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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY RAY CASTELLO,

Defendant and Appellant.

H037899

(Santa Clara County

Super. Ct. No. 173008)

Anthony Ray Castello appeals from an order extending his commitment as a mentally disordered offender (MDO) in a conditional release program (CONREP) for another year pursuant to Penal Code sections 1606 and 2972.¹ Castello contends that no substantial evidence supports the trial court’s finding that he continued to represent a substantial danger of physical harm to others. We disagree and affirm the judgment.

LEGAL BACKGROUND

“The MDO law is a civil commitment scheme targeting state prisoners with severe mental disorders who are about to be released Once a prisoner has been certified as an MDO, inpatient treatment under the supervision of [the State Department of Mental Health (DMH)] is usually required unless DMH certifies that the prisoner can be treated in an outpatient program.” (*People v. Martin* (2005) 127 Cal.App.4th 970, 973, disapproved on another ground in *People v. Achrem* 2013 Cal.App. LEXIS 57, [*2].)

¹ Further unspecified statutory references are to the Penal Code.

“The purpose of the MDO law is to protect the public by identifying those prisoners who would pose a danger to society upon release due to their mental disorder.” (*Id.* at p. 974.)

“We review the court’s finding on an MDO criterion for substantial evidence, drawing all reasonable inferences, and resolving all conflicts, in favor of the judgment.” (*Id.* at p. 975.) “Substantial evidence” in this context, just as in a criminal case, means “evidence that is reasonable, credible, and of solid value--to support the [court’s] finding.” (*People v. Beeson* (2002) 99 Cal.App.4th 1393, 1398; *People v. Miller* (1994) 25 Cal.App.4th 913, 919-920 [the substantial evidence test used in criminal appeals also applies to appellate review of MDO proceedings].) The appellate court must defer to the trial court in its evaluation of the credibility of a witness and cannot substitute its own evaluation of witness credibility for that of the trier of fact. (*People v. Clark* (2000) 82 Cal.App.4th 1072, 1083.)

Under section 2972.1, subdivision (e), a continuation of an MDO on outpatient status requires the trier of fact to determine whether the requirements of section 2972, subdivisions (c) and (d), have been met. Under section 2972, subdivision (c), a commitment may be extended for an additional year if the prosecution proves, beyond a reasonable doubt, that (1) the MDO continues to have “a severe mental disorder”; (2) the MDO’s “mental disorder is not in remission or cannot be kept in remission without treatment”; and (3) the MDO continues to represent a “substantial danger of physical harm to others.” (*People v. Beeson, supra*, 99 Cal.App.4th at pp. 1398-1399.)

FACTUAL BACKGROUND

In 1992, Castello was convicted of attempted murder and assault with a deadly weapon with great bodily injury after he attacked his father and two guests with a knife at the table in his father’s residence. The attack was provoked by Castello’s mental illness, which currently has been diagnosed as schizoaffective disorder. At the time of the incident, Castello was not on medication, suffered from a long history of drug and

alcohol abuse and had not yet been diagnosed with a mental illness. Castello was sentenced to 11 years in prison and later transferred to Napa State Hospital as an MDO. He was thereafter released on outpatient status under the supervision of South Bay CONREP in 2005 and his commitment was periodically extended by the court. His latest commitment ran from January 14, 2011, to January 14, 2012.

Harper Medical Group Director Dr. Douglas Johnson, a clinical psychologist who runs the conditional release program for the Department of Mental Health in Santa Clara, Santa Cruz, Monterey, and San Benito counties, testified to the following.

Dr. Johnson has worked with Castello since 1994 when Castello was a patient at Atascadero State Hospital. He is not Castello's primary therapist but commonly interacts with him at least twice a week and conducts his annual review. Castello is currently living at Athena's Room and Board, which involves low levels of monitoring. He is responsible for administering his own medication. Castello's blood is tested regularly and there has been no reason to suspect that Castello has not been taking his medication. His current condition of schizoaffective disorder is being treated with the anti-psychotic medication Abilify and the mood stabilizing medication Depakote. The positive symptoms of his disease have been kept in remission, but Castello continues to struggle with negative symptoms such as addictive behavior to food and caffeine and occasional purchases of lottery tickets. Castello's negative symptoms are not in remission. Castello lacks motivation, regulation, and self-initiative, though the CONREP program helps him build incentives to accomplish daily tasks. He does not experience delusions, hallucinations, or disorganized speech common with his disease. In the past year, he has not been violent or threatening and has not intentionally damaged any property. He has been regularly tested for drugs and alcohol and his tests are consistently negative. He understands that he has a mental illness but does not fully understand how his schizoaffective disorder interferes with his ability to control his addictive tendencies. In

October 2010, CONREP sent Castello to South Point STRP in El Cajon, a program focused on alleviating overeating tendencies. The program led to a loss of 12 pounds. However, by February 2011, Castello had returned to his previous level of functioning with a lack of motivation and increased difficulties. He continues to demonstrate an addiction to food and an inability to manage his money. Dr. Johnson specifically pointed to a time when Castello was allowed to manage his own money and consequently spent \$1,000 on fast food within one month. Castello has complied with all other mandated parts of his treatment plan. Dr. Johnson hopes Castello will be better able to initiate activities on his own and become more capable of adequately regulating his negative behavior. Castello's lack of self initiation and regulation suggests a failure to voluntarily follow his treatment plan.

When asked whether Castello's inability to control his addictive behavior makes him a danger to the community, Dr. Johnson offered the following: "Yes. I believe that." He further added: "If he is more lonely, less fulfilled, his propensity for engaging in addictive behavior increases. There are now serious but not devastating ones like the drug and alcohol that, left to his own, I would be worried. And I'm very convinced if he were to become involved in drugs and alcohol, his mental illness schizoaffective schizophrenia condition would be exacerbated greatly." Dr. Johnson affirmed that a combination of Castello's untreated addictions to overeating and caffeine along with use of drugs and alcohol would affect his schizoaffective disorder and cause him to be a danger to others. When asked about his recommendation for Castello, he stated that Castello should remain in the CONREP outpatient program. Further, he affirmed that, so long as there were no interferences from other life stressors such as drugs, alcohol, and environmental factors, Castello's medication would continue to limit his positive symptoms.

Dr. Johnson added that Castello has shown signs of improvement over the last year in his ability to identify and express emotional aspects concerning his life. When asked whether Castello was being safely and effectively treated in the outpatient program through CONREP, Dr. Johnson opined as follows: “He’s being safely treated. We’re working on being more effective. But all in all, I don’t want to try to plug my own program, but I think the structure of the program is very helpful.” He offered that the structure of the program provides the necessary components to keep Castello involved at a minimum level, and, if he were to be released and continued to take his medication, he would nevertheless be isolated and lack the interaction necessary to do reality testing, which could have an effect on his positive symptoms.

When asked what it would take to change Dr. Johnson’s recommendation, Dr. Johnson opined: “As I said, we’re hopeful he is talking about reentering the work force in some way. We would like--I would like for him to assume responsibility for managing his own finances. I would like to see him continue to participate in recovery both on the drug and alcohol and eating disorder side and to initiate more social interaction and activity without the program, meaning outside of the program.” He explained that, without the program, Castello would regress back to the condition before the underlying offense when Castello was socially isolated with no meaningful interpersonal interactions to serve as a test for reality.

Castello testified to the following. He has consistently complied with the treatment program and is aware of the triggers to his disease and how to avoid them. He believes that, if released from the program, he would continue to take his medication, obtain a job, and would not be a danger to the public. He believes that he is capable and ready to leave CONREP.

In granting the petition, the trial court stated that, though this last year for Castello was one of his best, he was not ready to be released: “I don’t think you’re there quite yet,

but I think you're well on your way to be where you want to be. Okay? I'm encouraged by basically Dr. Johnson set out four goals for you: Re-enter the work force, assume responsibility for your money, continue your participation in NA, AA and OA, and show more initiative regarding activities outside of the program. Those are four goals for you that you can work on in addition to everything else. [¶] So I am going to grant the petition. I am satisfied by the appropriate standard that you by reason of mental disease, effect, or disorder continue to represent a substantial danger of physical harm to others if continued supervision is terminated."

DISCUSSION

Castello contends that "there was no evidence, based upon the whole record that would allow a rational trier of fact to find, beyond a reasonable doubt, that [he] represented a substantial danger of physical harm to others." We disagree.

It can be reasonably inferred from Dr. Johnson's testimony that, if Castello were not in a structured program such as CONREP, there would be a risk that his addictive behaviors would manifest and that his use of illegal drugs or alcohol would greatly exacerbate his schizoaffective condition and, in turn, result in violence. This reasonable inference is supported by Castello's long-standing history of drug and alcohol abuse, his continued lack of motivation and self-initiative, his failure to voluntarily follow the treatment plan, his addictive tendencies with overeating and purchasing of lottery tickets, his inability to manage his own funds, and Dr. Johnson's testimony that he was "very convinced" that Castello would become dangerous if he leaves the outpatient program and his addictions remain untreated. Though Castello urges that Dr. Johnson did not state that his mental illness, if exacerbated, would present a substantial danger to others, the trial court could have reasonably interpreted Dr. Johnson's opinion to urge that CONREP is necessary to limit or prevent the type of addictive behavior that would enhance Castello's mental illness and result in violence. Though Castello was not presently

violent within the structured format of CONREP, Castello's (1) continued failure to voluntarily follow the treatment program through his lack of self regulation, and (2) long history of alcohol and drug use support that he would indulge in substance abuse and be a substantial danger to others if released from the CONREP program. Further, Dr. Johnson testified that Castello's addictive behaviors about food, caffeine, and lottery tickets are "symptom substitution[s]," a "soothing way to avoid dealing with real life issues, just like drugs and alcohol." Thus, the trial court could have reasonably concluded that Dr. Johnson's testimony established that the progress Castello had made was due to CONREP supervision and that this supervision was necessary to monitor Castello's behavior so that he did not relapse into addictive behavior. As a qualified expert, Dr. Johnson's opinion on Castello's dangerousness to others constitutes substantial evidence sufficient to support the trial court's finding.

The trial court could have reasonably concluded from this evidence that the People established beyond a reasonable doubt that Castello would be dangerous to others if he were released.

DISPOSITION

The judgment is affirmed.

Premo, J.

WE CONCUR:

Rushing, P.J.

Elia, J.