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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

DERRELL LAMAR GASKIN,

Defendant and Appellant.

G046130

(Super. Ct. No. 10CF0374)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Richard M. King, Judge. Affirmed.

Patrick J. Hennessey, Jr., 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, Peter Quon, Jr., and Lilia E. Garcia, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

A jury found defendant Derrell Lamar Gaskin guilty of battery resulting in serious bodily injury and assault by means of force likely to cause great bodily injury. The jury also found defendant had inflicted great bodily injury on the victim. The trial court sentenced defendant to 15 years in state prison.

Defendant appeals contending the court should have suspended the proceedings and re-evaluated his mental state based on his trial testimony and the testimony of an expert witness. He also contends the sentence imposed constituted an abuse of the court's discretion. We disagree with both contentions and affirm the judgment.

FACTS

Annabel Rodriguez was walking her six-year-old son to school when she noticed defendant, whom she had never met, walking past her. He stopped, turned around, and without any comment, struck her in the face, knocking her to the ground and shattering her nose. The incident was witnessed by a passing motorist.

Shortly before the originally scheduled trial, defendant's lawyer declared doubt regarding defendant's competence. The court ordered the criminal proceedings suspended and appointed a psychologist and a psychiatrist to examine defendant. Some weeks later, the court conducted a mental competency hearing and considered the two experts reports; both opined defendant was competent to stand trial. The court ordered criminal proceedings reinstated.

During the trial, defendant testified that he had noticed a female and a small child. After he passed them, he saw her trip and fall into the street. When he turned back to help her, they were both struck by a passing car. Defendant also testified to having had a most unusual background. In 2000, he played quarterback for the Los Angeles Raiders. At the same time, he played basketball for the Chicago Bulls, baseball for the

New York Yankees, and hockey for the Los Angeles Kings. He had also received a master's degree in medicine. He testified he had been confined to a mental facility and offered drugs for mental illness. But he denied ever taking psychotropic drugs.

Dr. Thomas Grayden, a professor of psychiatry at UCI, testified defendant was psychotic, suffered from schizophrenia, would break from reality, suffer hallucinations, and delusional thinking.

On the sentencing date, defendant's lawyer again declared doubt as to defendant's competence. Criminal proceedings were, once again, suspended and the court again appointed two experts, including Grayden to examine defendant. Thereafter, a jury trial was conducted to determine defendant's competence. Both experts testified and the jury found the defendant to be mentally competent. The court thereupon sentenced defendant.

DISCUSSION

1. The trial court adequately assured itself defendant was competent to be tried.

Each time that defendant's counsel declared a doubt about defendant's competence to proceed, the court followed the proper procedure. When the issue was first raised before trial, the court concluded, based on the information supplied by experts, that defendant was competent and reinstated the criminal proceedings. The second time counsel declared doubt about defendant's competence before sentencing, the issue was tried and the jury found the defendant to be competent. The evidence supported the court's and jury's conclusions.

Dr. Thomas J. Greenzang, one of the psychiatrists who examined defendant before trial, noted that defendant acknowledged "he was charged with assault. He indicated a female alleged that he struck her with a fist in the face." Greenzang noted that, although defendant "presented as being somewhat isolated during the current

evaluation” and “[h]is thinking appeared to be somewhat constricted, [h]e did not manifest overt hallucinations or delusions. He was able to respond appropriately to questions.” Greenzang expressed the opinion that defendant’s “history is consistent with his having schizoid personality traits . . . a potential diagnosis is schizoaffective disorder.” But Greenzang also stated that defendant “did understand the nature of the charges against him. [Defendant] indicated that he is charged with assault. He was able to provide the name of his attorney. He expressed a belief that he could cooperate with her. He had a general understanding of the roles of individuals involved in the legal proceedings.” Greenzang claimed it was his opinion that “at the time of the current evaluation . . . [defendant] is competent to face the charges against him.” The pretrial competency hearing was based on this report as well as the report of Dr. Jody Ward, a psychologist.

Ward reached similar conclusions. She stated defendant’s “thinking was goal oriented and directed through most of the interview, including the discussion of his current charges and the court case. When not discussing his mental health history, his reasoning was intact. His thinking became strange when discussing his mental health history. It appears that he may suffer from some type of mental illness like Schizophrenia. But overall, he knew [the] charges; the possible outcomes; the plea agreement . . . he [had been] offered; and the fact [a conviction] would [constitute] two strikes and how those strikes [would] affect his sentencing. He knew the roles of the court officers as well. He had an alternate explanation for his behavior at the time of the alleged crime and appears to be able to assist his attorney in preparing his defense.”

These reports provide substantial evidence supporting the court’s conclusion defendant was competent to stand trial.

As we noted, when defendant testified, he presented a work history that was obviously false. We need not belabor why a person could not have been employed at the same time by major league sports teams in four different sports. But would such

testimony tend to show that Greenzang and Ward were mistaken or that defendant's competency had deteriorated since their examinations? We do not believe that, even if defendant truly believed his fantastic accomplishments in professional sports, this would tend to show lack of competency to proceed with the trial. But defendant does not rely solely on this testimony; he also relies on the testimony of Grayden, a psychiatrist who testified on his behalf.

Grayden expressed the opinion that defendant "has clearly a psychotic disorder and I think it would be best characterized, at least based on available information, as schizophrenia." According to Grayden, defendant's symptoms included hallucinations, delusional and disorganized thinking, and memory problems. Schizophrenics also have a high rate of suicide and tend to be impulsive. Grayden had learned from defendant's sister that defendant had been hospitalized in a mental facility and prescribed psychiatric medications. But it is noteworthy Grayden's testimony did not suggest defendant's schizophrenia rendered him incompetent to stand trial or incapable of either understanding the proceedings or cooperating with his counsel.

Nor did defendant's counsel suggest after receipt of this testimony that she had doubts about defendant's competence to proceed.

We do not disagree with the proposition asserted by defendant's counsel that "[a] criminal trial of a mentally incompetent person violates due process." (Capitalization omitted.) (*People v. Lewis* (2006) 39 Cal.4th 970, 1047; *People v. Ramos* (2004) 34 Cal.4th 494, 507.) But, the evidence presented at trial, including both defendant's fantastic recitations about his athletic accomplishments and the testimony of Grayden, did not suggest his condition differed from what he had presented to the psychiatrist and psychologist who had examined him before trial. And, based on essentially the same information, Greenzang and Ward both had opined that defendant was nevertheless competent to proceed with the trial. "[A] defendant must exhibit more than bizarre . . . behavior, strange words, or a preexisting psychiatric condition that has

little bearing on the question of whether the defendant can assist his defense counsel. [Citations.]” (*People v. Ramos, supra*, 34 Cal.4th at p. 508.) Defendant acknowledges that “[w]here a competency hearing has already been held and the defendant has been found competent to stand trial, a trial court is not required to conduct another competency hearing unless it is presented with a change of circumstances or with new evidence that gives rise to a serious doubt about the validity of the previous competency finding.” (See also *People v. Medina* (1995) 11 Cal.4th 694, 734.)

After Grayden’s testimony the court stated that “he did indicate the defendant does have a mental disorder, but there is nothing before me that indicates a changed circumstance between when the defendant was found to be competent I believe in August or September and now.” It then solicited counsel’s comment on this issue and counsel declined to be heard. Defendant’s counsel would be in a better position than the judge, or anyone else for that matter, to evaluate whether defendant understood the nature of the proceedings and whether he was able to assist counsel in his defense. Counsel’s silence on the subject when invited by the court to express her opinion is thus significant.

2. The court properly sentenced defendant.

The court found the prior convictions, one prior strike (Pen. Code, §§ 667, subds. (d), (e)(1); 1170.12, subds. (b), (c)(1); all further statutory references are to the Penal Code) and a serious prior felony (§ 667, subd. (a)(1)) to be true. It also found defendant suffered two prison priors (§ 667.5, subd. (b)). Defendant moved to strike the prior strike allegations and the great bodily injury enhancement; the court denied the motion. It then sentenced defendant to double the middle term of 3 years for the assault charge under sections 667, subdivisions (d), (e)(1) and 1170.12, subdivisions (b), (c)(1), and stayed the sentence on the battery count under section 654. It further sentenced defendant to 3 years consecutive on the enhancement (§ 12022.7, subd. (a)), 5 years for the prior serious felony (§§ 667, subd. (a)(1)-1192.7), 1 year for one prison prior

(§ 667.5, subd. (b)), and stayed punishment for the second prison prior. Thus, the total sentence was for 15 years.

The court denied defendant's motion to strike the priors under *People v. Superior Court (Romero)* (1994) 13 Cal.4th 497. In denying the motion, the court considered both defendant's prior criminal history and the vulnerability of the victim. Defendant argues this ruling was an abuse of discretion because of his mental health history and his prior criminal history did not involve violence.

As defendant notes, citing *People v. Williams* (1998) 17 Cal.4th 148, 160-161, before the court may dismiss an allegation of a prior strike conviction, it must conclude he was outside the spirit of the three strikes sentencing scheme. But our review is for abuse of discretion and, based on the facts of this case, we cannot conclude that the trial court ruled in an "arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice." (*People v. Jordan* (1986) 42 Cal.3d 308, 316.) As the Attorney General points out, citing *People v. Carmony* (2004) 33 Cal.4th 367, 378, there is a "presumption that any sentence that conforms to these sentencing norms" set forth in the "Three Strikes" law is both rational and proper. And "[it] is not enough to show that reasonable people might disagree about whether to strike one or more' prior conviction allegations." (*People v. Myers* (1999) 69 Cal.App.4th 305, 310.) It would be inappropriate for us to second guess the trial court here.

DISPOSITION

The judgment is affirmed.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

ARONSON, J.

IKOLA, J.