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2013 IL App (3d) 120033-U

Order filed January 10, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellee,)	Will County, Illinois,
)	
v.)	Appeal No. 3-12-0033
)	Circuit No. 05-CF-2326
)	
PATRICK J. DAVIS,)	Honorable
)	Robert P. Livas,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices O'Brien and Schmidt concurred in the judgment.

ORDER

- ¶ 1 *Held:* The decision of the trial court to refuse to modify defendant's treatment plan to include supervised off-grounds pass privileges was against the manifest weight of the evidence where both witnesses at the hearing recommended defendant for the pass privileges, and the State presented no evidence in opposition.
- ¶ 2 Defendant, Patrick J. Davis, was charged by indictment with one count of armed robbery (720 ILCS 5/18-2(a)(2) (West 2004)) and one count of armed violence (720 ILCS 5/33A-2(a) (West 2004)). After the court found defendant unfit to stand trial and a serious threat to the

public safety, defendant was involuntarily committed pursuant to section 104-25(g)(2) of the Code of Criminal Procedure of 1963 (Code). 725 ILCS 5/104-25(g)(2) (West 2010). Defendant subsequently requested a modification to his treatment plan, which the trial court denied.

Defendant appeals, arguing that the trial court's decision to deny defendant's request for supervised off-grounds pass privileges was against the manifest weight of the evidence. We reverse.

¶ 3

FACTS

¶ 4 On December 1, 2005, defendant was charged by indictment with one count of armed robbery (720 ILCS 5/18-2(a)(2) (West 2004)) and one count of armed violence (720 ILCS 5/33A-2(a) (West 2004)). On January 10, 2006, defendant moved for an evaluation to determine his fitness to stand trial, which the trial court granted. On May 16, 2006, the trial court held a fitness hearing and found defendant unfit to stand trial. Defendant was placed in the custody of the Department of Human Services (DHS) for treatment.

¶ 5 On May 16, 2007, the trial court found that defendant remained unfit, and a discharge hearing was scheduled. 725 ILCS 5/104-23(b), 104-25(a) (West 2006). At the conclusion of the discharge hearing on May 5, 2008, the trial court ruled that the evidence was sufficient to find defendant "not not guilty" of the charged offenses. The trial court remanded defendant to DHS, and defendant's treatment was extended for a period of two years. 725 ILCS 5/104-25(d)(1) (West 2006).

¶ 6 Upon completion of defendant's extended period of treatment, the trial court determined that defendant remained unfit for trial. On December 4, 2010, the court found that defendant was a serious threat to the public safety and remanded him to DHS for further treatment, with a

maximum commitment date of October 29, 2030. 725 ILCS 5/104-25(g)(2) (West 2010).

¶ 7 On February 28, 2011, after almost five years of continuous mental health treatment, defendant moved for a hearing to modify his treatment plan to include unsupervised on-grounds and supervised off-grounds pass privileges. 725 ILCS 5/104-25(g)(2)(i), 104-31 (West 2010).

¶ 8 At the hearing on his motion on October 17, 2011, defendant called Sandra Roy, a licensed social worker at the Elgin Mental Health Center (EMHC), where defendant was in treatment. Roy testified that defendant had been her patient from July 1, 2008, up until the time of the hearing. Roy observed defendant twice a day for 5 to 10 minutes, and she also received information about defendant from group leaders at EMHC. Defendant had been at EMHC approximately four years.

¶ 9 While at EMHC, defendant attended group sessions including chemical dependency, anger management, stop the violence, and alcoholics anonymous. The information Roy received from group leaders indicated that defendant was quiet in group sessions, but defendant attended them regularly, was attentive, and had average participation compared to other patients. Defendant knew the rules and followed them. When not in group session, defendant would play cards or read the Bible.

¶ 10 Roy testified that defendant was never threatening or aggressive. If defendant got angry, he would get quiet. Since attending group sessions and taking his medications, defendant developed coping skills to deal with his anger, such as walking away or notifying staff of a problem. Roy testified that defendant was compliant in taking his psychotropic medications, and the medications had a positive effect on defendant. Roy testified that defendant understood the importance of taking his medications.

¶ 11 Roy opined that defendant did not constitute a serious threat to public safety and recommended unsupervised on-grounds and supervised off-grounds pass privileges. Roy testified that defendant's treatment team did not believe defendant was dangerous or an elopement risk. At the time of the hearing, defendant did not have any off-grounds privileges, but Roy described supervised off-grounds pass privileges as allowing patients off EMHC grounds so patients can demonstrate responsibility and progress towards discharge.

¶ 12 Roy testified that off-grounds passes allowed patients to go to the substance abuse treatment center, the library, or the recreation center. Roy reported that EMHC had not had any problems with patients escaping in the past. For off-grounds trips to the treatment center, patients were picked up by security personnel in a van, taken to the treatment center in handcuffs, and uncuffed at the door while security escorts remained outside the door until the session was complete.

¶ 13 When going to the library or recreation center, which remained open to the public during off-grounds passes, defendant would not be handcuffed and would be accompanied by recreational therapists. Typically one therapist is responsible for three patients during these outings. In the event of a problem with a patient, the therapists are not allowed to restrain patients, but instead must call EMHC or the police for assistance.

¶ 14 The hearing was continued until November 7, 2011, at which time defendant called Dr. Farzana Husain, a psychiatrist at EMHC, who had been defendant's treating psychiatrist since December 2010. Husain saw defendant about three times a month for about 15 to 20 minutes. Based on his observations and on the reports from the staff at EMHC, Husain testified that defendant had been progressing well, his behavior had improved, and he was compliant with

medications. Husain prescribed defendant two medications for psychosis, mood stabilization, and keeping defendant calm. Defendant did not have behavior problems with peers and had been cooperative with his treatment plan.

¶ 15 Husain opined that defendant was not a threat to public safety because he did not have a significant legal history. Husain did not recommend defendant's release from EMHC, but he recommended granting off-grounds pass privileges so that defendant could attend substance abuse treatment. The treatment was an intensive six-month program that the patients would attend twice a week. Husain believed defendant would benefit from both the counseling and the added responsibility of being in a different environment.

¶ 16 Regarding the charged offense, Husain testified that defendant and his brother attempted to rob a Walgreens while armed, and that he fired his weapon at people in the store. Defendant did not fully appreciate the role that substance abuse had played in his life, but admitted he was intoxicated at the time of the offense. Defendant did not recall any of the details surrounding the offense. Husain testified that defendant was stable, but would not be if he drank or took drugs again. Husain opined that defendant would benefit from the more intensive substance abuse treatment.

¶ 17 Husain further testified that following the hearing on October 17, 2011, defendant decided to attend more group sessions so he would qualify for pass privileges. Defendant enrolled in reality orientation, coping skills, interpersonal skills, current events, life skills, ethical thinking, and living in the community. Husain testified that defendant's motivation had improved since attending these groups.

¶ 18 The State did not put on any evidence. In closing arguments, the State objected to

defendant's request for unsupervised on-grounds pass privileges. In relation to supervised off-grounds passes, the State argued that there was a security concern relating to the use of recreational therapists instead of security officers to transport defendant to the library and recreation center. Accordingly, the State suggested that if the court were to grant supervised off-grounds passes, it should limit the pass so that defendant may only attend the substance abuse treatment center. Thereafter, the court would be able to decide whether or not more off-grounds passes should be granted.

¶ 19 Following arguments from both parties, the trial court denied defendant's request for conditional release and unsupervised on-grounds pass privileges. The court conditionally granted defendant's request for supervised off-grounds pass privileges if defendant could provide the court with specific details regarding safety procedures during the off-grounds visits and who would accompany defendant on off-grounds visits.

¶ 20 The hearing resumed on November 16, 2011, and defendant presented an updated report from EMHC. The report mainly summarized Roy's testimony that security officers, and not staff from EMHC, accompany patients to the treatment center. The report further indicated that nurses would evaluate defendant to determine whether he would be able to leave EMHC each day he was scheduled for off-grounds passes. The trial court found the report too vague to ensure adequate protection for the safety of others. Despite defense counsel's argument the EMHC had never had any problems with patients during off-grounds privileges, the court was still concerned that the security protocols in place were insufficient to protect the public if something went wrong. The court then made an analogy to the first time the space shuttle blew up. The court continued the hearing to allow defendant the opportunity to present more information regarding

security.

¶ 21 On November 30, 2011, defendant informed the court that EMHC would not make special accommodations for defendant during pass privileges, and that EMHC would only provide security as previously reported at the last hearing. The trial court denied defendant's request for supervised off-grounds pass privileges.

¶ 22 On December 28, 2011, defendant filed a motion to reconsider the trial court's judgment, which the trial court denied. Defendant appeals.

¶ 23 ANALYSIS

¶ 24 On appeal, defendant challenges only the trial court's decision to deny defendant's request for supervised off-grounds pass privileges, asserting it was against the manifest weight of the evidence.

¶ 25 Section 104-25(g)(2) of the Code provides that, if a defendant is remanded to DHS, he must be placed in a secure setting, unless the court determines that there are compelling reasons why such placement is not necessary. 725 ILCS 5/104-25(g)(2) (West 2010). A defendant placed in DHS may not be permitted any off-grounds privileges, unless approved by a specific court order. 725 ILCS 5/104-31 (West 2010). The court order may include such conditions on defendant as deemed appropriate and necessary to reasonably assure defendant's satisfactory progress in treatment and the safety of defendant or others. *Id.*

¶ 26 On review, we will not reverse a trial court's determination whether defendant should be granted pass privileges, unless such determination is against the manifest weight of the evidence. *People v. Cross*, 301 Ill. App. 3d 901 (1998). A decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable,

arbitrary, or not based on the evidence presented. *In re Elizabeth McN.*, 367 Ill. App. 3d 786 (2006).

¶ 27 Upon review of the record, we find that the trial court's decision to deny defendant off-grounds pass privileges was against the manifest weight of the evidence. Defendant presented the testimony of two experts, both of whom recommended granting defendant off-grounds pass privileges. The experts recommended pass privileges so defendant could attend intensive substance abuse treatment and demonstrate responsibility in a new environment to ensure his continued progress. The experts testified that defendant did not constitute a serious threat to public safety and was not an elopement risk. Despite this evidence, the trial court denied defendant's request, stating that EMHC lacked proper security to ensure adequate protection for the safety of others.

¶ 28 It is for the trial court to weigh the experts' opinions with the other evidence presented and draw its own conclusions. See *Cross*, 301 Ill. App. 3d 901. In this case, however, it was unreasonable for the trial judge to reject the experts' recommendations where there was no evidence presented that defendant required additional security.

¶ 29 Defendant put on evidence from DHS that it never had a problem with a patient during the exercise of supervised off-grounds privileges. The trial judge took the approach that "there is a first time for everything," by drawing an analogy between the exercise of pass privileges and the first time a space shuttle blew up. The trial judge, in essence, ignored the testimony of the people charged with defendant's treatment because defendant might possibly be the first patient to ever cause a problem during this process. This attitude would stifle all rehabilitation.

Furthermore, it flies in the face of what is known regarding this patient: the patient was drunk at

the time of the only, albeit very serious, criminal incident in which he had ever been involved. He is on psychotropic medications, and he would be evaluated by a nurse to make sure he was on his medications and fit before leaving the facility for the off-grounds treatment.

¶ 30 We acknowledge that the nature of defendant's criminal conduct which led to his commitment can be relevant to his dangerousness; however, it must be considered along with the other evidence presented at the hearing. See *In re Stephenson*, 67 Ill. 2d 544 (1977). The uncontradicted evidence showed that defendant was not threatening or aggressive, had been progressing well in treatment, and was compliant with medications. Despite evidence of defendant's progress in the last five years of treatment and the experts' opinions that he was not dangerous, the court determined that defendant required additional safety measures. The court's decision was in contradiction to cases such as *People v. Blumenshine*, 72 Ill. App. 3d 949 (1979), which held that the trial court may not make its own determination of defendant's dangerousness to the exclusion of uncontroverted expert testimony. Based on the record before us, we find that the trial court's decision to deny defendant supervised off-grounds pass privileges was against the manifest weight of the evidence. See *Elizabeth McN.*, 367 Ill. App. 3d 786.

¶ 31 CONCLUSION

¶ 32 For the foregoing reasons, the judgment of the circuit court of Will County is reversed, and the cause is remanded for further proceedings.

¶ 33 Reversed and remanded.