

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

GUILLERMO PEREZ MEDINA,

Defendant and Appellant.

E063511

(Super.Ct.Nos. RIF1403766 &
RIF1403118)

OPINION

APPEAL from the Superior Court of Riverside County. Mark E. Johnson, Judge.

Reversed.

Stephen M. Hinkle, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, A. Natasha Cortina and Michael Pulos, Deputy Attorneys General, for Plaintiff and Respondent.

The trial court found defendant and appellant Guillermo Perez Medina incompetent to stand trial and committed him to Liberty Healthcare Program or Patton State Hospital for a period of no more than three years. The court also authorized the treatment facility to administer involuntary antipsychotic medication to defendant. Defendant appeals from the latter orders arguing, inter alia, the People did not meet their burden under *Sell v. United States* (2003) 539 U.S. 166 (*Sell*), which articulated the constitutional standards for the involuntary administration of antipsychotic medication when the sole purpose of the treatment is to restore a defendant's competency to stand trial.

Because the trial court did not authorize the involuntary administration of antipsychotic medication for the purpose of restoring defendant's competency to stand trial, the standards articulated in *Sell* do not govern this appeal. Nonetheless, we conclude the record does not contain substantial evidence to support the orders. Therefore, we reverse the orders authorizing the involuntary administration of antipsychotic medication.

I.

FACTS

In a felony complaint filed on September 18, 2014 (case no. RIF1403118), the People charged defendant with one count of unlawfully driving or taking a vehicle without the owner's consent (Veh. Code, § 10851, subd. (a)), one count of receiving a stolen motor vehicle (Pen. Code, § 496d, subd. (a)), and one misdemeanor count of being under the influence of a controlled substance (Health and Saf. Code, § 11550, subd. (a)).

One month later, the People filed a separate felony complaint (case no. RIF1403766) charging defendant with one count of assault by means of force likely to produce great bodily injury. (Pen. Code, § 245, subd. (a)(4); all additional statutory references are to the Penal Code.)

At a felony settlement conference conducted in both cases, defendant's attorney declared a doubt as to defendant's competency to stand trial. The trial court also declared a doubt as to defendant's competency and suspended the proceedings. The court subsequently appointed three experts who evaluated defendant under sections 1368 and 1370. One expert opined defendant was competent to stand trial and did not suffer from a significant mental illness that would require treatment with antipsychotic medication. The other two opined defendant (1) lacked the capacity to understand the proceedings or to assist in a defense; (2) suffered from a substantial mental illness (possibly schizophrenia); (3) required treatment with antipsychotic medication to prevent his mental state from deteriorating further; and (4) lacked the capacity to make decisions regarding treatment with antipsychotic medication.

After reviewing the reports, the trial court found by a preponderance of the evidence defendant lacked the capacity to stand trial and appointed a fourth expert—Dr. Harvey W. Oshrin—to evaluate defendant's need for antipsychotic medication under section 1370. Dr. Oshrin filed a report in which he opined defendant meets the criteria for involuntary treatment with antipsychotic medication under section 1370, and the trial court then set an evidentiary hearing.

Dr. Oshrin testified he interviewed defendant and reviewed various jail records and the reports prepared by other experts. Dr. Oshrin diagnosed defendant with schizoaffective disorder with manic phase. He opined defendant lacks the capacity to make decisions about treatment with antipsychotic medication “because he does not recognize that he has a mental condition and does not recognize that he needs medication for the treatment of that mental condition.” Dr. Oshrin opined defendant needs antipsychotic medication to control his psychosis and, if left untreated, defendant’s mental condition will worsen and probably cause serious harm to defendant’s physical or mental health. Finally, based on the injuries defendant allegedly inflicted on defendant’s mother, Dr. Oshrin opined defendant posed a demonstrated danger of inflicting substantial physical harm on others due to his mental disorder.

On cross-examination, Dr. Oshrin testified there was no indication in the records that defendant had ever been prescribed or offered antipsychotic medication while in custody. Also, the records indicated defendant had been evaluated and denied housing in the jail’s mental health unit. He testified his “psychiatric impression” of defendant was schizoaffective disorder manic type, but he could not give a more definitive diagnosis. Dr. Oshrin testified he diagnosed defendant as manic after witnessing defendant’s excited and elevated mood, and based his diagnosis of schizophrenia on the persistence of defendant’s mania over a period of months and on defendant’s inability to think rationally. Although defendant denied experiencing delusions or hallucinations, Dr. Oshrin testified not all schizophrenics experience those symptoms.

Dr. Oshrin testified his opinion that defendant lacks the capacity to make decisions about medication was based on defendant's mental condition and demonstrated mood disorder, and not on any legal standard of capacity. Dr. Oshrin testified he was unaware that section 1370 precludes a finding of incapacity to make decisions about treatment with antipsychotic medication based solely on the defendant's mental disorder. Dr. Oshrin testified he did not explain to defendant why he concluded defendant suffered from a mental illness, and he found nothing in the records to indicate any of the other evaluators did so either. Dr. Oshrin testified his opinion that defendant's mental health condition will worsen and likely result in harm to defendant was merely a prognosis. Although Dr. Oshrin was unaware of defendant taking antipsychotic medication while in custody, he was also unaware whether defendant had been violent, inflicted serious harm on anyone else, or suffered any serious harm while in custody.

With respect to defendant posing a demonstrated danger of inflicting substantial physical harm to others, Dr. Oshrin based his opinion solely on the injuries defendant allegedly inflicted on his mother. Dr. Oshrin testified he did not apply a legal standard when reaching his opinion. When asked how he reached the conclusion the injuries allegedly inflicted in this case were substantial, Dr. Oshrin testified he applied a sliding scale and his "medical impression." Dr. Oshrin testified a mere slap across the face might not constitute substantial physical harm, but kicking and stomping on someone does. Dr. Oshrin testified he saw no evidence defendant's mental illness played a role in the alleged assault, but presumed it did. Dr. Oshrin testified it is possible defendant's history of substance abuse caused some damage to his brain, and that antipsychotic medication is not always necessary

to treat such a condition. Finally, Dr. Oshrin testified he recommended defendant be provided outpatient treatment at Liberty Healthcare Program, which does not administer involuntary medication, and that treatment without involuntary medication might be successful.

On redirect, Dr. Oshrin testified involuntary treatment with antipsychotic medication would reduce or possibly eliminate defendant's symptoms and mania, and would render him safer to others.

The court indicated it believed the evidence proved conclusively defendant is mentally ill, and asked counsel to focus their arguments on the remaining issues. The prosecutor argued defendant lacked the capacity to make decisions about the need for treatment with antipsychotic medication because he did not recognize he suffered from a mental illness or that he needs medication. The prosecutor argued treatment with antipsychotic medication would significantly reduce or eradicate defendant's symptoms. The prosecutor also argued the evidence of defendant's violent attack on his mother established defendant posed a danger of inflicting substantial physical harm on others.

Defendant's attorney argued there was no evidence defendant lacked capacity to make decisions about medication, and that Dr. Oshrin based his opinion solely on the fact of defendant's mental illness. Counsel expressed her concern defendant was never told he suffers from a mental illness and was never given the opportunity to understand that he needs treatment with antipsychotic medication. Counsel also argued there was no competent evidence defendant does, in fact, suffer from a mental illness that requires treatment with medication. Counsel pointed to the fact Dr. Oshrin merely testified about his "psychiatric

impression” that defendant suffers from schizoaffective disorder, and that Dr. Oshrin could not provide an actual diagnosis. Moreover, counsel argued there was no evidence defendant’s mental state was deteriorating. To the contrary, counsel argued defendant had not been receiving medication in jail but “he’s not gotten into any fights, he hasn’t had any problems with anybody, and on top of that he hasn’t even qualified to be housed in the mental health unit of the jail. This is not somebody whose mental health is of such a grave concern that they are substantially deteriorating.” Finally, defendant’s attorney argued there was no evidence defendant posed a danger of causing substantial physical harm to others.

The trial court found defendant posed a danger of inflicting substantial physical harm on others. “Really, anytime you start getting somebody on the ground and you start getting your feet involved, I think that’s pretty much met.” The court also found the alleged assault was “mental health related,” and concluded defendant was a danger to others under section 1370, subdivision (a)(2)(B)(i)(II). Although the court expressed some concern that Dr. Oshrin only testified to his “psychiatric impression,” the court nonetheless concluded the evidence established defendant suffers from a mental illness that requires treatment with antipsychotic medication; defendant refuses to recognize his mental illness; and defendant’s mental illness will worsen if left untreated. Therefore, the court found defendant also satisfied the criteria for involuntary medication under section 1370, subdivision (a)(2)(B)(i)(I). Subsequently, the court ordered defendant committed to Liberty Healthcare Program or to Patton State Hospital, and authorized the involuntary administration of antipsychotic medication.

Defendant timely appealed.

II.

DISCUSSION

A. *Applicable Law*

The federal constitution and state law prohibit the trial and conviction of a criminal defendant who is incompetent to stand trial because he lacks the ability to consult with his attorney with a reasonable degree of understanding, or because he lacks a rational and factual understanding of the proceedings. (§ 1367; *People v. Mai* (2013) 57 Cal.4th 986, 1032.) If a doubt is declared about the defendant's competency to stand trial, and the court is presented with substantial evidence the defendant is incompetent, the trial court must suspend the proceedings and conduct a hearing into the defendant's competency. (§ 1368; *People v. Mai*, at p. 1032.)

The court must appoint an expert to evaluate the nature of the defendant's mental disorder and to determine whether the defendant has the capacity to understand the nature of the proceedings and to assist his counsel in a defense. (§ 1369, subd. (a).) In addition, the expert must evaluate the defendant's need for antipsychotic medication, the defendant's capacity to make decisions about treatment with antipsychotic medication, and the defendant's dangerousness to himself and to others. (*Ibid.*) If the defendant is found incompetent to stand trial, the trial court must suspend the proceedings and order the defendant committed either to a state hospital for the treatment of the mentally disordered, another public or private treatment facility, or to a residential outpatient facility that will promote the speedy restoration of defendant's competency to stand trial. (§ 1370, subd. (a)(1)(B)(i).)

Before committing the defendant, however, the trial court must consider the opinions of an expert set forth in reports prepared under section 1369, and must determine whether the defendant lacks the capacity to make decisions about treatment with antipsychotic medication. (§ 1370, subd. (a)(2)(B).) The court must hear and determine whether any of the three grounds for authorizing the involuntary administration of antipsychotic medication are true:

“(I) The defendant lacks capacity to make decisions regarding antipsychotic medication, the defendant’s mental disorder requires medical treatment with antipsychotic medication, and, if the defendant’s mental disorder is not treated with antipsychotic medication, it is probable that serious harm to the physical or mental health of the patient will result. Probability of serious harm to the physical or mental health of the defendant requires evidence that the defendant is presently suffering adverse effects to his or her physical or mental health, or the defendant has previously suffered these effects as a result of a mental disorder and his or her condition is substantially deteriorating. The fact that a defendant has a diagnosis of a mental disorder does not alone establish probability of serious harm to the physical or mental health of the defendant.

“(II) The defendant is a danger to others, in that the defendant has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another while in custody, or the defendant had inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another that resulted in his or her being taken into custody, and the defendant presents, as a result of mental disorder or

mental defect, a demonstrated danger of inflicting substantial physical harm on others. Demonstrated danger may be based on an assessment of the defendant's present mental condition, including a consideration of past behavior of the defendant within six years prior to the time the defendant last attempted to inflict, inflicted, or threatened to inflict substantial physical harm on another, and other relevant evidence.

“(III) The people have charged the defendant with a serious crime against the person or property, involuntary administration of antipsychotic medication is substantially likely to render the defendant competent to stand trial, the medication is unlikely to have side effects that interfere with the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner, less intrusive treatments are unlikely to have substantially the same results, and antipsychotic medication is in the patient's best medical interest in light of his or her medical condition.” (§ 1370, subd. (a)(2)(B)(i)(I)-(III).)

If the court finds true any of the three grounds for administering involuntary medication, it “shall issue an order authorizing involuntary administration of antipsychotic medication to the defendant when and as prescribed by the defendant's treating psychiatrist at any facility housing the defendant for purposes of this chapter. The order shall be valid for no more than one year, pursuant to subparagraph (A) of paragraph (7). The court shall not order involuntary administration of psychotropic medication under subclause (III) of clause (i) unless the court has first found that the defendant does not meet the criteria for involuntary administration of psychotropic

medication under subclause (I) of clause (i) and does not meet the criteria under subclause (II) of clause (i).” (§ 1370, subd. (a)(2)(B)(ii).)

An order under section 1370 authorizing the involuntary administration of antipsychotic medication is appealable as a postjudgment order affecting the defendant’s substantial rights. (§ 1237, subd. (b); *People v. Christiana* (2010) 190 Cal.App.4th 1040, 1046-1047 (*Christiana*).)

B. *Because the Trial Court Did Not Authorize Involuntary Medication to Restore Defendant’s Competency to Stand Trial, the Sell Factors Do Not Apply*

Defendant contends the trial court’s orders authorizing the involuntary administration of antipsychotic medication are invalid because the People did not satisfy the constitutional standards set forth in *Sell, supra*, 539 U.S. 166. Because the orders in this case authorizing the involuntary administration of antipsychotic medication were not for the purpose of restoring defendant’s competency to stand trial, *Sell* does not control.

In *Washington v. Harper* (1990) 494 U.S. 210, the United States Supreme Court recognized that state prisoners possess “a significant liberty interest in avoiding the unwanted administration of antipsychotic drugs under the Due Process Clause of the Fourteenth Amendment. [Citations.]” (*Id.* at pp. 221-222.) “[G]iven the requirements of the prison environment,” however, the high court held “the Due Process Clause permits the State to treat a prison inmate who has a serious mental illness with antipsychotic drugs against his will, if the inmate is dangerous to himself or others and the treatment is in the inmate’s medical interest.” (*Id.* at p. 227.) In *Riggins v. Nevada* (1992) 504 U.S. 127, 135, the court extended that ruling to pretrial detainees. (See generally *People v.*

Jones (1997) 15 Cal.4th 119, 155, overruled on another ground in *People v. Hill* (1998) 17 Cal.4th 800, 823, fn. 1.)

In *Sell*, the high court held a state may involuntarily administer antipsychotic drugs to a criminal defendant for the purpose of restoring his competency to stand trial if a court finds true four factors: (1) there is an important governmental interest at stake; (2) involuntary medication will significantly further the state's interest, such that the medication is substantially likely to restore the defendant's competency to stand trial but will not have side effects that will interfere significantly with the defendant's ability to assist his counsel in conducting a defense; (3) involuntary medication is necessary to advance those interests and less intrusive alternative treatments are unlikely to achieve the same results; and (4) the drugs are medically appropriate and in the defendant's best medical interests. (*Sell, supra*, 539 U.S. at pp. 180-181.) Thereafter, the California Legislature amended section 1370 to comply with *Sell* when the involuntary administration of antipsychotic medication is for the purpose of restoring the defendant's competency to stand trial. (§ 1370, subd. (a)(2)(B)(i)(III); *People v. O'Dell* (2005) 126 Cal.App.4th 562, 569-570 (*O'Dell*).

The *Sell* court was careful to limit its holding to the involuntary administration of antipsychotic medication for the *sole purpose* of restoring a criminal defendant's competency to stand trial. (*Christiana, supra*, 190 Cal.App.4th at p. 1049, fn. 4; *O'Dell, supra*, 126 Cal.App.4th at p. 569.) "A court need not consider whether to allow forced medication for that kind of purpose" and, therefore, need not consider whether the four factors are true "if forced medication is warranted for a *different* purpose, such as the

purposes set out in *Harper* related to the individual's dangerousness, or purposes related to the individual's own interests where refusal to take drugs puts his health gravely at risk. [Citation.] There are often strong reasons for a court to determine whether forced administration of drugs can be justified on these alternative grounds *before* turning to the trial competence question." (*Sell, supra*, 539 U.S. at pp. 181-182.) "If a court authorizes medication on these alternative grounds, the need to consider authorization on trial competence grounds will likely disappear." (*Id.* at p. 183.)

Likewise, section 1370 does not require a trial court to consider the *Sell* factors in every case. The court must authorize the involuntary administration of antipsychotic medication if it finds true *any* of the three statutory grounds, but the court *may not* base its order on the "competent to stand trial" ground unless it has first found the defendant does not meet the criteria for the first two grounds. (§ 1370, subd. (a)(2)(B)(i), (ii).)

In this case, the People did not argue defendant satisfied the "competent to stand trial" ground for the administration of involuntary medication under section 1370, subdivision (a)(2)(B)(i)(III) and, instead, argued the court should authorize the administration of involuntary medication under section 1370, subdivision (a)(2)(B)(i)(I) and (II). The prosecutor told the court "the grave concern is that the defendant himself does not believe that he has any mental illness whatsoever, that he has no problem, and that he does not need any form of medication." The People argued defendant posed a danger to himself and to others, and that medication would significantly reduce or even eliminate defendant's symptoms. Defendant's attorney conceded the People were not

arguing for the administration of involuntary medication for the purpose of restoring defendant's competency to stand trial.

In his reply brief, defendant argues the court did, in fact, authorize the involuntary administration of antipsychotic medication for the purpose of restoring his competency to stand trial. He points to the order appointing Dr. Oshrin, which requested an evaluation of whether defendant satisfied the three grounds for administering involuntary medication under section 1370. True enough, each order in this case appointing an expert asked that defendant be evaluated under all three grounds for administering involuntary medication, including whether the involuntary medication was necessary to restore defendant's competency. But the court's oral ruling and written orders authorizing the administration of involuntary medication were based solely on section 1370, subdivision (a)(2)(B)(i)(I) and (II), and were not based on the "competent to stand trial" ground under section 1370, subdivision (a)(2)(B)(i)(III).

Finally, defendant points to a comment the trial judge made on the record as proof the court authorized the administration of involuntary medication for the purpose of restoring trial competency. After the court had already found defendant incompetent to stand trial and had authorized the administration of involuntary medication pursuant to section 1370, subdivision (a)(2)(B)(i)(I) and (II), defendant's attorney argued the court should refer defendant to the Inland Regional Center for assessment of any possible developmental disability. The court denied the request, but told defense counsel she could renew her request at the next hearing. The trial court denied the renewed request at the next hearing, and ordered defendant "committed to Liberty Healthcare Program

and/or Patton State Hospital and [to] remain there *until restored to competence.*” (Italics added.) Defendant reads too much into the language we italicize. Having found defendant was incompetent to stand trial, the trial court was required to commit defendant to a treatment facility or outpatient program until his competence was restored. (§ 1370, subd. (a)(1)(B)(i).) The court was clearly referring to the purpose of the commitment orders, and not to the purposes behind the orders authorizing the involuntary administration of antipsychotic medication.

Because the court did not authorize the involuntary administration of medication for the purpose of restoring defendant’s competency to stand trial, we need not determine whether the People established the *Sell* factors.

C. *The Orders Authorizing the Involuntary Administration of Antipsychotic Medication Are Not Supported by Substantial Evidence*

Defendant also contends the record does not contain substantial evidence to support an order authorizing the involuntary administration of antipsychotic medication under section 1370, subdivision (a)(2)(B)(i)(I) or (II). We agree and reverse the orders.

An order under section 1370 authorizing the involuntary administration of antipsychotic medication is reviewed for substantial evidence. (*People v. Coleman* (2012) 208 Cal.App.4th 627, 633; *Christiana, supra*, 190 Cal.App.4th at p. 1050; *O’Dell, supra*, 126 Cal.App.4th at p. 570.) “A substantial evidence inquiry examines the record in the light most favorable to the judgment [or order] 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.” (*People v. Barnwell* (2007) 41 Cal.4th 1038, 1052, citing *People v. Johnson* (1980) 26 Cal.3d 557, 578.)

1. The Evidence Was Insufficient to Support the Orders Under Section 1370, Subdivision (a)(2)(B)(i)(I).

To support an order under section 1370, subdivision (a)(2)(B)(i)(I), the court must make three findings: (1) the defendant lacked the capacity to make decisions regarding treatment with antipsychotic medication; (2) the defendant’s mental illness required treatment with antipsychotic medication; and (3) serious harm to defendant’s physical or mental health would result if the defendant were not so treated.

Dr. Oshrin opined defendant lacks the capacity to make decisions about treatment with antipsychotic medication “because he does not recognize that he has a mental condition and does not recognize that he needs medication for the treatment of that mental condition.” On cross examination, Dr. Oshrin testified he did not consider any legal standards when arriving at his opinion and, instead, based his opinion solely on defendant’s mental disorder.

Defendant contends Dr. Oshrin’s testimony is insufficient to prove lack of capacity because no one explained to defendant he suffers from a mental illness that requires treatment with antipsychotic medication. Defendant seems to argue that, had Dr. Oshrin or another expert explained to defendant why they concluded defendant was mentally ill and needed medication, defendant’s continued failure to recognize his illness would be proof of his lack of capacity. True, none of the experts appointed to evaluate defendant expressly told defendant he is mentally ill and needs medication. But the

experts asked defendant if he had a history of mental illness and whether he experienced delusions or hallucinations. And Dr. Oshrin specifically asked defendant if he thought he needed medication for a mental illness. It strains credulity to believe defendant did not deduce that at least some of the experts were of the opinion defendant suffers from a mental illness that requires treatment with medication.

Even if we were to conclude the record supports a finding that defendant lacks capacity to make decisions regarding treatment with medication, we conclude it does not support the other necessary findings. Dr. Oshrin testified his “psychiatric impression” is defendant suffers from schizoaffective disorder with manic phase and, if left untreated with medication, defendant’s mental state will deteriorate and probably cause serious harm to defendant’s physical or mental health. Dr. Oshrin also testified involuntary treatment with antipsychotic medication would reduce or possibly eliminate defendant’s symptoms and mania, and would render him safer to others.

However, on cross-examination, Dr. Oshrin testified his opinion that defendant’s condition would worsen was merely a prognosis based solely on the fact defendant continued to suffer from a mental illness. Although defendant had not been receiving any medication while in jail, Dr. Oshrin testified he was unaware whether defendant had been violent, inflicted serious harm on anyone else, or suffered any serious harm while in custody. Dr. Oshrin also testified defendant had been evaluated for placement in the jail’s mental health unit and had been denied such a placement.

An expert’s opinion is only as good as the facts on which it is based. “[T]he law does not accord to the expert’s opinion the same degree of credence or integrity as it does

the data underlying the opinion. Like a house built on sand, the expert's opinion is no better than the facts on which it is based.'" (*People v. Gardeley* (1996) 14 Cal.4th 605, 618, quoting *Kennemur v. State of California* (1982) 133 Cal.App.3d 907, 923.)

Dr. Oshrin did not testify to any facts on which he based his diagnosis that defendant's medical condition required treatment with antipsychotic medication, and he testified to no facts on which he based his prognosis that, if left untreated, defendant's mental state would worsen and cause defendant physical or mental harm. Indeed, Dr. Oshrin conceded defendant's condition might improve with other treatment options. The mere fact that a defendant suffers from a mental disorder is simply not a sufficient basis on which the trial court could conclude the defendant would probably suffer serious harm if his mental illness were left untreated with medication. (§ 1370, subd. (a)(2)(B)(i)(I).)

Therefore, we conclude the record does not support the trial court's orders authorizing the involuntary administration of antipsychotic medication under section 1370, subdivision (a)(2)(B)(i)(I).

2. The Evidence Was Insufficient to Support the Orders Under Section 1370, Subdivision (a)(2)(B)(i)(II).

An order authorizing involuntary treatment with antipsychotic medication under section 1370, subdivision (a)(2)(B)(i)(II), requires a finding the defendant has inflicted, attempted to inflict, or made a serious threat to inflict substantial physical harm on another person, either while in custody, or that resulted in his being taken into custody. It also requires a finding the defendant currently presents, as a result of his mental disorder or mental defect, a demonstrated danger of inflicting substantial physical harm on others.

“Demonstrated danger” may be based on an assessment of the defendant’s present mental condition, including consideration of the defendant’s behavior within the past six years.

(Ibid.)

Dr. Oshrin opined defendant posed a danger of inflicting substantial harm on others based solely on the alleged assault on his mother. As with the question of capacity, Dr. Oshrin testified he did not apply a legal standard when forming his opinion of defendant’s dangerousness and, instead, testified he applied a sliding scale and his “medical impression” in concluding the alleged assault constituted infliction of substantial physical harm.

There does not appear to be much dispute the record contains substantial evidence to support the trial court’s finding that defendant inflicted or attempted to inflict substantial physical harm on his mother. However, we conclude the record does not support the court’s additional finding that defendant posed a demonstrated danger of inflicting substantial physical harm on others *because of his mental disorder or mental defect*. Dr. Oshrin testified he merely presumed defendant’s mental illness played a role in the alleged assault on his mother, and he testified to no facts whatsoever demonstrating defendant posed a current threat based on his mental illness. As already noted, Dr. Oshrin testified defendant was not receiving medication while in custody, yet there was no evidence defendant had acted violently or inflicted harm on others while in custody. It appears Dr. Oshrin’s opinion about current dangerousness was based solely on the fact defendant continued to suffer from a mental illness.

In sum, we conclude the record does not support the trial court's findings that defendant meets the criteria for the involuntary administration of antipsychotic medication under section 1370, subdivision (a)(2)(B)(i)(I) or (II). Therefore, we must reverse the orders authorizing the involuntary administration of medication.

III.

DISPOSITION

The orders authorizing the involuntary administration of antipsychotic medication are reversed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

McKINSTER
J.

We concur:

RAMIREZ
P. J.

HOLLENHORST
J.