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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

STEPHEN MORRIS MAPLE,

Defendant and Appellant.

H041008

(Santa Clara County

Super. Ct. No. 137404)

Steven Morris Maple appeals from an April 29, 2014 order of the Santa Clara County Superior Court committing him as a mentally disordered offender (MDO) for one year, from May 20, 2014 to May 20, 2015, pursuant to Penal Code section 2970.¹ Appellant asserts that the evidence at the hearing on the petition to recommit him was insufficient to establish current dangerousness and therefore, the recommitment constituted a due process violation.

We conclude the evidence is sufficient and affirm.

I

Factual and Procedural Background

On November 7, 2013, the Santa Clara County District Attorney filed a petition to compel Maple's involuntary treatment pursuant to section 2970. It alleged that on March 21, 1990, Maple committed a violation of sections "245(a)(1), 664-211, 459-460.2." It stated that he was convicted of those offenses and sentenced to three years

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

in state prison. On September 13, 1996, following a parole revocation term, Maple was admitted to Atascadero State Hospital pursuant to section 2962. It alleged that the court had previously extended Maple's commitment and, at the time of the petition, he was receiving treatment at Napa State Hospital.

The November 7, 2013 petition alleged that Maple's then current commitment was set to expire on May 20, 2014. It stated that he "continues to suffer from a severe mental disorder, said mental disorder is not in remission or cannot be kept in remission without continued treatment, and that by reason of his mental disorder, [he] represents a substantial danger of physical harm to others." It sought an order extending Maple's involuntary commitment as an MDO from May 20, 2014 until May 20, 2015.

On April 29, 2014, a court trial was held on the petition. The People called Dr. Raffi Zakian. He was a licensed clinical psychologist; he had worked at Coalinga State Hospital since February 2013. As a staff psychologist at Coalinga, Dr. Zakian was involved in the diagnosis and treatment of severe mental disorders. He assessed the risk that patients posed to themselves or others.

Before coming to Coalinga State Hospital, Maple had been at Napa State Hospital. Dr. Zakian had reviewed Maple's psychiatric history, including "the chart discharge summary from Napa State Hospital, psychiatry notes, psychology notes, previous suicide risk assessment," and nursing and psychiatry progress notes.

Maple had been a patient of Dr. Zakian since only March 5, 2014, and Dr. Zakian acknowledged that the time elapsing since then was a very short time in which to get to know somebody. Dr. Zakian had conducted an admission psychological assessment on March 27, 2014. Dr. Zakian had also performed a mental status examination of Maple, which took approximately an hour, on the day before the trial.

Maple attended the "Managing Mental Illness" group, which met once a week and was led by Dr. Zakian. In addition, Maple attended a social skills group and possibly a recreational group. Dr. Zakian had frequent contact with Maple on the unit as part of his

rounds. The doctor saw Maple on a daily basis in the hallway or during treatment team meetings. Dr. Zakian talked to other members of the treatment team about Maple's progress.

In Dr. Zakian's opinion, Maple suffered from a severe mental disorder as defined by the MDO law. Maple had been diagnosed with schizophrenia, paranoid type. Maple had reported to Dr. Zakian that he was being persecuted by an agency that he called the Brotherhood of the Flesh, a mafia-like group whose members call each other brother and use certain gestures. That was a fixed delusion that Maple continued to experience at the time of trial. The delusion was a strongly held, pervasive belief that he was being plotted against and persecuted by the Brotherhood of the Flesh.

Maple's controlling offense occurred in 1990 and involved an assault with a deadly weapon on a clerk. Records indicated that Maple was "floridly psychotic" and paranoid during his arrest. He believed that he was being persecuted by the Brotherhood of the Flesh and it had been responsible for killing his family members.

Maple's paranoia concerning the Brotherhood of the Flesh had remained fairly consistent over time. Dr. Zakian did not believe that Maple understood the connection between his mental illness and his crime. In his opinion, Maple would not recognize the warning signs of delusions that could cause him to behave dangerously.

Maple received medication for his mental disorder at Coalinga State Hospital. Dr. Zakian believed that Maple's paranoid schizophrenia caused him to have serious difficulty controlling his behavior absent mandated treatment. Maple's mental illness substantially impaired his perception of reality or his judgment. Without treatment for his mental illness, Maple could be afraid, anxious, and guarded and the illness could induce him to act on his delusions. Maple could think people were part of the Brotherhood of the Flesh and plotting against him, which could cause him to act violently in self defense.

Dr. Zakian believed that Maple's mental illness was not in remission since he still had an entrenched belief that he was being persecuted by the Brotherhood of the Flesh. Maple did not recognize that his belief was untrue and he did not consider himself mentally ill even though he knew his diagnosis.

At Coalinga State Hospital, Maple had been courteous and polite, he had taken his medication as prescribed, and he had gotten along with and had been cooperative with other patients and staff. There had been no incidents at Coalinga State Hospital. The October 20, 2013 report prepared by Napa State Hospital indicated that there had been no documented instances of physical or verbal aggression by Maple in the previous year. Dr. Zakian attributed the lack of violent incidents during that period partially to the fact Maple was taking his medications.

Dr. Zakian indicated that some patients who suffer from paranoid schizophrenia and experience fixed delusions are less amenable to changing their beliefs than patients with hallucinations. Those with fixed delusions may be treated in the community *if* they do not act on their delusions in a dangerous way. Those patients who may be treated in the community, however, have at least some insight that they are mentally ill and their delusions are symptoms of mental illness.

Maple had reported to Dr. Zakian that he began drinking as a teenager and continued drinking on a weekly basis. Alcohol exacerbates the symptoms of schizophrenia and may induce mania or psychosis. Alcohol may interfere with medications. At the time of trial, Maple was not attending any substance abuse treatment group.

As far as Dr. Zakian was aware, Maple did not have a relapse prevention plan to control his potentially dangerous behavior. Maple lacked awareness that he needed to continue taking medication to control his mental illness. Maple had told Dr. Zakian that, if he were released, he would stop taking his medications and he would drink and use drugs. Dr. Zakian believed that, if that happened, Maple's capacity for violence would

increase. If he stopped his medications and used alcohol, Maple could become dangerous. His paranoid delusion about the Brotherhood of the Flesh would probably factor into that potential dangerousness. In the hospital, Maple was taking his medications and he had no access to substances.

Maple had spoken with a representative of CONREP (conditional release program) about a week before the trial. Maple had reported to Dr. Zakian that he was told that he was not ready for the program because he did not believe he had a mental illness. Dr. Zakian believed Maple was not ready for unconditional release. He indicated that Maple would pose a substantial danger of physical harm if unconditionally released because of Maple's intention to discontinue his medications and use substances if released. In Dr. Zakian's opinion, Maple should be retained for treatment at the hospital for another year. He encouraged Maple to continue with the "Managing Mental Illness" group and to enroll in the substance recovery group to learn relapse prevention skills and skills to maintain sobriety in the community.

Maple did not present any evidence at the trial.

Following the trial on the petition, the court found the petition to be true and ordered Maple's commitment extended for a year, from May 20, 2014 to May 20, 2015, pursuant to section 2970.

II

Discussion

A. Mootness

The challenged commitment has already expired. "[T]he duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that when, pending an appeal from the judgment of a lower court, and without any fault of the defendant, an event occurs which renders it

impossible for this court, if it should decide the case in favor of plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal.’ [Citations.]” (*Consolidated Vultee Air. Corp. v. United Automobile* (1946) 27 Cal.2d 859, 863; see *Younger v. Superior Court* (1978) 21 Cal.3d 102, 119-120 [“ ‘The rendering of advisory opinions falls within neither the functions nor the jurisdiction of this court. [Citations.]’ [Citation.]”].)

Maple urges this court to address his contention on the merits because the commitment violated his constitutional right to due process and the issue is likely to recur but evade review because of the short commitment term. Courts may exercise their discretion to decide an otherwise moot case where it poses an issue of broad public interest that is capable of repetition but is likely to evade review. (See *People v. Cheek* (2001) 25 Cal.4th 894, 898 [although two-year civil commitment had expired while appeal was pending, court exercised its discretion to decide the issue for the guidance of future proceedings]; *People v. Harris* (1993) 14 Cal.App.4th 984, 990 [several appellate contentions were “of sufficient public importance that it is appropriate to address them on the merits despite the fact that appellant’s commitment has expired”].) A challenge to the sufficiency of the evidence is entirely fact specific and does not pose an issue of broad significance.

The People state that the appeal is not moot and should be considered on its merits, citing *People v. J.S.* (2014) 229 Cal.App.4th 163, 174 (*J.S.*). The People indicate that they do not know whether Maple’s commitment was extended for another year following the expiration of the challenged commitment.

In *J.S.*, an MDO committee petitioned for judicial review of her MDO classification pursuant to section 2966, subdivision (b). (*J.S.*, *supra*, 229 Cal.App.4th. at p. 167.) The People successfully moved to dismiss the petition as moot on the ground that the initial term of commitment had expired. (*Ibid.*)

The appellate court in *J.S.* determined the petition was not moot. (*J.S.*, *supra*, 229 Cal.App.4th at p. 167.) It stated: “Even after the expiration of the initial commitment . . . the initial determination of whether an offender qualifies as an MDO continues to have practical effects. In some circumstances, an offender’s involuntary treatment may be continued beyond the initial one-year term, either as a continued condition of parole, or after parole is terminated. ([*People v.*] *Lopez* [(2010)] 50 Cal.4th [1055,] 1062-1063.) Obviously, if an offender’s initial commitment is improper, any extended commitment would also be improper. Moreover, to continue an offender’s commitment, the People need only make a showing regarding the three section 2966 criteria that are capable of change over time, while it is assumed that the initial showing with respect to the static factors remains valid. ([*People v.*] *Merfield* [(2007)] 147 Cal.App.4th [1071,] 1075-1076; § 2966, subd. (c).) Thus, at least where the People seek to continue an offender’s involuntary treatment beyond the initial one-year term, an offender’s challenge to the validity of the initial determination that he or she qualifies as an MDO could have significant practical effects, and cannot be considered moot.” (*Id.* at pp. 170-171.)

In *People v. Fernandez* (1999) 70 Cal.App.4th 117 (*Fernandez*), an MDO committee challenged an order extending his MDO commitment pursuant to section 2970 on the ground that the court lacked jurisdiction to extend his commitment because “certain procedural requirements had not been met: the 180-day rule set forth in section 2970 [for submitting written evaluation on remission] and the 30-day rule of section 2972 [for commencing trial].” (*Fernandez, supra*, at pp. 126-127.) This court determined that, even though the appellant’s one-year recommitment term had expired, that the appeal was not moot because his commitment had been extended for an additional year and “our decision [might] still affect the lower court’s right to continue jurisdiction under the original commitment as well as the recommitment. (See *People v. Mord* [(1988)] 197 Cal.App.3d [1090,] 1115.)” (*Id.* at pp. 134-135.)

On our own motion, we take judicial notice that a new order for commitment, filed March 13, 2015, committed Maple under the MDO law for another year, from May 20, 2015 to May 20, 2016. (See Evid. Code, §§ 452, subd. (d), 459; §§ 2970, 2972.) Accordingly, we do not treat this appeal as moot since a reversal of the April 29, 2014 order of commitment based on the insufficiency of the evidence would mean that the court lacked jurisdiction to extend Maple's commitment as an MDO going forward.

B. Sufficiency of the Evidence

The evidence showed that Maple continued to suffer from a severe mental disorder, paranoid schizophrenia, which was one of the causes of, or was an aggravating factor in the commission of, his assault with a deadly weapon on a clerk in 1990. (§ 2962; see § 2960.) The medication that Maple took to treat this disorder had not put it into remission. Maple continued to harbor the fixed belief that a mafia-like group or organization, the Brotherhood of the Flesh, was pursuing him. When he was originally arrested, Maple was psychotic and paranoid and he was suffering from the belief that the Brotherhood had killed his family members and was persecuting him. Maple does not appreciate that his delusion about the Brotherhood is a symptom of his illness and is not based on reality. At the time of trial, he still believed that the group existed and was after him, which created the potential that he would act violently in a perceived need to defend or protect himself. Maple did not acknowledge his mental illness or understand the connection between it and his crime. Although Maple had not acted violently based on his delusion while in custodial treatment during the year prior to trial, he had been taking his medication. He had clearly indicated that he would discontinue his medication and resume drinking alcohol if unconditionally released, which would increase his capacity for violence.

The evidence was sufficient to support the finding that Maple had a severe mental disorder, his severe mental disorder was not in remission or could not be kept in

remission without treatment, and by reason of his severe mental disorder, he represented a substantial danger of physical harm to others. (See § 2972.)

DISPOSITION

The April 29, 2014 order of commitment is affirmed.

ELIA, ACTING P.J.

WE CONCUR:

BAMATTRE-MANOUKIAN, J.

MIHARA, J.