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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

LARRY WALTON,

Defendant and Appellant.

F062092

(Super. Ct. No. CF04905796)

OPINION

APPEAL from an order of the Superior Court of Fresno County. Wayne R. Ellison, Judge.

Timothy E. Warriner, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Charles A. French and John G. McLean, Deputy Attorneys General, for Plaintiff and Respondent.

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Appellant Larry Walton was committed to Atascadero State Hospital (ASH) as a mentally disordered offender (MDO) pursuant to Penal Code section 2960 et seq.¹ He contends his due process rights were violated when the trial court refused to instruct the jury that his mental disorder must cause him serious difficulty in controlling his behavior in order to commit him as an MDO. We disagree and will affirm the order.

FACTUAL AND PROCEDURAL SUMMARY

On November 14, 2005, Walton pled guilty to assault resulting in great bodily injury. On September 25, 2006, Walton was sentenced to state prison. He was released on parole in June 2010, violated parole, and was returned to prison. On November 5, 2010, a petition for extended involuntary treatment pursuant to section 2970 was filed. On March 4, 2011, the jury found the petition to be true and Walton was committed to ASH until March 29, 2012.

Testimony at trial established that Walton's criminal record included 30 different convictions dating back to 1978, with about 10 convictions involving violence and the others involving drug and theft crimes. Walton spent 40 years in prison, on parole, in jail, on probation, or in a state hospital. Walton's current offense was for striking his uncle multiple times and causing numerous injuries, including several facial fractures.

After his arrest for the current offense, Walton was found incompetent to stand trial because he was actively paranoid and had disorganized thinking. He was sent to a hospital for treatment, where he threatened a doctor and attacked another patient.

Dr. Joe DeBruin, a forensic and clinical psychologist employed at ASH, testified that Walton has a severe mental disorder -- paranoid-type schizophrenia. Walton's schizophrenia impairs his perception of reality, and his symptoms involve numerous persecutory delusions.

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

Walton began receiving treatment in his early 20's for auditory hallucinations; he was hospitalized five times. At the age of 25, Walton began receiving social security benefits based on his mental illness. In addition to the hospitalizations in his early 20's, Walton was hospitalized on 16 separate occasions in the state hospital system dating back to 1986.

When Walton was released on parole in June 2010, he was placed in a board and care facility in Fresno. Within days he violated parole by possessing alcohol. While being transported for a drug test, Walton began smoking crack cocaine and fled when the driver stopped the van. Walton was located in San Francisco, where he was smoking crack cocaine, and was taken to a crisis bed in San Quentin. Crisis beds are used when a person is threatening harm to himself or another person or is gravely disabled.

DeBruin noted that there was an order in place authorizing forced medication of Walton. Such an order requires a finding that an individual is gravely disabled or is a threat to himself or others. In January 2011, Walton still was delusional. Walton's participation in treatment groups was marginal.

DeBruin opined that Walton was a danger to himself or others as evidenced by Walton's significant history of mental illness and hospitalizations, the violence of the current offense, and an incident three months earlier where Walton attacked another patient. In that incident, the patient suffered a concussion, lost two teeth, and had to have several stitches in his face.

DeBruin stated that Walton's performance on supervised release would be poor, particularly since he was under an involuntary medication order. DeBruin concluded that Walton presently was a danger to others and would become more of a danger if he were released. Walton is not in remission with his illness and will suffer from it the rest of his life.

Walton testified on his behalf. He stated that if released, he would take his medications voluntarily, would support himself with his social security, and would look for a job.

DISCUSSION

Walton contends the trial court erred when it refused to instruct the jury that his mental disorder must cause him serious mental difficulty in controlling his behavior. Therefore, he claims the commitment order must be reversed.

The order Walton appeals from expired March 29, 2012. Accordingly, the appeal is moot. (See *People v. Hurtado* (2002) 28 Cal.4th 1179, 1186.) Because this is an issue that will be recurring in subsequent recommitment petitions, we exercise our discretion to decide the issue presented. (See *ibid.*)

MDO Act

The MDO Act, enacted in 1985, requires that offenders who have been convicted of violent crimes related to their mental disorders, and who continue to pose a danger to society, receive mental health treatment during and after the termination of their parole until their mental disorder can be kept in remission. (§ 2960 et seq.) Although the nature of an offender's past criminal conduct is one of the criteria for treatment as an MDO, the MDO Act itself is not punitive or penal in nature. (*People v. Superior Court (Myers)* (1996) 50 Cal.App.4th 826, 836-840.) Rather, the purpose of the scheme is to provide MDO's with treatment while at the same time protecting the general public from the danger to society posed by an offender with a mental disorder. (§ 2960.)

In keeping with the scheme's nonpunitive purpose, section 2972, subdivision (g) provides that MDO's who have been civilly committed after their parole period has expired are granted the same rights that are afforded involuntary mental patients under Welfare and Institutions Code section 5325 et seq.

Due Process Violation

Walton contends, relying upon *Kansas v. Hendricks* (1997) 521 U.S. 346 and *Kansas v. Crane* (2002) 534 U.S. 407, that the jury should have been instructed that an MDO must have serious difficulty controlling his or her violent behavior because a finding of dangerousness alone is insufficient to support civil commitment. These cases are inapposite because they involve the civil commitment of sexually violent predators under Kansas statutes, which explicitly require the finding of a mental abnormality that makes it difficult for the person to control dangerous behavior. (*Hendricks*, at p. 358; *Crane*, at pp. 409-411.)

This issue has been resolved against Walton by the appellate court in the case of *People v. Putnam* (2004) 115 Cal.App.4th 575, 581 (*Putnam*). There, the Court of Appeal noted that the Kansas statutory scheme for sexually violent predators is different from the MDO Act under which Walton was civilly committed. The MDO Act requires a finding that “by reason of his or her severe mental disorder, the patient represents a substantial danger of physical harm to others.” (§ 2972, subd. (c).) The appellate court in *Putnam* concluded that “instructing the jury with the applicable statutory language adequately informs the jury of the kind and degree of risk it must find to be present in order to extend an MDO commitment.” (*Putnam*, at p. 582.)

Walton argues that the holding in *Putnam* was impliedly overruled by the Supreme Court in *In re Howard N.* (2005) 35 Cal.4th 117 (*Howard N.*). Thus, we should not agree with *Putnam*. We are not persuaded.

The Supreme Court in *Howard N.* addressed a different statutory scheme under Welfare and Institutions Code section 1800 et seq. for juvenile civil commitments. Unlike the MDO and the sexually violent predator statutes, the juvenile statutory scheme addressed in *Howard N.* did not include a definition linking the defendant’s mental disorder to a lack of volitional control. (*Howard N.*, *supra*, 35 Cal.4th at p. 136.) Consequently, jury instructions tracking the statutory language of the juvenile scheme did

not necessarily inform the jury of the required showing that the mental disorder impaired the ability to control dangerous behavior. (*Id.* at p. 130.)

Here, the jury was instructed with CALCRIM No. 3457, which provided in relevant part that the jury must find that “[b]ecause of his severe mental disorder, [Walton] presently represents a substantial danger of physical harm to others.” The instruction also provided that the jury must find the severe mental disorder “substantially impairs the person’s thought, perception of reality, emotional process, or judgment; or that grossly impairs his behavior.” This language exactly tracks the language of the MDO Act found in section 2972, subdivision (c). The definition of a severe mental disorder in the MDO statutes by implication requires a jury to find that the defendant lacks volitional capacity to control dangerous behavior. (*Putnam, supra*, 115 Cal.App.4th at p. 582.)

We presume that the jury consists “of intelligent persons who are fully able to understand, correlate and follow the instructions given to them. [Citation.]” (*People v. Archer* (1989) 215 Cal.App.3d 197, 204.) Absent evidence to the contrary, and here there is none, we presume the jury understood and correctly applied the instructions. (*People v. Talhelm* (2000) 85 Cal.App.4th 400, 409.) Consequently, the jury necessarily found that Walton’s mental disorder presented a substantial danger of physical harm to others and that Walton met the criteria for commitment under the MDO Act. (*Putnam, supra*, 115 Cal.App.4th at pp. 581-582.)

DISPOSITION

The order is affirmed.

CORNELL, Acting P.J.

WE CONCUR:

KANE, J.

DETJEN, J.