, combined with the medications Aguon is taking, could affect his sex drive.

Dr. McGuinness opined that Aguon would not regain his prehospitalization physical strength. On cross-examination, she indicated she was not aware of any evidence that Aguon lacks the ability to forcefully stick his fingers in a woman's vagina without her consent, and his condition would not prevent him from doing that.

Dr. Peter LaValle, who is Aguon's treating psychiatrist at CSH, testified he first had contact with Aguon when he was ordered in September 2010 to write a report about Aguon. He initially thought that Aguon did not pose a serious and well-founded risk of committing a sexually violent offense if released unconditionally and that Aguon was so sick he could be managed safely in the community.

However, after he wrote the report, Dr. LaValle met with the medical director, Dr. Sandhu, who showed him a section 6605 report written by Dr. Nameeta Sahni. Dr. LaValle read that report, which showed that Aguon's behavior was much more aggressive than that which Dr. LaValle thought he was capable. After reading Dr. Sahni's report, Dr. LaValle changed his mind and recommendation. In his subsequent September 23, 2010 report, Dr. LaValle opined that Aguon presented "a lower risk for engaging in future sexually violent predatory behavior since his medical hospitalization," but stated that Aguon's "dynamic risk factors, those amenable to treatment, are unchanged." Dr. LaValle also opined that Aguon was "severely antisocial and would remain dangerous in any nursing home environment, including a medical unit at CSH"; his "mental condition has not changed such that he no longer meets the definition of Sexually Violent

Predator"; and "[t]he best interest of Mr. Aguon and adequate protection for the community cannot be assured in a less restrictive treatment setting at this time."

Dr. LaValle also testified, however, that he had seen Aguon on a regular basis since December 2010. His opinion changed again. He believes Aguon does not need to be confined in the state hospital to prevent him from reoffending because he does not have the sexual desire or physical capability he once had.

On cross-examination, Dr. LaValle testified that Aguon does not go to sex offender treatment at CSH, and he was currently suffering from a diagnosed mental disorder, paraphilia not otherwise specified with nonconsenting persons. He acknowledged that Aguon is not a good candidate for sex offender treatment in the community because he lacks the appropriate level of insight about the sex offenses he committed, he would not like being asked about his past sexual crimes, and he would not be helped by treatment in the community. On redirect, Dr. LaValle opined that Aguon could be treated safely in the community, and he would benefit more from individual treatment than from group treatment.

Kathleen Griffin, a registered nurse who had worked with Aguon at CSH, testified that Aguon had suffered tremendously as a result of his medical conditions, and he had become a humble, contrite, and frightened man as a result of his near-death experiences. She described Aguon as very fragile and opined that while his medical condition might improve slightly, he would not regain his former health.

Aguon also presented the testimony of Laniece Clausell, a social worker at CSH. She testified that Aguon's treatment team at CSH, of which she was a member, did not

believe Aguon would benefit from the phased sex offender treatment program at CSH due to the condition of his health. She also testified, however, that the treatment team believed Aguon could be safely and unconditionally discharged.

2. The prosecution's evidence

In opposition to Aguon's section 6608 petition, the prosecution presented two witnesses. First, Dr. Sahni, who is a clinical psychiatrist and contract evaluator at CSH, testified to her opinion that Aguon needs sex offender treatment. Her opinion was based on the nature of his sexual crimes, the fact that he committed the crimes against multiple victims, his clinical diagnosis of sexual sadism, and his diagnosed antisocial personality coupled with his PCLR score that places him in the high range for psychopathy. Based on Aguon's refusal to engage in sex offender treatment, his inappropriate touching of female staff at CSH,⁵ and his demonstrated inability or unwillingness to discuss his past sex offenses, Dr. Sahni opined that Aguon could not be released safely into the community conditionally at the treatment program.

Second, Alan Stillman, who is the community program director and executive director of Liberty Health Care which provides services to SVP's after their release from CSH, testified about the conditional release program (the Liberty Program). The Liberty program provides supervision and treatment in the community. Its two main goals are protecting society and helping the offender reintegrate back into the community. In their

⁵ Aguon's own witness, Dr. LaValle, acknowledged during the evidentiary hearing on Aguon's section 6608 petition that "there was some question" earlier that year "about [Aguon] touching nurses who were taking his vital signs." Dr. Sahni testified that Aguon "has a history of placing his hands on female staff."

program, a staff member monitors the offender at all times through a GPS device, daily phone contact, and weekly meetings. The program makes unannounced home visits, conducts searches, requires polygraph testing, and conducts monthly meetings with everyone involved with the offender.

Stillman testified that the Liberty program requires the offender to attend sex offender treatment, and the program would recommend revocation if the offender refuses to comply. Offenders are required to attend at least one hour of individual sex offender therapy and one hour of group sex offender therapy each week. Stillman explained that the "primary focus in specific sex offender therapy is to try to be able to help t[he] client verbalize why he committed the acts he did, why he thinks they may have developed, . . . what he's going to do now that he's out and what has changed for him," as well as whether he has "options to intervene to his triggers." He also explained that the offender must be amenable to treatment because the purpose of the program is to balance treatment with supervision in the community.

Stillman also testified the Liberty program is not a compassionate release program because it does not have the resources to deal with someone with severe medical issues, especially when the offender shows a lack of interest or motivation. Stillman believed Aguon was not an appropriate candidate for the Liberty program. He opined that Aguon is not amenable to sex offender treatment at Liberty Health Care.

DISCUSSION

I. *APPEAL*

In case No. D060325, Aguon appeals the denial of his section 6608 petition, contending the court prejudicially erred and denied him due process in making that ruling because (he asserts) the court applied an incorrect legal standard. This contention is unavailing.

A. *Court's ruling*

On August 10, 2011, the court denied Aguon's section 6608 petition after considering the written submissions of the parties and the evidence and oral arguments presented at the two-day evidentiary hearing held on August 8 and 9. Specifically, the court denied Aguon's request for conditional release. The court also ruled it did not have the authority to unconditionally release Aguon under section 6608, and it would not order him released unconditionally even if it could.

In support of its ruling, the court noted there was no evidence that Aguon had made any substantial progress in understanding why he offended. The court found that Aguon "becomes upset, frustrated, [and] refuses to participate in any discussions about his prior offenses." Noting there was "testimony and evidence before the court that there were nurses who took some offense, concern to the extent that he had touched them," the court stated that "[t]o the extent these nurses expressed some concern about contact by Mr. Aguon, it suggests to the court that they are not satisfied that he is not capable of somehow restraining them and taking further steps should he have a mind to do so."

The court also found that "given his present physical condition," Aguon was "*still capable of preying on someone else* that may be of a similar stature as himself if he is released into the community" (italics added), such as "an aging female with vulnerabilities." Noting that Aguon had "not dealt with the mental stimulus that caused him to act out in the past," the court stated it was "not satisfied he will not have those revisited because of his mental health condition."

The court then gave the following additional reasons for its decision:

"Under the code section where it requires the court to determine whether or not the person committed would be a danger to the health and safety of others and it is likely that he or she will engage in sexually violent criminal behavior due to his or her diagnosed medical or mental disorder, again, not due -- or will not because they are not physically capable, but whether or not they are likely to because of a diagnosed mental disorder if under supervision and treatment in the community, this court is satisfied that *Mr. Aguon has not received treatment for his mental health condition in [CSH] and as a result not amenable to it.*

"It's been offered to him. It's been encouraged to him. And he also has been provided an opportunity, even in his medical unit, to participate in counseling which he has refused to do. There is nothing to suggest that he would partake in treatment once he was released into the community. The court finds *he is not amenable to treatment* based upon his history.

"To the extent he may be released into the community under the supervision, yes, the court believes based upon the testimony and the extent to which Liberty [Health Care] tends to supervise sexually violent predators that are released into these conditional released programs, I believe the supervision is in place. However, I do not believe that treatment can be provided because *he is not amenable to treatment.* And the court finds by law that is the second component of being released into the community, you can be supervised and treated in the community.

"Because he is not willing to participate in treatment notwithstanding his medical condition, the court does not find that [Aguon] should be conditionally released. And the court, at this point in time, under [section] 6608 does not have the authority to unconditionally release him which the court is not inclined to do and would not do and denies [his] request for conditional release in the community." (Italics added.)

B. *Statutory Framework* (§ 6608)

Under section 6608, a person committed as an SVP may petition for conditional release or an unconditional discharge, notwithstanding the lack of recommendation or concurrence by the Director of Mental Health. (§ 6608, subd. (a); *People v. Reynolds* (2010) 181 Cal.App.4th 1402, 1406-1407 (*Reynolds*)). When the court receives such a petition without the concurrence of the director, it "shall endeavor whenever possible to review the petition and determine if it is based upon frivolous grounds, and, if so, shall deny the petition without a hearing." (§ 6608, subd. (a).)

If the court finds the section 6608 petition is not frivolous, the court "shall hold a hearing to determine whether the person committed would be 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 due to his or her diagnosed mental disorder if under supervision and treatment in the community.*" (§ 6608, subd. (d), hereafter § 6608(d), italics added; *Reynolds, supra*, 181 Cal.App.4th at p. 1407.) The term "likely" as used in section 6608(d)—in the phrase "likely that he or she will engage in sexually violent criminal behavior due to his or her diagnosed mental disorder if under supervision and treatment in the community"—connotes more than a mere possibility the person will reoffend; it means the person presents a substantial danger, that is, a serious and well-founded risk that he or

she will commit such crimes if so released. (*People v. Rasmuson* (2006) 145 Cal.App.4th 1487, 1506-1507 (*Rasmuson*), citing *People v. Superior Court (Ghilotti)* (2002) 27 Cal.4th 888, 922 (*Ghilotti*).)

At the hearing on the section 6608 petition, the petitioner has the burden of establishing by a preponderance of the evidence that he or she is not likely to reoffend if released. (§ 6608, subd. (i); see *Rasmuson, supra*, 145 Cal.App.4th at p. 1507 ["In denying appellant's petition for conditional release, the trial court found that he 'failed to meet his burden of proof,' that is, to establish by a preponderance of the evidence that he is not likely to reoffend."].)

If the court determines it is *not likely* the committed person will engage in sexually violent criminal behavior due to his or her diagnosed mental disorder while under supervision and treatment in the community, the court "shall order the committed person placed with an appropriate forensic *conditional* release program operated by the state for one year [and] [a] substantial portion of the conditional . . . release program shall include outpatient supervision and treatment." (§ 6608(d), italics added.) At the end of the one-year period of conditional release, the court "shall hold a hearing to determine if the person should be *unconditionally* released from commitment on the basis that, by reason of a diagnosed mental disorder, he or she is not a danger to the health and safety of others in that it is *not likely* that he or she will engage in sexually violent criminal behavior." (*Ibid.*, italics added.)

1. *Standards of review*

Where a hearing is ordered on a section 6608 petition for conditional release, the substantial evidence standard of review applies. (*Reynolds, supra*, 181 Cal.App.4th at p. 1407; *Rasmuson, supra*, 145 Cal.App.4th at pp. 1503–1504.) Under that standard, in assessing the sufficiency of the evidence, we review the entire record in the light most favorable to the judgment to determine whether it discloses evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could make the challenged factual determination under the applicable standard of proof. (See *Rasmuson, supra*, 145 Cal.App.4th at p. 1507; see also *People v. Johnson* (1980) 26 Cal.3d 557, 578.) We resolve all conflicts in the evidence and questions of credibility in favor of the judgment, and indulge every reasonable inference the trier of fact could draw from the evidence. (*Rasmuson*, at p. 1507.) "The testimony of one witness, if believed, may be sufficient to prove any fact." (*Id.* at p. 1508, citing Evid. Code, § 411.)

Our review of a question of law concerning the interpretation of a statute is de novo. (*People v. Cromer* (2001) 24 Cal.4th 889, 894.) We also review de novo a trial court's determination that resolved a mixed question of law and fact involving a federal constitutional right. (*Ibid.*)

C. *Analysis*

In support of his principal contention that the court applied an incorrect legal standard in denying his section 6608 petition, Aguon asserts the court "construed that section as permitting release only if the individual [committed] is *amenable to treatment* for the mental disorder that was the basis for his commitment to the state hospital."

(Italics added.) He contends that in so construing section 6608, the court erroneously "added to the statute an element that was not placed there by the Legislature." These contentions are unavailing.

The statutory standard to be applied in ruling on a section 6608 petition, as set forth in subdivision (d) of that section, is "whether the person committed would be 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 due to his or her diagnosed mental disorder if under supervision and treatment in the community." (§ 6608(d); *Reynolds, supra*, 181 Cal.App.4th at p. 1407.) As noted, the courts in California have interpreted this standard to mean that the person committed would be a danger to the health and safety of others within the meaning of section 6608(d) if that person presents a serious and well-founded risk he or she will commit sexually violent crimes if released under supervision and treatment in the community. (*Rasmuson, supra*, 145 Cal.App.4th at pp. 1506-1507, citing *Ghilotti, supra*, 27 Cal.4th at p. 922.)

Here, the record shows the court understood and applied that standard in denying Aguon's section 6608 petition. On the second day of the evidentiary hearing on the petition, and before it issued its ruling, the court stated, "[A]s I understand my role here, it is to determine whether or not the evidence supports that [Aguon] may be safely released to a conditional release program and continue his treatment in the community." After the court and counsel discussed the issue of whether the court was required to make a finding as to whether Aguon was amenable to treatment, they reviewed the language of section 6608(d). The court then demonstrated its understanding of the applicable

standard when it stated, "the criteria for the court to assess is, can he be released into the community, be supervised and treated *without a well-founded risk to public safety.*" (Italics added.) The next day, shortly before it announced its ruling denying Aguon's petition, the court again demonstrated its understanding of the applicable standard.⁶

Although it may be preferable for the trial court, in denying a section 6608 petition, to use the specific statutory language set forth in section 6608(d), it is not required to do so. Here, the language the court used was tantamount to a finding under that subdivision that Aguon presents a serious and well-founded risk he will commit sexually violent crimes if released under supervision and treatment in the community within the meaning of that subdivision. (See *Rasmuson*, *supra*, 145 Cal.App.4th at pp. 1506-1507.) Specifically, the court stated that "given his present physical condition," Aguon was "*still capable of preying on someone else* that may be of a similar stature as himself if he is released into the community. For example, an aging female with vulnerabilities who is not as strong as h[e is] would still be subjected to being overcome by any advances he might make. And given that he's not dealt with the mental stimulus

⁶ As already noted, the court stated at the August 10, 2011 hearing: "Under the code section where it requires the court to determine whether or not the person committed would be a danger to the health and safety of others and it is likely that he or she will engage in sexually violent criminal behavior due to his or her diagnosed medical or mental disorder, again, not due—the or will not because they are not physically capable, but whether or not they are likely to because of a diagnosed mental disorder if under the supervision and treatment in the community, this court is satisfied that Mr. Aguon has not received treatment for his mental health condition in [CSH] and as a result [is] not amenable to it."

that caused him to act out in the past, the court . . . is not satisfied he will not have those revisited because of his mental health condition."

The record does show that the court, in denying Aguon's petition, found it significant that Aguon was not amenable to treatment. Specifically, the court stated that "[t]here is no evidence whatsoever before the court that Mr. Aguon has made any substantial progress in understanding why he offended. Quite frankly, it appears he becomes upset, frustrated, [and] refuses to participate in any discussions about his prior offenses." The court then explained that "[w]hat has been testified to in this court is that that is a critical component of being able to assure that person can be released back into the community, [and] integrate without being a threat." Noting that "[t]here is nothing to suggest that he would partake in treatment once he was released into the community," the court found that Aguon "*is not amenable to treatment* based upon his history." (Italics added.)

Aguon's lack of amenability to treatment was an important and proper factor for the court to consider in determining under section 6608(d) whether he presents a serious and well-founded risk he will commit sexually violent crimes if released under supervision and treatment in the community. Accordingly, we conclude the court did not err or violate Aguon's constitutional rights by considering this factor in reaching its decision.

The court's denial of Aguon's section 6608 petition is supported by substantial evidence. It is undisputed that Aguon suffers from a qualifying diagnosed mental disorder, although the evidence presented at the hearing on the petition is conflicting as to

whether the appropriate diagnosis is sexual sadism or paraphilia not otherwise specified with nonconsenting persons. It is also undisputed that Aguon has refused to participate in the sex offender treatment program at the state hospital beyond the first, basic educational phase of the program.

Dr. Sahni testified that Aguon needs sex offender treatment. She opined that he could not be released safely into the community conditionally for treatment because of his refusal to engage in sex offender treatment, his inappropriate touching of female staff at CSH, and his demonstrated inability or unwillingness to discuss his past sex offenses.

Alan Stillman, the community program director of Liberty Health Care which provides services to SVP's after their release from CSH, testified that Aguon is not amenable to sex offender treatment at Liberty Health Care, and, thus, he is not an appropriate candidate for the program it offers.

For all of the foregoing reasons, we affirm the court's denial of Aguon's section 6608 petition.

II. *HABEAS CORPUS PETITION*

In his consolidated petition for writ of habeas corpus (case No. D061460), Aguon contends he no longer meets the constitutional and statutory criteria for civil commitment as an SVP because "he is not now a danger to the health and safety of others as a result of a mental disorder." He also contends he should be granted habeas corpus relief because the court prejudicially erred and denied him due process in denying his section 6608 petition by applying an incorrect legal standard when it "construed that section as permitting release only if the individual is *amenable to treatment* for the mental disorder

that was the basis for his commitment to the state hospital." (Italics added.) These contentions are unavailing. Accordingly, we deny Aguon's petition.

A. Aguon's Habeas Corpus Petition

In his pending habeas corpus petition, Aguon requests that this court order this matter transferred to the Superior Court of San Diego County "and/or" issue an order to show cause why the requested relief should not be granted and also order that a hearing be conducted as soon as possible to determine the truth of the allegations contained herein.

In support of his contention that he no longer meets the criteria for civil commitment as an SVP, Aguon relies in part on his section 6608 petition (discussed, *ante*) and the evidence presented in support thereof. He also relies on the declaration of Dr. LaValle, who is his treating psychiatrist, and the January 28, 2012 report of another psychiatrist, Dr. Abrams.

In his May 2011 declaration, Dr. LaValle states his opinion that Aguon "no longer poses a 'substantial' danger to the public and does not currently meet the statutory criteria for civil commitment as a[n SVP], because, due to his significant medical issues, he is *not likely* to commit a sexually violent predatory offense unless confined in the custody of the [DMH]." In support of his opinion, Dr. LaValle discusses Aguon's medical condition.

Dr. Abrams, in his January 2012 report, states he interviewed Aguon for two-and-a-half hours at CSH on October 17, 2010, and reviewed about 4,500 pages of records, including the transcript of the August 2011 hearing on Aguon's section 6608 petition. Aguon specifically relies on the following excerpts from Dr. Abrams's report:

"In brief summary, Mr. Aguon does not have a present mental disorder that makes him a well founded or substantial sexual danger to the health and safety of others. There is little evidence that Mr. Aguon suffers from any current paraphilic disorder, or any other Axis I or Axis II mental disorder that would predispose him to sexual violence. It is very unclear that Mr. Aguon ever suffered from a mental disorder that predisposed him to sexual predatory violence. . . .

". . . There is some very small risk that Mr. Aguon might engage in sexually violent criminal behavior in the future, which is estimated at less than a one in one hundred chance if he wanders from a nursing facility or other sort of care taking environment, resumes his prior cocaine and alcohol abuse and has sufficient health to overpower a victim. Mr. Aguon is actively involved in alcohol rehabilitation treatment, and has not used alcohol in nearly 15 years. His risk of resuming alcohol abuse is estimated at less than 10 [percent]. Mr. Aguon can be safely managed in the community. He does not require institutional confinement. Mr. Aguon's health status appears highly compromised, and his lifespan is undoubtedly shortened by his recent medical problems. A prediction of his remaining years is speculative. However regardless of his potential years at risk, his risk is so low that knowing whether he has three months or three years left to live does not meaningfully raise or lower his risk for future dangerous acts.

"Mr. Aguon does need regular medical attention, and needs adequate medical and psychological testing to investigate his cognitive problems. Mr. Aguon is entitled to constitutionally adequate treatment of his cognitive impairment. Mr. Aguon needs to continue in his 12 step program in the community. Mr. Aguon may soon need help with his ADLs (Activities of Daily Living) due to his medical and cognitive problems, and may need to be housed in a nursing care facility. Mr. Aguon should have benefits available from the Veterans Administration."

B. *Analysis*

We deny Aguon's habeas corpus petition for the following reasons. First, the disputed factual issues of whether Aguon continues to meet the statutory criteria for civil commitment as an SVP, and whether he presents a serious and well-founded risk he will

commit sexually violent crimes if released under supervision and treatment in the community, have already been fully and repeatedly litigated in the Superior Court and he is not entitled to another hearing at this time. Aguon is only entitled to have determinations under sections 6605 and 6608 once a year, and he is barred from bringing successive and repetitious habeas corpus petitions in the superior court without a showing of good cause. (§§ 6605, subd. (a), 6608, subd. (h); see *In re Clark* (1993) 5 Cal.4th 750, 774 ["repetitious successive [habeas corpus] petitions are not permitted"].) Here, the record shows that in December 2003 and again in September 2008, a jury found that Aguon qualified as an SVP. On August 11, 2011, Jerome Costa, M.D., who is medical director of CSH, concurred with Dr. Sahni's August 3, 2011 section 6605 annual report to the court in which she concluded that Aguon continued to meet the definition of an SVP and that "[a]s a result of a mental disorder [he] remains a danger to the health and safety of others in that he is likely to engage in sexually violent predatory criminal behavior in the future." As already discussed, the court denied Aguon's section 6608 petition on August 11, 2011, following a two-day evidentiary hearing. More recently, in October 2011, the trial court denied Aguon's previous petition for a writ of habeas corpus, finding he had "failed to make a prima facie showing that he no longer meets the requirement for civil commitment."

Second, Aguon's contention that he should be granted habeas corpus relief because the court prejudicially erred and denied him due process in denying his section 6608 petition by applying an incorrect legal standard, is unavailing. We have already concluded the court understood and applied the correct legal standard.

DISPOSITION

The judgment is affirmed; the petition for writ of habeas corpus is denied.

NARES, Acting P. J.

I CONCUR:

HALLER, J.

I CONCUR IN THE RESULT:

I concur in the result of the majority opinion affirming the trial court's denial of Aguon's section 6608 petition. Although the evidence submitted in connection with the petition was conflicting, and would support a grant of the petition (testimony of Dr. LeValle), there was also substantial evidence that Aguon was likely to reoffend if released into the community (testimony of Dr. Sahni). However, I agree with Aguon's position that if he does not need treatment or is not amenable to treatment and nevertheless does not now meet the criteria of a violent sexual predator because he is not likely to reoffend if released, the section 6608 petition should be granted.

McDONALD, J.