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2013 IL App (3d) 120504-U

Order filed September 12, 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 14th Judicial Circuit,
Plaintiff-Appellee,)	Whiteside County, Illinois,
)	
v.)	Appeal No. 3-12-0504
)	Circuit No. 90-CF-125
)	
BYRON E. HALE,)	Honorable
)	Stanley B. Steines,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices Schmidt and Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's constitutional right to a speedy trial was not violated during recovery proceedings under the Sexually Dangerous Persons Act (725 ILCS 205/0.01 *et seq.* (West 2008)).

¶ 2 Defendant, Byron E. Hale, was charged with two counts of criminal sexual assault (Ill. Rev. Stat. 1989, ch. 38, ¶ 12-13(a)(2)). The State filed a petition alleging that defendant was a sexually dangerous person (Ill. Rev. Stat. 1989, ch. 38, ¶ 105-3), and defendant stipulated to the allegations. Defendant was committed to the custody of the Illinois Department of Corrections

(DOC). On November 6, 2009, defendant filed an application for recovery and unconditional discharge (725 ILCS 205/9 (West 2008)). On April 27, 2012, following a bench trial, the trial court denied defendant's application. Defendant appeals, claiming his constitutional right to a speedy trial was violated. We affirm.

¶ 3

FACTS

¶ 4 Defendant was charged with two counts of criminal sexual assault (Ill. Rev. Stat. 1989, ch. 38, ¶ 12-13(a)(2)). Prior to trial, the State filed an application alleging that defendant was a sexually dangerous person (Ill. Rev. Stat. 1989, ch. 38, ¶ 105-3). Defendant stipulated to the allegations and was committed to the DOC as a sexually dangerous person.

¶ 5 On November 6, 2009, defendant filed an application for recovery and unconditional discharge (725 ILCS 205/9 (West 2008)). The court scheduled a case management conference for April 12, 2010. On December 9, 2009, defendant filed a motion explaining that he would not participate in any psychiatric evaluations relating to his application. On January 8, 2010, the court sent a copy of defendant's application to the DOC, as demanded by section 9(a) of the Sexually Dangerous Persons Act (Act). 725 ILCS 205/9(a) (West 2008) ("the clerk of the court shall cause a copy of the application to be sent to the Director of the Department of Corrections").

¶ 6 At the April 12 conference, the court ordered the State to complete a sociopsychiatric report, as required by section 9(a) of the Act. The State explained that the State psychiatrist would need eight months to complete the report. The court ordered the State to complete the report by December 13, 2010, and continued the case management conference to that date.

¶ 7 On October 7, 2010, respondent filed a motion entitled "Combined Action for

Declaratory Judgment and Motion for Hearing." The motion alleged that the court had allowed too much time for pretrial discovery. The court decided to postpone ruling on the motion until the case management conference on December 13. However, the weather prevented defendant from appearing on December 13, and the court continued the case management conference to January 28, 2011.

¶ 8 At the January 28 conference, the State indicated that the report was still 90 days from completion. Respondent reiterated that he would not participate in the State's creation of the report. Respondent moved to have a hearing on his motion continued until May 2, 2011. The court continued the conference and respondent's motion to that date. On May 2 defendant waived his right to an attorney and his right to a jury trial. The court set a bench trial on defendant's application for September 6, 2011.

¶ 9 On May 4, 2011, the State filed the sociopsychiatric report. The report stated that defendant had refused program treatment in the DOC since January 2008 and found that defendant remained a sexually dangerous person.

¶ 10 On September 6, 2011, defendant appeared and moved for substitution of judge. The cause was continued to September 27, 2011, for a hearing before a different judge, at which time defendant's motion was denied. The matter was continued to November 29, 2011, for a hearing on defendant's pending motions.

¶ 11 At the November 29 hearing, the court denied defendant's motions. The cause was continued to April 27, 2012, for a bench trial. After a bench trial on April 27, the court denied defendant's application for recovery. Defendant appeals.

¶ 12

ANALYSIS

¶ 13 Defendant raises three claims on appeal: (1) his constitutional right to a speedy trial was violated where he filed an application for sexually dangerous person recovery and discharge on November 6, 2009, and he received a bench trial on his application on April 27, 2012; (2) the Act (725 ILCS 205/0.01 *et seq.* (West 2008)) is unconstitutional as applied to defendant as it violates his constitutional right to a speedy trial; and (3) the Act is unconstitutional on its face because, without mandatory time lines to ensure that recovery proceedings are timely conducted, the Act is in violation of the constitutional right to a speedy trial.

¶ 14 I. Constitutional Right to a Speedy Trial

¶ 15 Defendant claims that his constitutional right to a speedy trial was violated where, after being committed as a sexually dangerous person (see 725 ILCS 205/1.01 (West 2008)), defendant filed an application for recovery and discharge (725 ILCS 205/9 (West 2008)) on November 6, 2009, and received a hearing to decide that application on April 27, 2012, a wait of more than 29 months.

¶ 16 For clarity's sake, it is important here to distinguish between the sources of the right to speedy trial. First, in Illinois, there is a statutory right to a speedy trial. 725 ILCS 5/103-5 (West 2008). The statutory right applies only to criminal prosecutions and does not apply to proceedings under the Act. *Id.*; *People v. Spurlock*, 388 Ill. App. 3d 365 (2009); *In re Detention of Hughes*, 346 Ill. App. 3d 637 (2004). Second, the fifth amendment of the United States Constitution, as incorporated through the due process clause of the fourteenth amendment, guarantees the right to a speedy trial in all criminal prosecutions. U.S. Const. amends. V, XIV; *Barker v. Wingo*, 407 U.S. 514 (1972); *Klopfer v. North Carolina*, 386 U.S. 213 (1967).

¶ 17 Proceedings under the Act are "civil in nature." 725 ILCS 205/3.01 (West 2008).

However, because of the deprivation of liberty that results from commitment, the defendant/respondent is entitled to the "essential protections" provided at a criminal trial. *People v. Trainor*, 196 Ill. 2d 318, 328 (2001). The Act itself guarantees such protections as the right to a jury trial, the right to counsel, and the right to proof beyond a reasonable doubt. 735 ILCS 205/3.01, 205/5 (West 2008). Due process requires additional protections, including the constitutional right to a speedy trial and the right to confront and cross-examine witnesses. *People v. Lawton*, 212 Ill. 2d 285 (2004); see also *People v. Nastasio*, 19 Ill. 2d 524 (1960) (right to confront and cross-examine witnesses); *People v. Beshears*, 65 Ill. App. 2d 446 (1965) (right to a speedy trial).

¶ 18 The State acknowledges that respondents are afforded the right to a speedy trial during commitment proceedings under the Act, citing *Lawton*, 212 Ill. 2d 285, and *People v. Craig*, 403 Ill. App. 3d 762 (2010). The State argues, however, that the right does not apply to recovery proceedings. In support of that argument, the State claims that no case has explicitly held that the right to speedy trial applies to a recovery hearing. The State offers no case holding, or even suggesting, that the right to a speedy trial does not apply during recovery proceedings. Nor does the State provide a compelling argument about *why* due process might demand the right to a speedy trial at a commitment proceeding but not a recovery hearing.

¶ 19 We hold that due process guarantees the right to a speedy trial at a recovery hearing under the Act. In support of that holding, we cite our recent decision in *People v. Donath*, 2013 IL App (3d) 120251. In *Donath*, the defendant/respondent claimed that his constitutional right to a speedy trial was violated where a three-year delay occurred between his filing of an application for recovery and the trial on that application. In denying defendant's claim, we acknowledged

that the right to a speedy trial applies to a recovery hearing under the Act. (We note that the *Donath* decision was issued on March 22, 2013, after the State filed its brief in the present case.)

¶ 20 The holding in *Donath* comports with existing case law on the topic. The State is correct that previous cases' declarations of the right to a speedy trial at recovery proceedings were *dicta*. See, e.g., *Lawton*, 212 Ill. 2d at 295 ("defendants subject to the Act must be accorded *** the right to a speedy trial"); *Craig*, 403 Ill. App. 3d at 766 ("In any proceeding under the Act, a respondent has the right to demand a trial by jury and to be represented by counsel. [Citation] A respondent also has the right to a speedy trial"). However, we find the reasoning and language of those cases persuasive and hold that the right to a speedy trial applies to recovery proceedings under the Act.

¶ 21 Having established that the constitutional speedy trial right applies to recovery proceedings, we apply the four-factor test of *Barker*, 407 U.S. 514, to determine whether a violation occurred. The four factors are: length of the delay, reasons for the delay, prejudice to the defendant's defense, and defendant's assertion of the right. *Id.* Determining whether there was a violation of a defendant's speedy trial right "necessitates a functional analysis of the right in the particular context of the case." *Id.* at 522.

¶ 22 The first consideration is length of delay. A speedy trial analysis will not be triggered unless the length of delay "crosses the threshold from ordinary to 'presumptively prejudicial.'" *People v. Crane*, 195 Ill. 2d 42, 52 (2001) (quoting *Doggett v. United States*, 505 U.S. 647, 651-52 (1992)). Typically, a delay approaching one year is considered presumptively prejudicial. *Id.* In the present case, the delay was 29 months long. We find that the delay was presumptively prejudicial and, therefore, we proceed to analyze the remaining three factors. See *id.*

¶ 23 We next consider the reason for the delay. The State has the burden of justifying any delay that occurred. *Id.* An intentional delay will weigh heavier against the State than a more neutral delay. *Id.* Under the Act, a trial on a defendant's application for recovery cannot occur until the State prepares a sociopsychiatric report about the defendant. In the present case, defendant filed his application for recovery on November 6, 2009, and the report was filed with the court on May 4, 2011, a delay of nearly 18 months. However, part of the delay can be attributed to defendant's refusal to participate in the creation of the report. The State also cites the unavailability of the DOC psychiatrist as contributing to this period of delay. We find any delay attributable to the State to be unintentional.

¶ 24 After the report was filed on May 4, 2011, defendant received a bench trial on April 12, 2012, a delay of approximately 11 months. A bench trial was scheduled for August, but defendant moved for substitution of judge, and the bench trial was postponed. After that motion was denied, the court continued the matter to November 2012 to decide defendant's pending motions. The bench trial itself was continued to April 2012. We attribute the delay from September to April to defendant because, if not for defendant's motions, a bench trial would have taken place in August 2011.

¶ 25 We now consider the third factor—whether the delay prejudiced defendant's defense. The *Barker* test envisions three kinds of prejudice: (1) oppressive pretrial incarceration; (2) anxiety and concern of the accused; and (3) the possibility that the defense will be impaired. *Barker*, 407 U.S. 514. Oppressive pretrial incarceration is less of a concern in recovery proceedings because the respondent is detained only after having been adjudicated sexually dangerous in a prior commitment proceeding. That situation is unlike a criminal defendant who may be in pretrial

incarceration based only upon a finding of probable cause. However, even in the context of recovery proceedings, a respondent suffers prejudice if detained as a sexually dangerous person after he has recovered. In the present case, defendant did suffer oppressive pretrial incarceration, albeit to a lesser degree than would a typical criminal defendant. In addition, he certainly suffered some amount of anxiety and concern while he awaited trial, however, not as much as would a criminal defendant.

¶ 26 The third type of prejudice, impairment of the defense, is the most serious. *Id.* This prejudice is concerned with the risk that the longer the delay, the more likely it is that defendant's witnesses will have died or forgotten the events in question. This risk is also reduced in a recovery proceeding because the only relevant evidence is the defendant's progress in treatment; the only potential witnesses are the defendant's doctors and therapists. In the present case, defendant suffered no prejudice to his ability to present his case, as all desired witnesses were able to appear. The greatest burden to defendant's defense was his refusal to cooperate with the State's psychiatrists.

¶ 27 As to the final factor—defendant's assertion of the right—defendant admits on appeal that he failed to assert the right below. As noted in *Barker*, "failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial." *Barker*, 407 U.S. at 532.

¶ 28 When balancing the four factors, and taking into consideration the "particular context" of a recovery proceeding, we find that respondent's constitutional right to a speedy trial was not violated. Although a delay of nearly 2½ years is presumptively prejudicial, we find that respondent contributed to a significant amount of the delay, and the remainder of the delay was unintentional on the part of the State. Defendant's defense was not prejudiced by the delay, and

defendant failed to raise the speedy trial issue. On balance, we find that defendant was not prejudiced, and his speedy trial claim fails.

¶ 29 II. Constitutionality of the Act

¶ 30 Defendant claims that the Act (725 ILCS 205/0.01 *et seq.* (West 2008)) is unconstitutional both on its face and as applied to his case. He argues the Act violates the constitutional right to a speedy trial because it lacks a mandatory time line dictating when the director of the DOC must "cause to be prepared and sent to the court a sociopsychiatric report concerning the applicant," as required by section 9(a) of the Act. 725 ILCS 205/9(a) (West 2008). The lack of a deadline, defendant argues, allows for delay in the preparation and sending of the report. That delay could postpone defendant's hearing under section 9(b) to such a degree that his constitutional right to a speedy trial is violated. Defendant argues that because the statutory scheme of the Act permits a risk of unconstitutional delay, the Act is unconstitutional.

¶ 31 A. Constitutionality of the Act as Applied

¶ 32 As explained, *supra*, the application of the Act to defendant did not violate his constitutional right to a speedy trial. Respondent has not explained how the analysis of this issue would or could differ from the four-factor *Barker* analysis applicable to his first claim.

¶ 33 B. Constitutionality of the Act on its Face

¶ 34 A statute is invalid on its face only if no set of circumstances exist under which the statute would be valid. *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296 (2008). As established, *supra*, the Act is valid as applied to defendant in the present case. Therefore, circumstances exist under which the statute is valid.

¶ 35 CONCLUSION

¶ 36 The judgment of the circuit court of Whiteside County is affirmed.

¶ 37 Affirmed.