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2
3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT OF WASHINGTON
5

6 CORY MASON,

7 Plaintiff,

8 v.
9

10 COMMISSIONER OF SOCIAL
11 SECURITY,

12 Defendant.
13

No. 1:16-CV-3069-JTR

ORDER GRANTING
DEFENDTANT’S MOTION FOR
SUMMARY JUDGMENT

14 **BEFORE THE COURT** are cross-motions for summary judgment. ECF
15 No. 15, 18. Attorney D. James Tree represents Cory Mason (Plaintiff); Special
16 Assistant United States Attorney Jennifer Ann Kenney represents the
17 Commissioner of Social Security (Defendant). The parties have consented to
18 proceed before a magistrate judge. ECF No. 7. After reviewing the administrative
19 record and briefs filed by the parties, the Court **GRANTS** Defendant’s Motion for
20 Summary Judgment and **DENIES** Plaintiff’s Motion for Summary Judgment.

21 **JURISDICTION**

22 Plaintiff protectively filed an application for Supplemental Security Income
23 (SSI) on May 23, 2012, alleging disability since birth (May 10, 1991), due to
24 Asperger’s syndrome, ADHD/ADD, fetal alcohol syndrome, conduct disorder,
25 bipolar disorder, and depression/suicidal. Tr. 269-274, 330. Plaintiff’s application
26 was denied initially and upon reconsideration.

27 Administrative Law Judge (ALJ) Ruperta M. Alexis held hearings on
28 February 6, 2014, Tr. 66-92, and July 15, 2014, Tr. 36-65, and issued an

1 unfavorable decision on September 25, 2014, Tr. 18-30. The Appeals Council
2 denied review on February 22, 2016. Tr. 1-3. The ALJ's September 2014 decision
3 thus became the final decision of the Commissioner, which is appealable to the
4 district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for judicial
5 review on April 25, 2016. ECF No. 1, 4.

6 **STATEMENT OF FACTS**

7 The facts of the case are set forth in the administrative hearing transcript, the
8 ALJ's decision, and the briefs of the parties. They are only briefly summarized
9 here.

10 Plaintiff was born on May 10, 1991, and was 21 years old on the filing date
11 of his application, May 23, 2012. He attended school through the 8th grade and has
12 never worked. Tr. 79, 330-331. He indicated he believed he was unable to work
13 because he has a hard time getting along with others and difficulty multitasking or
14 focusing/concentrating. Tr. 76-78. He indicated he has applied for several jobs,
15 such as field and warehouse work, but had not been able to obtain employment.
16 Tr. 44-45. He agreed that his offender status may be a reason he has not been able
17 to secure a job. Tr. 45. Plaintiff testified telephonically from jail at the first
18 administrative hearing because he had been arrested for failure to register, a
19 requirement he has as a result of a kidnapping offense at the age of 15. Tr. 73-74,
20 83-84. He has had several arrests and incarcerations as a result of his failures to
21 register since he became homeless in 2010. Tr. 44, 74-76.

22 **STANDARD OF REVIEW**

23 The ALJ is responsible for determining credibility, resolving conflicts in
24 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,
25 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*,
26 deferring to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,
27 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed
28 only if it is not supported by substantial evidence or if it is based on legal error.

1 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is
2 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at
3 1098. Put another way, substantial evidence is such relevant evidence as a
4 reasonable mind might accept as adequate to support a conclusion. *Richardson v.*
5 *Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one
6 rational interpretation, the Court may not substitute its judgment for that of the
7 ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*,
8 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the
9 administrative findings, or if conflicting evidence supports a finding of either
10 disability or non-disability, the ALJ's determination is conclusive. *Sprague v.*
11 *Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision
12 supported by substantial evidence will be set aside if the proper legal standards
13 were not applied in weighing the evidence and making the decision. *Browner v.*
14 *Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

15 **SEQUENTIAL EVALUATION PROCESS**

16 The Commissioner has established a five-step sequential evaluation process
17 for determining whether a person is disabled. 20 C.F.R. § 416.920(a); *see Bowen*
18 *v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the burden of
19 proof rests upon the claimant to establish a prima facie case of entitlement to
20 disability benefits. *Tackett*, 180 F.3d at 1098-1099. This burden is met once a
21 claimant establishes that physical or mental impairments prevent him from
22 engaging in his previous occupation. 20 C.F.R. § 416.920(a)(4). If a claimant
23 cannot do his past relevant work, the ALJ proceeds to step five, and the burden
24 shifts to the Commissioner to show that (1) the claimant can make an adjustment to
25 other work; and (2) specific jobs exist in the national economy which claimant can
26 perform. *Batson v. Commissioner of Social Sec. Admin.*, 359 F.3d 1190, 1193-
27 1194 (2004). If a claimant cannot make an adjustment to other work in the
28 national economy, a finding of "disabled" is made. 20 C.F.R. § 416.920(a)(4)(v).

1 **ADMINISTRATIVE DECISION**

2 On September 25, 2014, the ALJ issued a decision finding Plaintiff was not
3 disabled as defined in the Social Security Act.

4 At step one, the ALJ found Plaintiff had not engaged in substantial gainful
5 activity since the application date, May 23, 2012. Tr. 20. At step two, the ALJ
6 determined Plaintiff had the following severe impairments:

7 developmental/cognitive disorder (ADHD versus Autism Spectrum Disorder
8 versus Fetal Alcohol Syndrome); affective disorder (major depressive disorder
9 versus bipolar disorder); anxiety disorder; and personality disorder. Tr. 20. At
10 step three, the ALJ found Plaintiff did not have an impairment or combination of
11 impairments that meets or medically equals the severity of one of the listed
12 impairments. Tr. 22.

13 The ALJ assessed Plaintiff’s Residual Functional Capacity (RFC) and
14 determined he could perform a full range of work at all exertional levels with the
15 following nonexertional limitations: he can understand, remember and perform
16 simple, repetitive, routine tasks in a structured work environment, meaning there
17 are clear goals, directions and duties outlined; he can follow a schedule and
18 complete a normal workday; and he can have occasional interaction with co-
19 workers and the public. Tr. 24.

20 At step four, the ALJ noted Plaintiff has no past relevant work. Tr. 29. At
21 step five, the ALJ determined that based on the testimony of the vocational expert,
22 and considering Plaintiff’s age, education, work experience and RFC, Plaintiff
23 could perform other jobs present in significant numbers in the national economy,
24 including the jobs of vehicle cleaner, hand packager and laundry laborer. Tr. 29-
25 30. The ALJ thus concluded Plaintiff was not under a disability within the
26 meaning of the Social Security Act at any time from May 23, 2012, the date the
27 application was filed, through the date of the ALJ’s decision, September 25, 2014.
28 Tr. 30.

1 described difficulty obtaining work as a result of his criminal history, not because
2 of limitations from his impairments.⁴ Tr. 25-26.

3 The ALJ provided several reasons for discounting plaintiff's subjective
4 complaints, and those reasons are clear, convincing, and fully supported by the
5 record. In any event, as stated above, Plaintiff has not contested the ALJ's
6 credibility finding in this case. *See Paladin Assocs., Inc. v. Mont. Power Co.*, 328
7 F.3d 1145, 1164 (9th Cir. 2003) (issues not specifically and distinctly contested in
8 a party's opening brief are considered waived). Accordingly, it is undisputed that
9 the ALJ properly determined Plaintiff was not fully credible in this matter.

10 **B. Medical Source Opinions**

11 Plaintiff's sole contention in this case is that the ALJ erred by failing to
12 properly weigh the opinions of certain medical sources regarding his mental
13 limitations. Plaintiff specifically argues the ALJ erred by giving very little weight
14 to the opinions of Dr. Veltkamp, according significant weight to only a portion of
15 Dr. Dougherty's opinion and giving significant weight to the opinions of medical
16 expert McDevitt. ECF No. 15 at 6-19.

17 In this case, the ALJ found that although Plaintiff had severe mental
18 impairments (a developmental/cognitive disorder, an affective disorder, an anxiety
19 _____
20 complaints. 20 C.F.R. §§ 404.1530, 426.930; *Fair v. Bowen*, 885 F.2d 597, 603
21 (9th Cir. 1989). The Ninth Circuit has also determined a claimant's failure to
22 report symptoms is a clear and convincing reason to reject a claimant's statements.
23 *Greger v. Barnhart*, 464 F.3d 968, 972 (9th Cir. 2006).

24 ⁴The inability to work due to nondisability factors is a valid basis for
25 rejecting a claimant's credibility. *Bruton v. Massanari*, 268 F.3d 824, 828 (9th Cir.
26 2001) (stating that in making a credibility determination, the ALJ did not err by
27 considering that claimant left his job because he was laid off, rather than because
28 he was injured).

1 disorder, and a personality disorder), the medical evidence did not support the
2 degree of limitation alleged by Plaintiff. Instead, the ALJ determined Plaintiff
3 retained the RFC to perform a full range of work at all exertional levels with the
4 following nonexertional limitations: he can understand, remember and perform
5 simple, repetitive, routine tasks in a structured work environment; he can follow a
6 schedule and complete a normal workday; and he can have occasional interaction
7 with co-workers and the public. Tr. 24. The Court finds the ALJ's interpretation
8 of the medical evidence of record is supported by substantial evidence. *See infra*.

9 **1. Jody Veltkamp, Psy.D.**

10 Plaintiff contends the ALJ erred by giving "very little weight" to the January
11 2006 examining report of Dr. Veltkamp. ECF No. 15 at 6-8.

12 The relevant time period in this case is from the filing date of Plaintiff's
13 application, May 23, 2012, through the date of the ALJ's determination, September
14 25, 2014. Evidence from outside of this period of time can be deemed useful as
15 background information; however, it is irrelevant to the extent that it does not
16 address Plaintiff's medical status during the relevant period at issue in this action.
17 *See Fair v. Bowen*, 885 F.2d 597, 600 (9th Cir. 1989). In fact, as specified by the
18 ALJ, Plaintiff had a prior application for disability that became administratively
19 final on April 6, 2010, Tr. 95, the ALJ found no grounds for reopening that prior
20 determination, and the ALJ indicated any discussion of evidence prior to the date
21 of that final determination would be for historical purposes only and should not be
22 construed as an attempt to reopen the prior case. Tr. 18.

23 Dr. Veltkamp examined Plaintiff in January 2006, when Plaintiff was a 14-
24 year-old middle school student. Tr. 367-380. As indicated by the ALJ, this
25 evaluation report greatly predates the relevant time period. Tr. 28. Consequently,
26 the Court finds the ALJ provided a proper basis for concluding Dr. Veltkamp's
27 January 2006 assessment was entitled to "very little weight" and that more recent
28 records would be more pertinent to Plaintiff's May 2012 application for SSI. *Id.*

1 Although the ALJ properly accorded little weight to the January 2006
2 opinions of examiner Veltkamp, it is significant to note Dr. Veltkamp's testing
3 revealed Plaintiff rated in the average to low-average range in testing related to
4 academic achievement and attention/concentration. Tr. 370-371. Although Dr.
5 Veltkamp found Plaintiff displayed significant difficulty with executive functions,
6 Tr. 371-372, Dr. Veltkamp opined Plaintiff did not classify as having a learning
7 disability and demonstrated no difficulty with attention/concentration, Tr. 374-375.

8 **2. Roland Dougherty, Ph.D.**

9 Plaintiff also contends the ALJ erred by not including all of the limitations
10 expressed in Dr. Dougherty's report in her ultimate RFC determination. ECF No.
11 15 at 16-18.

12 On August 25, 2014, following the administrative hearing, Dr. Dougherty
13 examined Plaintiff. Tr. 645-670. Dr. Dougherty diagnosed ADHD; autism
14 spectrum disorder; probable fetal alcohol effects; major depressive disorder,
15 moderate, chronic; bipolar disorder, NOS; anxiety disorder, NOS; and subclinical
16 posttraumatic disorder symptoms. Tr. 655. Dr. Dougherty filed out a Medical
17 Source Statement of Ability to Do Work-Related Activities (Mental) check-box
18 form noting marked impairment (serious limitation) with Plaintiff's abilities to
19 understand and remember complex instructions; carry out complex instructions;
20 make judgments on complex work-related decisions; interact appropriately with
21 the public; and respond appropriately to usual work situations and to changes in a
22 routine work setting, Tr. 643-644, despite opining in his narrative report that
23 Plaintiff was likely to have the ability to do some detailed and complex tasks;
24 should be able to accept instructions from supervisors; was likely to have some
25 difficulty interacting with coworkers and the public; and may be able to maintain
26 regular attendance in the workplace if he had stable housing, but was likely to have
27 a good deal of difficulty completing a normal workday/workweek without
28 interruptions from his mental impairments, Tr. 657. Dr. Dougherty indicated

1 Plaintiff's report of some episodes of euphoria may also make it difficult for
2 Plaintiff to maintain employment and would likely make it difficult for him to deal
3 with stress encountered in the workplace. Tr. 657.

4 The ALJ accorded "significant" weight to Dr. Dougherty's opinion "with
5 one exception." Tr. 27. The ALJ is not required to adopt in full the opinion of any
6 particular medical source. *See Magallanes v. Bowen*, 881 F.2d 747, 753 (9th Cir.
7 1989) ("It is not necessary to agree with everything an expert witness says in order
8 to hold that his testimony contains 'substantial evidence.'" (quoting *Russell v.*
9 *Bowen*, 856 F.2d 81, 83 (9th Cir. 1988))). An ALJ may properly rely upon only
10 selected portions of a medical opinion while ignoring other parts, but such reliance
11 must be consistent with the medical record as a whole. *Edlund v. Massanari*, 253
12 F.3d 1152, 1159 (9th Cir. 2001).

13 The ALJ gave weight to Dr. Dougherty's check-box conclusions that
14 Plaintiff would be capable of performing simple instructions and interacting with
15 supervisors and coworkers and to Dr. Dougherty's narrative report that Plaintiff
16 had fair social skills, is likely to have the ability to perform some detailed and
17 complex tasks, and would have some difficulty interacting with coworkers and the
18 public. Tr. 27, 643-644, 657. The ALJ indicated these limitations were consistent
19 with the record, including normal psychiatric observations and psychological test
20 performances and Plaintiff's minimal mental health treatment, and accounted for
21 Dr. Dougherty's limitations by restricting Plaintiff to the performance of simple,
22 repetitive tasks in a structured work environment with occasional coworker and
23 public contact. Tr. 27.

24 However, the ALJ assigned little weight to Dr. Dougherty's opinion that
25 Plaintiff would have difficulty completing a normal workday/workweek due to his
26 mental health condition and is likely to have difficulty handling workplace stress.
27 Tr. 27, 657. These findings are inconsistent with the evidence of record, including
28 normal psychiatric observations and psychological test performances and

1 Plaintiff's lack of mental health treatment, and Dr. Dougherty cited only Plaintiff's
2 "multiple disorders" and Plaintiff's reports of episodes of euphoria as the basis for
3 these findings. Tr. 27, 657. Although Dr. Dougherty administered psychological
4 testing which revealed possible mild to moderate cerebral impairments, a full scale
5 IQ in the low average range, visual memory and visual working memory in the
6 borderline range, immediate memory and delayed memory in the low average
7 range, and auditory memory, a relative strength for Plaintiff, in the average range,
8 Tr. 654, it is apparent, as determined by the ALJ, that Dr. Dougherty relied on
9 Plaintiff's subjective statements for his conclusion that Plaintiff would have
10 difficulty completing a normal workday/workweek and would likely have
11 difficulty handling workplace stress, *see* Tr. 646-653 (self-reported history and
12 description of symptoms). As indicated above, the ALJ's finding that Plaintiff is
13 less than fully credible is supported by the evidence of record and free of error,
14 and, pursuant to *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001), a
15 physician's opinion may be disregarded when it is premised on the properly
16 rejected subjective complaints of a plaintiff. *See Morgan v. Comm'r. of Soc. Sec.*
17 *Admin.*, 169 F.3d 595, 602 (9th Cir. 1999) (the opinion of a physician premised to
18 a large extent on a claimant's own account of symptoms and limitations may be
19 disregarded where they have been properly discounted).

20 Plaintiff contends Dr. Dougherty's diagnoses of ADHD, major depressive
21 disorder, and bipolar disorder, in combination with autism and probable fetal
22 alcohol effects, provide support for a finding that Plaintiff would have "a good deal
23 of difficulty completing a normal workday/workweek." ECF No. 15 at 18.
24 However, "the mere existence of an impairment is insufficient proof of a
25 disability." *Matthews v. Shalala*, 10 F.3d 678, 680 (9th Cir. 1993). Plaintiff has
26 failed to show that these impairments caused any disabling functional limitations
27 and fails to specify any functional limitations from these diagnoses that were not
28 accounted for in the ALJ's RFC determination.

1 Here, the ALJ properly evaluated the opinions of Dr. Dougherty, interpreted
2 and resolved ambiguities from the entirety of the medical evidence, and adopted
3 the limitations she found credible and supported by the overall record. The ALJ
4 did not err by giving “significant weight” to the opinion of Dr. Dougherty, while
5 also discounting a portion of the opinion.

6 **3. Robert McDevitt, M.D.**

7 Plaintiff additionally contends the ALJ erred by according significant weight
8 to the opinion of medical expert Robert McDevitt, M.D. ECF No. 15 at 6-16.

9 Dr. McDevitt testified at the administrative hearing held on July 15, 2014.
10 Tr. 46-57. He stated the records indicated Plaintiff has a series of behavioral
11 problems but found there was no evidence of a major mental impairment. Tr. 48-
12 49, 52-53, 54. From a mental health standpoint, he noted there were no records of
13 treatment since 2012. Tr. 50. Dr. McDevitt nevertheless opined the record
14 reflected Plaintiff was too high functioning for any type of sheltered workshop and
15 concluded Plaintiff should be able to perform simple, repetitive work and some
16 complex work. Tr. 50. He believed Plaintiff would function best in a structured
17 situation with clear goals and clear tasks. Tr. 52.

18 The ALJ accorded significant weight to the medical expert’s testimony,
19 finding it was consistent with Plaintiff’s performance on psychological testing, his
20 activities and the normal psychiatric observations found in the record. Tr. 26.

21 Plaintiff argues that Dr. McDevitt at no time cited any other source for his
22 testimony other than Dr. Veltkamp, an examining physician the ALJ subsequently
23 rejected. ECF No. 15 at 7-8. That is not the case. Dr. McDevitt indicated he
24 received all of Plaintiff’s available medical and school records. Tr. 39, 47. While
25 Dr. McDevitt did not cite medical sources by name, other than Dr. Veltkamp, he
26 did cite medical records from the years following Dr. Veltkamp’s examination as
27 indicative that Plaintiff did fairly well in a structured environment, Tr. 48, 52
28 (citing Tr. 381-388, 444-496, 499-559), and specifically cited medical records

1 from Central Washington Comprehensive Mental Health as “the best” records, Tr.
2 48 (citing Tr. 499-559). Plaintiff’s argument is without merit.

3 Plaintiff also takes issue with Dr. McDevitt’s opinion that Plaintiff was too
4 high functioning. ECF No. 16 at 14-16. While Plaintiff is correct that it is clear
5 from a review of the record that Plaintiff is not a high functioning individual, Dr.
6 McDevitt did not state that Plaintiff was high functioning. Rather, Dr. McDevitt
7 testified the record reflected Plaintiff was too high functioning to be limited to a
8 sheltered workshop and that Plaintiff should be capable of performing simple,
9 repetitive work and some complex work. Tr. 50. Dr. McDevitt’s opinion in this
10 regard is supported by the weight of the record evidence.

11 It is the responsibility of the ALJ to determine credibility, resolve conflicts
12 in medical testimony and resolve ambiguities, *Saelee v. Chater*, 94 F.3d 520, 522
13 (9th Cir. 1996), and this Court may not substitute its own judgment for that of the
14 ALJ, 42 U.S.C. § 405(g). Where, as here, the ALJ has made specific findings
15 justifying a decision, and those findings are supported by substantial evidence in
16 the record, this Court’s role is not to second-guess that decision. *Fair*, 885 F.2d at
17 604.

18 CONCLUSION

19 Based on the foregoing, the Court finds the ALJ’s interpretation of the
20 medical record is supported by the weight of the evidence of record. The ALJ
21 provided specific and legitimate reasons for giving little weight to the January
22 2006 opinions of Dr. Veltkamp; significant weight to the opinion of Dr.
23 Dougherty, while also rejecting part of his opinion; and significant weight to the
24 opinion of medical expert McDevitt. Having reviewed the record and the ALJ’s
25 findings, the Court finds the ALJ’s decision is supported by substantial evidence
26 and free of legal error. Accordingly, **IT IS ORDERED:**

27 1. Defendant’s Motion for Summary Judgment, **ECF No. 16**, is
28 **GRANTED.**

1 2. Plaintiff’s Motion for Summary Judgment, **ECF No. 15**, is **DENIED**.

2 The District Court Executive is directed to file this Order and provide a copy
3 to counsel for Plaintiff and Defendant. Judgment shall be entered for Defendant
4 and the file shall be **CLOSED**.

5 DATED August 14, 2017.

A handwritten signature in black ink, appearing to be "M" or "Rodgers".

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JOHN T. RODGERS
UNITED STATES MAGISTRATE JUDGE