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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> COMMITMENT of CARLOS JOHNSON	)	Appeal from the Circuit Court of Winnebago County.
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	)	No. 06—MR—22
	)	
(The People of the State of Illinois, Petitioner-Appellee, v. Carlos Johnson, Respondent-Appellant).	)	Honorable John R. Truitt, Judge, Presiding.

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PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.  
Justices Bowman and Burke concurred in the judgment.

**ORDER**

*Held:* The trial court's judgment that the State had proven by clear and convincing evidence that respondent, a sexually violent person, had not made sufficient progress to be conditionally released was not against the manifest weight of the evidence; the evidence was merely in conflict, and the trial court was entitled to credit the State's evidence over respondent's.

Respondent, Carlos Johnson, appeals from the denial of his petitions for conditional release under section 60 of the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/60 (West 2008)), arguing that the State failed to prove by clear and convincing evidence that respondent had not made sufficient progress to be conditionally released. We affirm.

I. BACKGROUND

In December 2007, respondent was found to be a sexually violent person under the Act. The trial court ordered him committed to the Department of Human Services' Rushville Treatment and Detention Facility (TDF) for care, control, and treatment until further order of the court. On September 23, 2008, respondent petitioned for conditional release. Following a hearing, respondent's petition was denied.

On August 9, 2009, and on November 13, 2009, respondent filed nearly identical petitions for conditional release. At the hearing on the petitions, which took place on March 11, 2010, the State presented the testimony of Dr. Steven Gaskell, an expert in clinical psychology with a specialty in sex offender evaluation and risk assessment. Gaskell had examined respondent on October 29, 2007, conducted respondent's six-month reevaluation in June 2008, and examined respondent again in May 2009. Respondent presented the testimony of Dr. William Welch<sup>1</sup>, who had interviewed respondent's sister, respondent's daughter, and respondent in October 2009. Following the testimony, the court found that respondent had not made sufficient progress to be conditionally released and denied respondent's petitions. Respondent timely appealed.

## II. ANALYSIS

Respondent argues that “[i]n the face of conflicting expert opinions on the issue of whether the respondent had made sufficient progress to be conditionally released, the court's ruling, that the [S]tate had met its burden of clear and convincing evidence, is arbitrary and unreasonable.” We disagree.

Section 60(d) of the Act provides that the trial court shall grant a petition for conditional release “unless the State proves by clear and convincing evidence that the person has not made

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<sup>1</sup>The record and the briefs mistakenly identify this witness as William Welsh.

sufficient progress to be conditionally released.” 725 ILCS 207/60(d) (West 2008). In making a decision on conditional release, the court must consider “the nature and circumstances of the behavior that was the basis of the allegation in the petition [for commitment under the] Act, the person’s mental history and present mental condition, where the person will live, how the person will support himself or herself and what arrangements are available to ensure that the person has access to and will participate in necessary treatment.” 725 ILCS 207/60(d) (West 2008). We will reverse a court’s ruling on a petition for conditional release if it is contrary to the manifest weight of the evidence. *In re Commitment of Sandry*, 367 Ill. App. 3d 949, 978 (2006). “A decision is contrary to the manifest weight of the evidence only if an opposite conclusion is clearly apparent.” *Id.* (citing *Terminal-Hudson of Illinois, Inc. v. Goldblatt Brothers, Inc.*, 51 Ill. App. 3d 199, 206 (1977)).

The State proved by clear and convincing evidence that respondent had not made sufficient progress to be conditionally released. First, Gaskell testified concerning the nature and circumstances of respondent’s sexually violent offenses. In 1978, respondent was charged with rape. The rape charge was reduced to unlawful restraint, pursuant to a plea agreement, and respondent was sentenced to two years in prison. In 1981, respondent was again charged with rape. In that case, respondent encountered a 51-year-old woman on her morning walk, pushed her into a cornfield, and sexually assaulted her. He was sentenced to six years in prison. In 1993, respondent offered a ride to a woman and then pressured her to have sex. Respondent struggled with the woman as she tried to escape his moving vehicle. The car went off the road and down an embankment. When the car stopped, respondent struck the woman in the face, breaking her nose, and then he sexually assaulted her. Respondent was sentenced to 25 years in prison. In addition to the sexual offenses, respondent had five other convictions. Respondent also had both major and minor disciplinary reports while

in prison, including one for sexual misconduct for being physically and verbally inappropriate with a nurse.

Gaskell testified at length concerning respondent's past and present mental condition. Gaskell diagnosed respondent with (1) paraphilia not otherwise specified (NOS), sexually attracted to non-consenting females, non-exclusive type, (2) alcohol dependence in a controlled environment, and (3) personality disorder NOS, with antisocial traits. Gaskell explained that the mental disorders affect respondent's emotional and volitional capacity so as to predispose him to commit future acts of sexual violence. Respondent had urges and fantasies that he had acted upon on multiple occasions and had demonstrated a preference for sex with nonconsenting persons, predisposing him to do such acts again. Respondent's alcohol dependence and personality disorder disinhibit his already flawed judgment. In addition, employing actuarials and considering additional risk and protective factors, Gaskell opined, to a reasonable degree of psychological certainty, that respondent was substantially likely to commit future acts of sexual violence.

Gaskell testified concerning where respondent would live and how he would support himself. According to Gaskell, respondent reported to him that he would live in his mother's basement and that he would work for his sister's business distributing coffins.

Finally, Gaskell testified concerning the arrangements available to ensure that respondent had access to and would participate in the necessary treatment. According to Gaskell, respondent entered the "CORE" sex offender treatment program in July 2006. Initially, respondent denied that he was a sex offender and stated that he was participating in treatment solely to secure his release from the TDF. He had participated in the program for three years and had progressed through the second of five phases of treatment. Throughout the course of treatment, respondent had manipulated weaker

residents and had taken commissary items. Respondent did not accept feedback and had to work on not using threats and intimidation with other group members. Respondent was suspended from group treatment in September 2008 for manipulating others, lack of motivation in treatment, and stealing other residents' contact information. For a period of time, he was not in treatment, then he entered the "Power to Change" group. To get back into the CORE group, respondent had to complete Power to Change. Almost immediately after his return to CORE treatment in August 2009, respondent was caught with pornography. He continued to manipulate and intimidate other residents. He exhibited sexually inappropriate behaviors toward staff. According to Gaskell, respondent had not completed a relapse prevention plan. Respondent believed that his risk of reoffending was slight. Gaskell stated that respondent told him that he wanted to have outpatient treatment rather than the treatment he currently received at the detention facility, which was a 15-hour-per-week intensive treatment program that focused on relapse prevention. According to Gaskell, respondent remained a sexually violent person and the most appropriate place for him to be treated continued to be the TDF.

Nevertheless, respondent argues that Gaskell's testimony concerning whether respondent made sufficient progress conflicts with testimony provided on behalf of respondent by Welch and respondent. According to respondent, these conflicts undermine the State's evidence concerning the issue of progress in treatment. For instance, respondent maintains that, while Gaskell testified that respondent did not start the Power to Change group until April 2009 and that, as of June 2009, he had not yet returned to CORE treatment, respondent testified that he had reentered CORE treatment in January 2009. In addition, although Gaskell testified that respondent had not yet completed Phase II of treatment, respondent testified that he was working on Phase II and Phase III objectives

concurrently. Respondent also argues that Welch testified that respondent's statistical chances of reoffending are "static" and will remain high regardless of treatment and that, while respondent is in the high-risk category of 32.7% to 42.8%, this established that his chances of not reoffending are greater than his chances of reoffending.

Respondent also points to Welch's testimony concerning respondent's performance on various tests. Welch testified that the results of respondent's Personality Assessment Inventory showed that respondent is motivated to seek help when needed; the results of a 2006 Paulhus Test did not indicate any self-deception or impression management; the results of a Penile Plethysmograph did not indicate deviant sexual arousal; and the results of a 2006 Able Test (a visual test of sexual arousal) matched respondent's self-report of arousal. Welch also met with respondent and at no time did respondent talk about sexually deviant fantasies such as rape or nonconsensual sex. Further, the results of a Cognitive Distortion Test (which measures an individual's tendency to distort reality) showed that respondent was not distorting the information he provided to Welch. Welch opined that, based on his review of respondent's treatment records, respondent had made some progress in treatment.

Respondent has failed to establish that the trial court's decision is against the manifest weight of the evidence. He shows only that the testimony was in conflict, and conflicting testimony is insufficient to demonstrate that the court's decision is against the manifest weight of the evidence. See *In re Detention of Cain*, 402 Ill. App. 3d 390, 396-97 (2010) (mere existence of conflicting expert opinion insufficient to demonstrate probable cause warranting evidentiary hearing on petition for conditional release).

To be sure, the court noted that the testimony was confusing concerning respondent's participation in Power to Change and CORE treatment. The court stated:

“We know that [respondent] was removed \*\*\* from core during Phase II. Dr. Gaskell's report talks about being removed in November of '08 \*\*\* but then Dr. Gaskell's report talked about he needed to complete power to change before re-entering core, but then Dr. Gaskell backed off on that and said gee I think he is in power to change and core at the same time, but page 23 of his report talks about that power to change, completion of that is a condition precedent to re-entering core, but then he seemed to testify contrary to that, you could be in both. I will be honest with you, these experts are confusing. They are contradictory, they are some assistance to the Court, but they sure seem to be all over the board on certain points. And then when [respondent] re-entered core—now I know that \*\*\* Gaskell's report was June of '09. Gaskell's report doesn't even talk about the Respondent being back in core, but then the Respondent testified that he had been back in core since early '09. There's this conflicting testimony all over the place, quite frankly. At one point [respondent] talks about just completing Phase III but then admits that he has completed the polygraph questionnaire [*sic*] and he is ready to take the polygraph. I am concluding he is still in Phase II. I don't see how he is in Phase III.”

Despite the confusion, the court's conclusion that respondent was not in Phase III was supported by the evidence, as respondent admitted that he had not yet taken the polygraph. Thus, even assuming that respondent could be working on Phase III objectives while still in Phase II, the court could conclude that respondent had failed to make sufficient progress to be conditionally released.

Further, it is clear that the court considered Welch's testimony but found it less credible than Gaskell's testimony with respect to whether respondent had made significant progress. With respect to Welch's testimony, the court stated as follows:

“I question Dr. Welsh [*sic*] with regard to some of his testimony, specifically the portion of his Report that talks about—let me find the exact language. Where is it? Okay. It mentions in the Report that the Respondent has completed a significant portion of treatment and sort of danced around that, and finally admitted that that was inaccurate.

[Welch] talked about the fact that [respondent] has participated, and we all know, okay, he has been housed since February of '06. The length of time in a facility in and of itself is clearly not dispositive. If that were the case somebody could go to a facility, sit in the room and not participate and when they hit a magical number of months or years they are either discharged or conditionally released, but in any event Dr. Welsh [*sic*] backed off from his statement that [respondent] has completed a significant portion of his treatment, down to, at least my notes show, that he appears—and that's my emphasis—to be making some progress—and again that's my emphasis as well—so it's obviously watered down significantly from what it started.”

In concluding that respondent had not made sufficient progress to be conditionally released, the court noted and took into consideration all the relevant factors. The court stated:

“In my opinion, based on everything I have heard is that [respondent] is still in Phase II of V and hasn't completed Phase II. At this point, as counsel argued, there's no relapse prevention plan, there's no understanding cycle and understanding triggers. There's a ways to go. There's nothing with regard to his health condition or his age that mitigates his risk.

The Court has considered the criminal offenses, sexually related offenses as well as the non-sexual, the mental history and present mental condition, which was testified to at length, where he would live, how he would support himself, what arrangements are available to ensure he has access to and will participate in necessary treatment.

There are certainly some positives. The question is, quite honestly, has he made sufficient progress to be conditionally released, and while looking at my notes from the October of '08 hearing on the Petition for Conditional Release, he is still in Phase II, hasn't advanced out of that Phase, and quite frankly until I have seen further progress, I believe that at this point, given Dr. Gaskell's opinions to a reasonable degree of certainty that with regard to his risk of re-offending, he found it substantially probable that he would engage—will engage in acts of sexual violence in the future. He stated the opinion that he remains [a] sexually violent person, that the least restrictive and most effective treatment is where he presently is, and Dr. Welsh [*sic*] quite frankly backing off to the opinion that it appears that he is making some progress, I believe at this point that the State has proven by clear and convincing evidence that [respondent] has not made sufficient progress to be conditionally released.”

In sum, respondent has failed to establish that the court's decision is against the manifest weight of the evidence. The court heard testimony from both experts and found the State's expert to be more credible. An opposite conclusion is not apparent.

### III. CONCLUSION

Based on the foregoing, we affirm the order of the circuit court of Winnebago County.

Affirmed.