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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

STEWART WAYNE SNEED,

Defendant and Appellant.

E053572

(Super.Ct.No. RIF085831)

OPINION

APPEAL from the Superior Court of Riverside County. Bernard Schwartz, Judge.

Affirmed.

Rex Adam Williams, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Lilia E. Garcia and Raquel M. Gonzalez, Deputy Attorneys General, for Plaintiff and Respondent.

After a bench trial, the court found defendant Stewart Wayne Sneed suffered from a severe mental disorder that was not in remission, and could not be kept in remission without continued in-custody treatment; and that by reason of his mental disorder he represented a substantial danger to others. The court recommitted defendant to the Department of Mental Health for an additional year. On appeal, defendant contends insufficient evidence supports his recommitment. We affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

On May 10, 1999, defendant pled guilty to assault by means of force likely to produce great bodily injury and admitted a corresponding enhancement that he personally used a dangerous weapon. Defendant also pled guilty to unlawful possession of flammable material with the intent to use the material to set a fire. Additionally, defendant admitted a prior strike conviction. According to defendant's testimony in the current matter, he was on the freeway "throwing Molotov cocktails at automobiles" while on drugs. The court sentenced defendant to six years imprisonment.

Defendant was later transferred to Atascadero State Hospital pursuant to Penal Code section 2684.^{1,2} Thereafter, defendant was found to meet the Mentally Disordered

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² Section 2684, subdivision (a) provides: "If, in the opinion of the Director of Corrections, the rehabilitation of any mentally ill, mentally deficient, or insane person confined in a state prison may be expedited by treatment at any one of the state hospitals under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services, the Director of Corrections, with the approval of the Board of Prison Terms for persons sentenced pursuant to subdivision (b) of Section 1168, shall certify that fact to the director of the appropriate department who shall evaluate the

[footnote continued on next page]

Offender (MDO) criteria and was involuntarily committed until February 6, 2004, pursuant to section 2962.³ The People filed subsequent petitions successfully seeking to extend defendant's periods of recommitment pursuant to sections 2970 and 2972.⁴

On January 25, 2011, the People filed the instant section 2970 petition seeking to extend defendant's period of involuntary treatment to February 6, 2012. On April 27, 2011, defendant testified at trial he had used marijuana, rock cocaine, PCP, and alcohol in the past. He was currently in NA and AA substance recovery programs; he had been in a 12-step program for three years. He was currently on the first of the 12 steps and did not have a sponsor. He did not currently use illegal controlled substances although they were available in his placement.

Defendant testified he has a mental condition, schizoaffective disorder, bipolar type, which is under control so long as he takes his medications. The symptomology of

[footnote continued from previous page]

prisoner to determine if he or she would benefit from care and treatment in a state hospital. If the director of the appropriate department so determines, the superintendent of the hospital shall receive the prisoner and keep him or her until in the opinion of the superintendent the person has been treated to the extent that he or she will not benefit from further care and treatment in the state hospital.”

³ “[S]ection 2962 of the [MDO] Act provides that individuals convicted of certain enumerated violent offenses caused or aggravated by a severe mental disorder, and who pose a substantial threat of harm to others, may be required to receive mental health treatment as a condition of parole.” (*Lopez v. Superior Court* (2010) 50 Cal.4th 1055, 1057, fn. omitted.)

⁴ “Once parole is terminated, if an MDO’s mental disorder is not in remission and the individual represents a substantial danger of physical harm to others, the district attorney can petition to extend involuntary treatment for one year. (§ 2970.)” (*Lopez v. Superior Court, supra*, 50 Cal.4th at p. 1057.)

his condition when untreated include delusional thinking and auditory hallucinations. He currently took the prescription medications Lithium, Zyprexa, Risperdal, and Ambien for treatment of his conditions. He had been in mental hospitals for the past five years.

Defendant conceded, “if I’m using drugs, I’m not myself, I’m the second person. I’m not the same person. And that really scares me too because I don’t have a desire to use drugs because it’s something that can hurt a person.” If he took drugs it “would affect the medication. The medication wouldn’t work if you were using drugs or alcohol. It wouldn’t work.”

Defendant was previously released on parole in the Forensic Conditional Release Program (CONREP).⁵ He was “kicked out of the program because [he] relapsed.” He was living in a home with 18 other individuals; he had been informed that someone was using controlled substances; he could smell marijuana. Defendant asked to be moved, but after two and a half months he remained housed there.

Defendant did not want to be released to CONREP again. Rather, he wished to be put under a conservatorship with his brother or daughter in San Diego, where all four of his children lived. His brother had promised to support him until he could get a job or obtain disability. Defendant did not believe he would be a danger to the community if

⁵ CONREP is a program for, amongst others, persons judicially committed as MDOs. “CONREP patients have direct access to a full range of mental health services during their period of outpatient treatment. These services include individual and group therapies, collateral contacts, home visits, substance abuse screenings and psychological assessments.” (http://www.dmh.ca.gov/Services_and_Programs/Forensic_Services/CONREP/default.asp, as of May 4, 2012.)

released. He did not believe he would be a danger if he started using drugs again because he did not believe he would ever use drugs again.

Dr. Robert Suiter, a clinical psychologist who had routinely conducted MDO evaluations over the past 10 years, testified on behalf of defendant. He was appointed by the court to conduct a section 2970 evaluation of defendant. He reviewed defendant's clinical record and conducted a clinical interview with him on March 18, 2011. Dr. Suiter testified that defendant had "a very well-documented history of having a severe mental disorder"; defendant had schizoaffective disorder. Defendant received treatment at Atascadero State Hospital for approximately four years, went into CONREP for two years, and went to Patton State Hospital in 2006, where he has remained for the past four to five years.

Dr. Suiter concluded defendant "was in partial remission. I was hesitant to conclude that he was in full remission, mainly due to the chronicity of his disorder. And because of the lengthy history of his disorder, I would have wanted to have a longer period of time with the absence of the overt symptoms of the disorder before being reassured he was in full remission." A review of defendant's record showed some continuing "indications of lesser symptoms—restlessness, some disturbance of his sleep, some mood instability. As I recall, there were not descriptions of more overt symptoms in terms of hallucinations and delusions, but more symptoms in the affective range."

Defendant had been compliant with taking his medications for a considerable period of time. He had a fairly good insight into his disorder; in other words, defendant understood his medications assisted in reducing the symptoms of his disorder and that he

needed to continue taking the medications to ensure he did not become symptomatic again. However, Dr. Suiter testified that “given the chronicity of his disorder and there was certainly a fairly lengthy history of some aggressive criminal acts prior to his controlling offense, as coupled with the history of substance abuse, [it] certainly couldn’t . . . be concluded that he represented no meaningful risk. But at the same time, I concluded that he did not meet a substantial risk of harm to others.” Dr. Suiter reiterated: “considering all the factors, in my opinion, he doesn’t represent a substantial risk” of physical harm to others if released.

Nevertheless, Dr. Suiter prepared a report in which he noted defendant could not “be safely and effectively treated as an outpatient.” “I still would be concerned with an absence of any type of structured treatment such as CONREP. [¶] . . . [¶] . . . The absence of some even reduced structural treatment would concern me.” Although defendant had demonstrated significant improvement from when he was first admitted to Patton State Hospital five years earlier, his current condition did not “allow for a wholesale dismissal of any concern about him.” Indeed, Dr. Suiter allowed for the possibility that other psychologists, albeit a minority, might deem defendant a substantial risk to the public.

Dr. Jeffrey Cheng, a licensed psychiatrist who had worked at Patton State Hospital since August 2007, testified he had been defendant’s treating psychiatrist since August 2009. He had reviewed all defendant’s medical records and saw defendant individually on a monthly basis. Dr. Cheng concluded defendant had a severe mental illness; in a previous report issued in July 2010, Dr. Cheng reported defendant’s mental disorder was

not in remission. However, “at the present time, my opinion would be that he is in remission, but would not remain in remission if he was not in continued treatment.” “[P]sychiatrically, I would say he is in remission.”

Nevertheless, Dr. Cheng reported that defendant continued to “display some negative symptoms [and] could suffer from a lack of knowledge and insight in regards to his illness, which is thought to be associated with schizophrenia.” Dr. Cheng noted defendant’s violent past had not been completely addressed. Moreover, defendant’s history of substance abuse indicates “he can become violent because of his mental illness in conjunction with . . . substance abuse.” Dr. Cheng opined defendant was developing the skills to avoid doing drugs if pressured to do so, and to avoid situations that would put defendant in that position, but defendant had not reached a point where Dr. Cheng was comfortable defendant would make the right decisions in those circumstances. Ultimately, Dr. Cheng recommended defendant continue in three to six months of active participation in substance abuse treatment before release to CONREP, or to receive a diagnosis of full medical remission.

Dr. Cheng noted that in May 2008 defendant had been involved in an incident where he removed his shirt, put Vaseline on his torso, and said, “I’m not going to let these fuckers get anything over on me.” The reporting doctor believed it had been a precursor to a fight, and defendant admitted to Dr. Cheng he had been greasing himself

up in preparation for a fight.⁶ In July 2010, defendant refused medication because he believed it was poisoning him and ruining his organs. On November 7, 2010, defendant became upset with a staff member and refused his medication. On November 29, 2010, defendant attempted to “cheek” his Ambien, which is behavior associated with substance abuse. Well into 2009, defendant had been the subject of multiple forced-medication orders; since then, except for the aforementioned incidents, defendant had taken his medications voluntarily.

Dr. Cheng testified he would like defendant to be recommitted for an additional year to see if he could be placed in CONREP. “What makes him dangerous is a prior history of violence with uncontrolled schizoaffective disorder, which occurs in an environment in which he’s using drugs.”

Heidi Kirkendoll, a licensed “psych tech” for 20 years, who had worked at Patton State Hospital for the past 11 years, testified on behalf of defendant. She stated she observed defendant on a daily basis and frequently interacted with him. Defendant was sociable and helpful. Defendant used Vaseline as a moisturizer.

The trial court noted, “[e]ven the defense expert Dr. Suiter indicated that you are only in partial remission. And of course Dr. Cheng indicated that you are not in remission yet.” The court further observed defendant was just in the beginning stages of his substance abuse recovery programs. Thus, the court found defendant suffered a

⁶ During his testimony, defendant denied the incident in its entirety, noting only that he uses lotion and baby oil as a moisturizer.

severe mental illness, was not in remission, and posed a substantial danger to the public. The court ordered defendant recommitted for an additional year.

DISCUSSION

Defendant contends insufficient evidence supports his recommitment. We conclude substantial evidence supported the court's order recommitting defendant for an additional year.

The adequacy of findings supporting a recommitment order pursuant to MDO proceedings is reviewed on appeal for substantial evidence. (*People v. Miller* (1994) 25 Cal.App.4th 913, 919-920.) “A substantial evidence inquiry examines the record in the light most favorable to the judgment and upholds it if the record contains reasonable, credible evidence of solid value upon which a reasonable trier of fact *could* have relied in reaching the conclusion in question. Once such evidence is found, the substantial evidence test is satisfied. [Citation.] Even when there is a significant amount of countervailing evidence, the testimony of a single witness that satisfies the standard is sufficient to uphold the finding.’ [Citations.]” (*People v. Fuiava* (2012) 53 Cal.4th 622, 711.)

“Under the MDO statute, [a] defendant’s commitment may not be extended unless the prosecution proves, beyond a reasonable doubt, that he has a severe mental disorder that is not in remission or cannot be kept in remission without treatment, and that, as a result of the disorder, defendant represents a substantial danger of physical harm to others. [Citation.] A mental disorder is in remission if its symptoms are controlled by medication. [Citation.] Thus, an MDO whose symptoms are controlled by medication

and who is not dangerous while on medication is by definition ‘in remission,’ and represents no danger to others. Such a person does not meet the statutory criteria for an extension of his or her MDO commitment.” (*People v. Noble* (2002) 100 Cal.App.4th 184, 190.)

Here, substantial evidence supports the requisite criteria for extending defendant’s MDO commitment. Both expert witnesses, and defendant himself, testified defendant has a severe mental disorder. Although both expert witnesses testified equivocally regarding whether defendant’s mental disorder was in remission, both ultimately concluded that it was in “partial,” not “full” remission. Dr. Cheng’s conclusion that defendant was psychiatrically in remission was counterpoised by his recommendation that defendant receive three to six months of additional substance abuse treatment before he could say defendant was in full medical remission. Likewise, Dr. Suiter, defendant’s own witness, explicitly testified twice that defendant was in “partial” remission, not “full remission.” Dr. Suiter noted defendant continued to display overt symptoms of his mental illness. Thus, substantial evidence supported the court’s determination defendant had a severe mental illness that was not in remission.

Furthermore, substantial evidence supports the court’s determination defendant poses a substantial risk to the public. Dr. Suiter noted the chronicity of defendant’s disorder and the lengthy history of his aggressive criminal acts, even prior to the originating offense, combined with defendant’s history of substance abuse, meant defendant posed at least some risk, albeit not one Dr. Suiter considered substantial. Nonetheless, Dr. Suiter allowed for the reasonable possibility that other psychologists

might deem defendant a substantial risk. Indeed, Dr. Suiter conceded defendant could not “be safely and effectively treated as an outpatient” and recommended that if released, he be placed in a structured treatment program such as CONREP. This is something defendant rejected.

Dr. Cheng observed that defendant’s violent past had not been completely addressed. Similarly, defendant’s substance abuse issues had not been satisfactorily ameliorated, which was of much concern because “he can become violent because of his mental illness in conjunction with the substance abuse.” Defendant admitted substance abuse negatively affected the symptomology of his mental disorder. Defendant had relapsed in the past even when placed in a structured environment such as CONREP; yet, he was requesting that he be placed in an unstructured environment now. Defendant had refused to take his medication nine months earlier because he believed it was poisoning him. Defendant had admitted to Dr. Cheng his attempt to engage in violent behavior in May 2008, but then denied it. Defendant had refused his medication on one occasion less than six months earlier and attempted to “cheek” a dosage even later, a behavior indicative of substance abuse. Dr. Cheng observed that defendant was dangerous because of his prior history of violence, his uncontrolled mental disorder, and his substance abuse. Neither doctor believed defendant had reached the point where he could consistently take all his medications and avoid the temptation of illicit substance abuse without being in an extremely structured environment. Thus, defendant has simply not established enough of a track record to demonstrate he could do both; ergo, he poses a substantial risk to the

community. Therefore, the court's recommitment order is supported by substantial evidence.

DISPOSITION

The judgment is affirmed.

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MILLER
J.

We concur:

HOLLENHORST
Acting P. J.

McKINSTER
J.