

No. 1-10-3649

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> COMMITMENT OF DONALD PODKULSKI)	Appeal from the
(The People of the State of Illinois,)	Circuit Court of
)	Cook County.
Petitioner-Appellee,)	
)	
v.)	No. 07 CR 80013
)	
Donald Podkulski,)	Honorable
)	Michael B. McHale,
Respondent-Appellant).)	Judge Presiding.

PRESIDING JUSTICE STEELE delivered the judgment of the court.
Justices Neville and Salone concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not abuse its discretion in ordering respondent, a sexually violent person, committed to a secure facility for control, care, and treatment.
- ¶ 2 Respondent Donald Podkulski appeals from the trial court's order committing him to the Illinois Department of Human Services (DHS) for institutional care in a secure facility. On appeal, respondent contends the trial court abused its discretion in ordering him committed to a secure facility, and instead, should have imposed conditional release. For the reasons that follow, we affirm.

¶ 3 Between 1985 and 1995, defendant pleaded guilty to, and was convicted of, eight separate sexually violent offenses against eight separate minors. For his guilty pleas, defendant received prison terms ranging from 6 to 25 years. In 2007, the State filed a petition seeking to have respondent declared a sexually violent person (SVP) and to have him committed under the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/40 (West 2008)). The petition alleged that respondent had been diagnosed with pedophilia and paraphilia and was dangerous, as his mental disorders made it substantially probable that he would engage in future acts of sexual violence.

¶ 4 The trial court found probable cause to conduct further proceedings. Following a bench trial, the court adjudicated respondent an SVP. Thereafter, the case proceeded to a dispositional hearing. It is the result of the dispositional hearing that is at issue in the instant appeal.

¶ 5 At the hearing, the parties stipulated that Dr. Robert Brucker, Jr., was qualified to testify as an expert in clinical psychology, specifically, in the area of sex offender evaluations and risk assessment. Dr. Brucker testified that he was assigned by DHS to conduct a psychological examination of respondent in the fall of 2007, before respondent was adjudicated an SVP. In preparing his examination report, Dr. Brucker reviewed the Illinois Department of Corrections master file on respondent, as well as various court documents, police records, and evaluations. He attempted to speak with respondent, but respondent declined to be interviewed. Dr. Brucker updated his report at least twice before respondent's adjudication.

¶ 6 Following respondent's adjudication as an SVP, Dr. Brucker conducted a pre-dispositional investigation to determine the least restrictive environment appropriate for respondent, as well as where he might live and work, and the status of his mental conditions. At the time, respondent was being detained in a secure treatment facility. Dr. Brucker obtained

updated documents from the facility and attempted to interview respondent, but again, respondent declined to be interviewed.

¶ 7 Dr. Brucker testified that in the course of his investigation, he considered the facts and circumstances of respondent's prior sexual offenses. In brief, he recounted in court that between 1985 and 1995, respondent had been convicted of a series of sex offenses involving male victims who ranged in age from 11 to 15 years old. With regard to respondent's mental history and present mental condition, Dr. Brucker testified that respondent had been diagnosed with pedophilia, sexually attracted to male nonexclusive types.

¶ 8 He considered respondent's risk to reoffend using standard actuarial instruments and risk factors which had been shown in research to be predictive of future sexual recidivism. On the actuarial instruments, respondent scored in the high risk category. No serious debilitating medical condition reduced his risk score and, while the successful completion of sex offense specific treatment would reduce his risk score, respondent had "never in his life" participated in such treatment. In contrast, because respondent was 55 years old at the time of the hearing, some age-based risk reduction was warranted.

¶ 9 Dr. Brucker noted that respondent had seldom engaged in meaningful conversations with clinical staff at the facility, had participated in minimal treatment, and had consistently declined to participate in sex offense specific treatment programs, as well as a majority of the other sex offense related treatment groups that were offered. The sex offense specific treatment program available at the facility offered 15 hours per week of group psychotherapy based on a cognitive-behavioral and relapse prevention model. According to Dr. Brucker, the program included assessment of individual needs; relapse prevention; restructuring and journaling; and a review of substance use, relationships, employment, and other factors to assist in developing an appropriate, effective intervention for each individual. Respondent had not participated in the

program. However, he did complete orientation and had participated in, but did not complete, the anger management and life stressors groups.

¶ 10 When asked whether he had been able to determine where respondent would live if he were released, Dr. Brucker answered in the negative. He stated that he had not been able to do so because respondent declined to speak with him. Dr. Brucker also indicated that he had not been able to determine how respondent would support himself in the community if he were released.

¶ 11 Dr. Brucker stated his belief that respondent needed a cognitive-behavioral based treatment program, as research indicated it was the most effective treatment method available for sex offenders. He considered what arrangements would be available to ensure respondent's access to and participation in treatment in the community if respondent were conditionally released. According to Dr. Brucker, multiple programs with approved treatment providers exist in the Cook County area, and the programs are largely cognitive in nature. However, many of them offer only one and a half to three hours per week live group psychotherapy in addition to an hour of individual psychotherapy. He knew of only one outpatient therapy program where an individual could participate in more than one session of group therapy per week. He had not contacted any programs to ask them about options specifically for respondent.

¶ 12 Dr. Brucker opined to a reasonable degree of psychological certainty that the most appropriate disposition for respondent would be commitment to a secure facility. Dr. Brucker explained that respondent had not shown, historically or presently, an interest or willingness to participate in any sex offender specific treatment. He also had not shown interest in participating in most other treatment being offered to him. Dr. Brucker stated that respondent's risk for sexual reoffending, as assessed by actuarial instruments, was "across the board in the high risk category." He noted that twice before, respondent had been released from incarceration only to

commit further sex offenses of a similar nature. Dr. Brucker stated, "There is no indication that I have seen that he's changed his thinking or changed his way of go[ing] about life at this point." Accordingly, it was his opinion that commitment in a secure facility would be the least restrictive placement and would best provide the necessary clinical treatment.

¶ 13 Following arguments, the trial court ordered respondent committed to a secure facility. In doing so, the trial court noted that respondent had refused both to be interviewed and to participate in sex offender treatment. The trial court found that respondent had a history almost exclusively with boys 11 to 13 years old, that his urges regarding sex with boys was intense, and that he was dangerous. The trial judge stated, "I see no need to think that any of that has changed, given his continued unwillingness to participate in treatment." Given the circumstances presented, the trial court determined that the least restrictive measure would be commitment to a secure facility.

¶ 14 On appeal, respondent contends that the trial court abused its discretion in finding that institutional care in a secure facility, rather than conditional release, was the appropriate placement for him. He asserts that the evidence presented at the dispositional hearing inadequately addressed the statutory elements that a court must consider in deciding between the two options, and that the trial court did not have sufficient information regarding the features of conditional release to decide it was not a viable alternative. Respondent argues that Dr. Brucker failed to adequately investigate the treatment options that would be available to respondent on conditional release; did not communicate with any of respondent's friends, family, therapists, or outside mental health providers, any of whom could have been a support system to assist respondent in accessing and participating in treatment; did not provide any evidence as to why placement in a secure facility would be superior to community-based treatment; and did not provide evidence regarding where respondent would live or be employed if placed on

conditional release. Finally, respondent contends that it was improper for the trial court to take into account his decision not to begin sex offender treatment while in pretrial detention.

¶ 15 The Act instructs that after an individual is found to be an SVP, the court "shall order the person to be committed to the custody of the [DHS]" and specify that the commitment be either institutional care in a secure facility or conditional release. 725 ILCS 207/40(a), (b)(2) (West 2008). When deciding between a secure facility or conditional release, the court is to consider: (1) the nature and circumstances of the behavior that was the basis of the allegations in the State's petition to have the respondent adjudicated an SVP; (2) the person's mental history and present mental condition; (3) where the person will live; (4) how the person will support himself; and (5) what arrangements are available to ensure that the person has access to and will participate in necessary treatment. 725 ILCS 207/40(b)(2) (West 2008); *In re Detention of Lieberman*, 379 Ill. App. 3d 585, 608-09 (2007). On appeal from an order committing a respondent to a secure facility, we review the trial court's decision for an abuse of discretion. *Lieberman*, 379 Ill. App. 3d at 609. We will find an abuse of discretion only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court. *Lieberman*, 379 Ill. App. 3d at 609.

¶ 16 Here, the record reflects that prior to ordering that respondent be committed to a secure facility, the trial court heard and considered evidence regarding all five of the relevant factors listed above. The first two factors are not in question: respondent's criminal history of eight separate sexually violent offenses against eight separate minors led to the State's petition to have him adjudicated an SVP; and respondent had been diagnosed with pedophilia. As to the third and fourth factors, Dr. Brucker testified that he was unable to determine where respondent would live or how he would support himself on conditional release, as respondent had refused to be interviewed. With regard to the fifth factor, Dr. Brucker explained that if respondent were

placed on conditional release, he would have access to group therapy once or twice per week in addition to individual therapy.

¶ 17 In our view, Dr. Brucker's testimony, while not extensive, adequately addressed the five factors identified in the Act so as to allow the trial court to make an informed decision between commitment to a secure facility and conditional release. Moreover, in addition to evidence of the five factors listed above, other evidence before the trial court supported its decision to commit respondent to a secure facility. Among other things, standard actuarial instruments pointed to a high risk of recidivism, respondent had twice before reoffended after serving a prison term, and respondent had not participated in any treatment programs for sex offenders.

¶ 18 We are mindful of respondent's argument that it was improper for the trial court to consider his decision not to begin sex offender treatment while he was in pretrial detention, since such participation would have been tantamount to conceding to his diagnosis, and any statements he may have made during treatment would have been admissible against him. However, respondent has cited no authority for this argument. This court has previously considered a respondent's refusal to undergo treatment as a factor supporting commitment to a secure facility. See *Lieberman*, 379 Ill. App. 3d at 609.

¶ 19 On review, we will not reweigh the relevant factors or substitute our judgment for that of the trial court. *Lieberman*, 379 Ill. App. 3d at 609. In light of all the evidence before the trial court in this case, including Dr. Brucker's testimony, the nature and circumstances of respondent's behavior, the risk of recidivism, respondent's diagnoses, and his refusal to participate in treatment for sex offenders, we cannot say that the trial court's order was arbitrary, fanciful, or so unreasonable that no reasonable person would take the court's view. See *Lieberman*, 379 Ill. App. 3d at 609. Accordingly, the trial court did not abuse its discretion in ordering respondent committed to a secure facility.

1-10-3649

¶ 20 For the reasons explained above, we affirm the judgment of the circuit court of Cook County.

¶ 21 Affirmed.