

No. 1-11-3488

**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

---

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 00 CR 80004
	)	
EDWARD LATKO,	)	Honorable
	)	Paul P. Biebel, Jr.,
Defendant-Appellant.	)	Judge Presiding.

---

JUSTICE HARRIS delivered the judgment of the court.  
Presiding Justice Quinn and Justice Simon concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court's denial of respondent's petition for conditional release under the Sexually Violent Persons Commitment Act was not against the manifest weight of the evidence.

¶ 2 Respondent, Edward Latko, who was previously adjudicated a sexually violent person (SVP) under the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/1 *et seq.* (West 2010)), appeals from a judgment denying his petition for conditional release under section 60 of the Act (725 ILCS 207/60 (West 2010)), contending that the judgment is against the manifest weight of the evidence.

¶ 3 In 1986, respondent pleaded guilty to five counts of criminal sexual assault and was sentenced to six years' imprisonment on each count, to be served concurrently. The record established that respondent committed those offenses against three male victims aged 12 to 15. One victim reported that the sexual offenses occurred over a period of five years, from age 7 until age 12. The reports indicated that respondent had engaged in a number of sexual offenses with the victims, including anal and oral sex, fondling of the victims' genitals, and showing the victims pornographic films depicting what appeared to be adult males and teenage boys engaged in sexual activity. On one occasion, respondent tied up two of the victims and performed oral sex on them while in the presence of the third victim.

¶ 4 In 1992, while on parole for those offenses, respondent was arrested again and charged with aggravated criminal sexual assault and aggravated criminal sexual abuse. The victim was respondent's cousin's five-year-old daughter, and the record showed that respondent removed the victim's pants, rubbed his penis against the victim's vagina, and told the victim not to tell anyone. Respondent pleaded guilty to aggravated criminal sexual assault and was sentenced to 18 years' imprisonment.

¶ 5 On October 12, 2000, prior to respondent's release from prison, the State filed a petition to commit respondent under the Act. On October 24, 2002, the court adjudicated him an SVP and committed him to a treatment detention facility (TDF) of the Department of Human Services (DHS).

¶ 6 On October 27, 2010, respondent petitioned for conditional release, under section 60 of the Act. On March 1, 2011, the trial court heard evidence on the petition. The State called Dr. David Suire, a licensed clinical psychologist, who first testified regarding respondent's various offenses. He stated that, although respondent pleaded guilty to the offenses and at one point admitted to police that he had engaged in sexual activity with one victim, he has since denied committing the offenses.

¶ 7 Suire testified that he evaluated respondent yearly since 2006. He attempted to conduct interviews with respondent every year, but, until the most recent report, respondent refused. For that most recent evaluation, Suire reviewed respondent's treatment record, his prior report, and conducted a one-hour interview with respondent.

¶ 8 Suire testified that he diagnosed respondent with three mental disorders predisposing him to engage in future sexual violence: pedophilia; paraphilia; and personality disorder not otherwise specified with narcissistic and dependent features. As to pedophilia and paraphilia, Suire testified that they went to respondent's "urges" and that "the fact that one is inclined to sexual contact with children, with adolescents or with nonconsenting persons, predisposes one to act on it." Regarding respondent's personality disorder, Suire testified that it "makes it more difficult for him to interact with people in an effective fashion and to get his emotional needs met. As such, he is more likely to seek to have those needs met with children."

¶ 9 Suire then testified that he conducted a "risk assessment" of respondent based on the results of actuarial instruments that measure certain risk factors, and considering additional "empirical risk" or "protective" factors, *i.e.*, factors that suggest that the risk is more or less than what the actuarial instruments indicate. The actuarial instruments included the Static-99, the revised Static-99 (Static-99-R), and the Minnesota Sex Offender Screening Tool-Revised (MnSOST-R). The Static-99-R differs from the Static-99 in only one respect: it accounts more precisely for the person's age. On the Static-99, respondent scored in the high risk range, and on the Static-99-R, he scored in the moderate-high to high risk range. On the MnSOST-R, he scored in the "refer risk" range, which Suire testified was the highest risk range.

¶ 10 Suire also identified five other risk factors applicable to respondent which increased his risk of recidivism: deviant sexual interest, low remorse/victim blaming, general social problems, employment instability, and childhood behavioral problems. Suire testified that he also considered whether the protective factors of "treatment progress, age and health" applied to

respondent. He stated that respondent had not participated in treatment at the TDF, and therefore his "treatment progress" would not be an applicable protective factor. Similarly, Suire concluded that the "health" factor was inapplicable, as he found no medical condition that would reduce respondent's risk of reoffending. Regarding respondent's age, Suire stated that it was "probably something of a protective factor[.]" but that his age was already adequately considered in the actuarial tests. Moreover, Suire stressed on cross-examination that there is a "great deal of dispute" about whether and to what degree age decreases the risk of recidivism, particularly with regards to offenders against children. Suire concluded that respondent "remains substantially probable to commit acts of sexual violence."

¶ 11 Suire then testified that respondent had not made sufficient progress to be conditionally released. In order to do so, respondent would need to "acknowledge his urges and actions[,] \*\*\* develop an understanding of why does he commit sexual offense[s], and \*\*\* develop effective interventions that will control that risk[.]" Suire testified that the "broad-spectrum, extensive treatment available" at the TDF made it the best place for addressing respondent's needs. He also testified that he was familiar with the treatment available to respondent if he were conditionally released, and determined that those services would not satisfy respondent's treatment needs. In Suire's opinion, the least restrictive and most beneficial environment for respondent to be treated was in the TDF.

¶ 12 Respondent called Dr. Kirk Witherspoon, a licensed psychologist whom the court had appointed to examine respondent. He testified that he reviewed respondent's file and, on June 30, 2010, he interviewed him for about five hours. In the interview, Witherspoon performed various diagnostic tests, including an IQ test, the SVR-20 and the Static 2002-R. Witherspoon stated that the interview portion typically takes only about an hour and a half, but that for the rest of the five-hour interview, Witherspoon was required to read the test questions to respondent, who he determined was "functionally illiterate[.]"

¶ 13 Witherspoon concluded that respondent had a "possible history of pedophilia[.]" He characterized this as a "rule out diagnosis[.]" meaning that there was some evidence but not enough to confirm, and noting that respondent denied committing the crimes to which he pleaded guilty. Witherspoon also diagnosed respondent with attention deficit disorder, and reading and writing disorders.

¶ 14 Witherspoon testified that he is familiar with the treatment program in the TDF, and that, as part of the program, a person is required to admit to the offenses for which they were convicted. Respondent, however, has refused to do so and maintained his innocence, and as such, the treatment available "doesn't fit [his] needs[.]" Witherspoon also testified that there was a "journaling" component of the treatment, which required participants to write down their thoughts and feelings to later share with the group. Witherspoon observed that respondent would be able to perform this task "only with extreme difficulty." As for the treatment available when on conditional release, Witherspoon commented that it is tailored more towards individual needs.

¶ 15 Witherspoon then testified that respondent scored "low" for his risk of reoffending on the SVR-20 and "moderate-high" on the Static 2002-R. When used in combination with a structured risk assessment tool (SRA), which Witherspoon maintained makes the result more accurate, the result decreased to "moderate or slightly less[.]" In respondent's case, the SRA lowered his result because he did not display "deviant sexual interest, deviant attitudes, \*\*\* [g]eneral relationship difficulty, [or] self-regulation problems[.]" Witherspoon testified that he used the Static 2002-R instead of the 99 or 99-R because it has been shown to be more accurate. Witherspoon stated that respondent's chances of reoffending were actually lower because his denial of sexual offenses against minors is "actually a protective factor[.]" meaning that the reoffense rates are higher for a person who admits their offenses than for those who do not. He further testified that respondent's risk assessment is reduced because of his age.

¶ 16 Witherspoon then concluded that respondent had a 6% chance of reoffending within five years, and that outpatient care would be the least restrictive environment appropriate for respondent's needed level of treatment. During cross-examination, Witherspoon stated that respondent's risk of reoffending was so low that there was no justification for treatment at all, but that, if the court wanted to "err on the side of caution[,] " it could order outpatient care.

¶ 17 The trial court denied respondent's petition for conditional release in a written order on September 22, 2011. The court observed that it was required to determine the "weight accorded [to the] expert testimony[,] " noting that the two experts were "entirely at odds." The court considered both "experts' evaluation reports and testimony fully," and found "that it must give greater weight to the opinion of Dr. Suire." The court then stated that it was basing its decision on Suire's conclusion that it was "substantially probable that [respondent] will engage in acts of sexual violence in the future if not confined to a secure setting." The court concluded that the least restrictive setting that would serve respondent's treatment needs while protecting the safety of the community would remain the TDF.

¶ 18 On appeal, respondent contends that the trial court erred in denying his petition for conditional release. Section 60 of the Act requires a trial court to grant a petition for conditional release unless it finds by clear and convincing evidence that "the person has not made sufficient progress to be conditionally released," considering "the nature and circumstances of the behavior that was the basis of the allegation [in the original petition to declare the person sexually violent], the person's mental history and present mental condition, 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 2010).

¶ 19 The trial court's finding may not be disturbed unless it is against the manifest weight of the evidence. *In re Commitment of Sandry*, 367 Ill. App. 3d 949, 978 (2006). A judgment is not against the manifest weight of the evidence unless "the opposite conclusion is clearly evident or

the [factual] finding is arbitrary, unreasonable, or not based in evidence.” *Samour, Inc. v. Board of Election Commissioners of the City of Chicago*, 224 Ill. 2d 530, 543 (2007). As the trier of fact, it is the circuit court’s role to resolve conflicting testimony by assessing the credibility of the witnesses and determining the weight to be accorded their testimony. *Sandry*, 367 Ill. App. 3d at 979; *In re Detention of Welsh*, 393 Ill. App. 3d 431, 457 (2009). We will not substitute our judgment for that of the circuit court on these matters. *In re Detention of Lieberman*, 379 Ill. App. 3d 585, 603 (2007). Where the circuit court’s factual findings are based upon credibility determinations, we will “generally defer to the [circuit] court.” *Sandry*, 367 Ill. App. 3d at 980; *Lieberman*, 379 Ill. App. 3d at 603.

¶ 20 Here, respondent contends that the court erred when denying his petition, when his "actuarial risk [of reoffending] was low to moderate[.]" He contends that the court ignored the testimony of Witherspoon, who concluded that respondent's risk of reoffending was only 6% in five years. We note, however, that in so arguing, respondent ignores the testimony of Suire in favor of his expert, Witherspoon. The trial court explicitly stated that it considered the reports and testimony of both experts, but found Suire's testimony more credible.

¶ 21 We also observe that respondent ignores evidence that respondent scored in the high risk range on the Static-99, the moderate-high to high risk range on the Static-99-R, and the highest risk range on the MnSOST-R. Even Witherspoon found his results to be "moderate-high" risk on the Static 2002-R. Moreover, the court also could properly consider the other risk factors Suire testified were applicable to respondent and increased his risk of recidivism, including deviant sexual interest; low remorse/victim blaming; general social problems, employment instability, and childhood behavioral problems.

¶ 22 Furthermore, although respondent claims that the Act does not require him to undergo treatment, we note that the Act requires the court to consider whether respondent has made "sufficient progress" to be conditionally released, which has been held to refer to the

respondent's progress in treatment. *Sandry*, 367 Ill. App. 3d at 976. As such, the court may properly look to respondent's continued refusal to engage in treatment when determining whether he had made sufficient progress. Moreover, respondent's refusal to consent to treatment also goes to the issue of whether he would participate in treatment if he were released into the community. Thus, based on the evidence presented, the circuit court could rationally have doubted that respondent would participate in necessary treatment if conditionally released. 725 ILCS 207/60(d) (2010).

¶ 23 Respondent also contends that the court erred in denying his petition when "he was above the age of 50, which substantially reduces his risk to re-offend." He claims that the court ignored evidence that "age alone can lower the risk of sex offending to an almost negligible level." In so arguing, respondent relies on a journal article that was never introduced into evidence, and we express no opinion on whether respondent's characterization of the study is accurate or whether the article is persuasive. We note however, that the issue of respondent's age, and its effect on respondent's risk of recidivism was extensively testified to by both experts, and the court was entitled to weigh the evidence and determine what weight to afford that factor. Although the experts provided conflicting testimony, this kind of conflict is insufficient to demonstrate that the court's decision is against the manifest weight of the evidence. *In re Detention of Cain*, 402 Ill. App. 3d 390, 396-97 (2010) (mere existence of conflicting expert opinion is insufficient to demonstrate probable cause warranting evidentiary hearing on petition for conditional release).

¶ 24 Respondent next asserts that the court should have given greater weight to Witherspoon's testimony because Suire did not perform psychological testing on respondent, and because Suire's interview of respondent lasted only one hour versus Witherspoon's five hours. This argument goes merely to the court's assessment of Suire's credibility and the weight to which his testimony was entitled. *Sandry*, 367 Ill. App. 3d at 980. Petitioner presents no compelling

No. 1-11-3488

reason for us to reweigh this evidence and substitute our judgment for that of the trial court, and we decline to do so.

¶ 25 For the foregoing reasons, we hold that respondent has not shown that the judgment 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 clearly apparent.

¶ 26 Affirmed.