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I. BACKGROUND

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A. The State's Commitment Petition

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In January 2006, the State filed a petition, requesting that the trial court enter an order, committing respondent to the custody of the Department of Human Services (Department) upon his release from prison because he remained a sexually violent person as defined by the Act (725 ILCS 207/1 to 99 (West 2006)). Respondent had been sentenced to 74 years in prison (of which he served 30 years) for the following eight sex offenses he committed between November 1975 and January 1976 in Sangamon and Macon Counties.

¶ 7

In November 1975, respondent, who was then 22 years old, was interrupted attempting to sexually assault a 13-year-old minor in a parking lot by removing her pants and underwear and lying on top of her with his pants down. Later that month, respondent—who was wearing a ski mask and brandishing a knife—gained access to the backseat of an adult female victim's car. Respondent fled when the victim deliberately collided with another car.

¶ 8

In December 1975, respondent forcefully confined a nine-year-old minor and placed his penis into her mouth until he ejaculated. Shortly thereafter, respondent forced another victim and her two minor children, ages three and six, into the bathroom of a laundromat, and raped the mother while holding a knife to the throat of one of her children.

¶ 9

In January 1976, respondent forced a victim and her two minor children, ages six and seven, into a public restroom at knifepoint. Respondent then forced the victim to (1) perform a "deviant sexual act" and (2) engage in sexual intercourse. Approximately two weeks later, respondent entered a car where a 15-year-old minor was sitting with her 2-year-old nephew. Respondent, who was brandishing a knife, threatened to kill the victim and her nephew if she did

not cooperate. While holding the knife to the nephew's throat, respondent fondled the victim's breasts and forced his penis into her mouth until he ejaculated.

¶ 10 The following day, respondent entered a laundromat with a stocking over his head and forced two women and the seven-year-old minor of one of the women into the restroom at knifepoint. Respondent held the knife to the minor's throat and threatened to kill them if they did not cooperate. Respondent forced the women to undress, forced his penis into one of their mouths, and digitally penetrated the other's vagina. He then forced the women to perform oral sex on each other and, thereafter, forced sexual intercourse on one of them.

¶ 11 During the same month—January 1976—respondent abducted an 11-year-old minor at knifepoint as she was leaving school. He drove her to a remote location, removed her pants and underwear, and forced his penis into her mouth until he ejaculated. Respondent also digitally penetrated her vagina and performed oral sex on her before letting her go.

¶ 12 In March 2007, following the trial court's finding of probable cause for commitment under the Act, the court found respondent to be a sexually violent person and remanded him to the care, custody, and control of the Department until such time as he was no longer a sexually violent person (725 ILCS 207/40 (West 2006)).

¶ 13 B. First Petition for Conditional Release

¶ 14 In October 2008, respondent filed his first petition for conditional release. In February 2009, following a probable cause hearing, the trial court dismissed respondent's petition, finding "cause did not exist to believe that it is not substantially probable that the [r]espondent will engage in sexual violence if on release or conditional release." This court later affirmed the court's dismissal of respondent's petition for conditional release. *People v. Huston*,

No. 4-09-0129 (Jan. 29, 2010) (unpublished order under Supreme Court Rule 23).

¶ 15 C. Second Petition for Conditional Release

¶ 16 In November 2009, respondent filed his second petition for conditional release. In March 2010, respondent moved to withdraw his petition, which the trial court later granted.

¶ 17 D. Third Petition for Conditional Release

¶ 18 In December 2010, respondent filed his third petition for conditional release, which is the subject of this appeal. In his petition, respondent noted that Kimberly Weitzl, a clinical psychologist, performed an annual examination of him pursuant to section 55 of the Act (725 ILCS 207/55 (West 2008)). Following that examination, Weitzl concluded within a reasonable degree of psychological certainty that although respondent continued to be a sexually violent person, he was safe to be managed in the community on conditional release. The State filed a motion for appointment of examiner and the trial court appointed Angeline Stanislaus, a forensic psychiatrist, to perform an evaluation on respondent.

¶ 19 In January 2012, the trial court held an evidentiary hearing on respondent's petition for conditional discharge. At the evidentiary hearing, the State presented expert testimony and a written report from Stanislaus. Respondent presented expert testimony and a written report from Weitzl.

¶ 20 Both experts diagnosed respondent with the following disorders: paraphilia, not otherwise specified; pedophilia, sexually attracted to females, nonexclusive; voyeurism; and antisocial personality disorder. Additionally, Stanislaus diagnosed respondent with sexual sadism and frotteurism.

¶ 21 Both experts found that respondent scored in the "High" risk category to reoffend

on the Static 99 actuarial risk assessment tool. Additionally, Stanislaus found respondent scored in the "High" risk category to reoffend on the Static 99 R actuarial risk assessment tool and Weitzl found respondent scored in the "Highest" risk category for sexual reoffense on the Minnesota Sex Offender Screening Tool-Revised (MnSOST-R). Weitzl noted that others who scored in this MnSOST-R risk category had a 72% chance of reoffending within six years. Both experts agreed that respondent's age lowers his risk of reoffending (respondent was 58 at the time of the hearing). However, Stanislaus noted age was already factored into the risk assessment scores and she would not assign it a further value, whereas Weitzl noted that research indicates the risk of reoffending for individuals who commit stranger rape decreases significantly after the age of 50 and even further after the age of 60. Each also noted additional risk factors, including sexual deviance, intimacy deficits, early onset of sexual offending, sexual preoccupation, antisocial personality disorder, and multiple paraphilias.

¶ 22 Weitzl opined that although respondent remained substantially likely to sexually reoffend, based on his diminishing vision due to Cone-rod Dystrophy (which she felt was "probably the most important" protective factor), increased age, and progress in sex-offender treatment, respondent was safe to be managed in the community on conditional release.

Stanislaus disagreed, opining that respondent had not made sufficient progress to be released on conditional release, adding that respondent's impaired vision problem was not a protective factor as it was not a terminal illness and respondent had adapted to his loss of vision.

¶ 23 Stanislaus noted that although respondent began sex-offender treatment in 2006 and had seen initial progress, his progress was "halted" for at least two months in mid-2011 due to lack of motivation. Respondent was also suspended from group therapy from January to

September 2010 because he failed to participate. Stanislaus testified that respondent has expressed a lot of hopelessness in the group sessions and has difficulty receiving feedback. She believed that respondent's treatment progress was cause for concern based on his severe offense history and respondent's self-report that prior to committing the crimes for which he was committed, he was depressed and felt helpless and hopeless. Weitzl acknowledged that respondent had been experiencing decreases in his motivation to participate in treatment recently, but she still found treatment to be "somewhat of a protective factor."

¶ 24 In April 2010, respondent completed a penile plethysmograph evaluation (PPG), which measures changes in penile circumference in response to a variety of stimulus objects (audio stories and visual slides) across gender, age, and consent. The results of this test, which were admitted into evidence, showed that respondent did not demonstrate significant arousal to any stimuli presented. Respondent reported that (1) he had difficulty achieving and maintaining an erection and (2) his last full sexual orgasm was "three years ago." The test administrator noted that respondent's condition "would lead one to believe respondent was unable to respond suitably during the assessment." The evaluator suggested a sexual arousal conditioning program should be part of his treatment plan because respondent reported he is most sexually interested in 13 to 16 years old girls. Additionally, the evaluator noted no "violent rape stimuli" was used during the PPG, but he recommended such stimuli be used in future testing based on respondent's prior offenses.

¶ 25 In February 2012, the trial court found that the State had proved by clear and convincing evidence that respondent had not made sufficient progress to be conditionally released.

¶ 26 This appeal followed.

¶ 27 II. ANALYSIS

¶ 28 Respondent argues the trial court's finding that the State proved by clear and convincing evidence that respondent had not made sufficient progress to be conditionally released from the Department's custody was against the manifest weight of the evidence. Specifically, respondent contends that the court erred by failing to sufficiently consider the following factors that suggest that he is unlikely to sexually reoffend if conditionally released: (1) a lengthy period of not reoffending; (2) his age; (3) results of the PPG test; (4) his loss of vision; and (5) his participation in sex-offender treatment. We disagree.

¶ 29 Conditional release is inappropriate when "the State proves by clear and convincing evidence that the person has not made sufficient progress to be conditionally released." 725 ILCS 207/60(d) (West 2010). In making this decision, "the court must consider the nature and circumstances of the behavior that was the basis of the allegation in the petition ***, 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." *Id.* A reviewing court will not reverse the trial court's finding unless its determination was against the manifest weight of the evidence, *i.e.*, when the opposite conclusion is clearly evident. *In re Commitment of Sandry*, 367 Ill. App. 3d 949, 978, 857 N.E.2d 295, 318 (2006).

¶ 30 In this case, respondent committed multiple sexually violent offenses prior to his incarceration. Specifically, respondent reported that (1) he had sexually assaulted between 15 to 23 females between the ages of 10 and 60; (2) he began window peeping and rubbing up against female children and adults between the ages of 12 and 16; (3) when he was 16 years old, he

entered a woman's home with a knife; informing the police that he intended to have sexual intercourse with the woman even if he had to force her; (4) he had molested his 12-year-old niece as she sat on his lap; (5) in October 1974, he was convicted of battery for grabbing the breast of an adult woman; and (6) he was arrested in 1975 for exposing his genitals to a 10-year-old girl. Respondent's admissions were in addition to the eight sexually violent offenses previously outlined.

¶ 31 In support of his claim that he has made significant progress to be on conditional release, respondent first notes that his last offense was committed in 1976. Respondent suggests that the absence of sexual offenses during this period is significant and supports his contention that he will not sexually reoffend in the future. However, we note respondent has been incarcerated since 1976. While he did not sexually reoffend against any adult prison guards while incarcerated, respondent self-reported that he is sexually attracted to female minors between the ages of 13 and 16. As recently as 2006, respondent reported that he masturbated to his memory of forcing a 12-year-old minor to perform oral sex on him, noting the memory was "very arousing." While incarcerated, respondent did not have access to this age group. Therefore, it is likely that this absence prevented him from reoffending while in custody.

¶ 32 Next, respondent asserts that his increased age is a protective factor. However, we note that respondent scored in the "high" and "highest" risk categories on the Static 99, Static 99 R, and MnSOST-R actuarial assessment tools, all of which factor in respondent's age.

¶ 33 Third, respondent relies on the results of the May 2010 PPG test to show that he has made significant progress and should be conditionally released from the Department. Although respondent did not demonstrate any significant arousal to any stimuli during the

administration of the PPG, respondent self-reported that he has had difficulty achieving and maintaining an erection. Further, no "Rape Stimuli" was used during the test which, based on respondent's criminal history, was recommended for future testing. Moreover, many of respondent's past offenses did not require respondent to achieve or maintain an erection, *e.g.*, grabbing women's breasts, digitally penetrating and performing oral sex on a child, forcing women to perform oral sex on each other, and fondling his niece as she sat on his lap, and, thus, respondent could commit similar crimes despite his inability to achieve or maintain an erection.

¶ 34 Respondent next contends that Stanislaus chose to ignore a clear medical condition, *i.e.*, his vision loss, by failing to consider it a protective factor as Weitzl did. According to respondent, his pattern of prior offenses is "stranger rape," and due to his "foggy eyesight" he would be unable to commit acts of stranger rape by pulling people off the street. First, we note that not all of respondent's prior offenses involved "grabbing strangers off the street" as Weitzl suggested. Several of respondent's crimes involved approaching victims in laundromats and holding a knife to the throat of a child to ensure the adult victim's compliance. Further, respondent's vision problems would not prevent future acts of frotteurism or exhibitionism, both of which respondent has engaged in since he was a teenager, or molestation of children who sit on his lap. Moreover, Stanislaus felt that respondent had adapted to his vision loss. Respondent reported that he was able to move about by using his peripheral vision and had little difficulty moving indoors or in familiar places. When he ventures outside, respondent wears blue-tinted glasses to see, he reads with the assistance of a magnifier, and can watch television with the help of a scanner. When interviewed by Stanislaus, respondent reported that the deterioration of his vision had arrested during the last year.

¶ 35 Last, respondent asserts that he has made significant progress in sex-offender treatment. In this case, both experts agreed that respondent began treatment shortly after he was transferred to the treatment center in 2006. Importantly, however, both experts acknowledged respondent had recently experienced a decrease in his motivation to continue treatment due to feelings of helplessness and hopelessness, *i.e.*, his treatment progress was stalled for two months in mid-2011 and he was suspended from group therapy from January to September 2010 due to his failure to participate. Weitzl concluded that, despite respondent's recent issues with treatment, she believed his significant progress in treatment since 2006 should be considered "somewhat of a protective factor." Stanislaus disagreed, noting that although respondent had been better engaging in treatment since September 2010, he had made little progress toward his overall treatment goals. Stanislaus also noted respondent's treatment team had recommended arousal reconditioning, which had not yet begun. In her opinion, for someone like respondent, who has a high risk for sexual recidivism, it is important for him to complete treatment.

¶ 36 In sum, respondent has a history of sexual violence. Both Weitzl and Stanislaus concluded that respondent continued to be a sexually violent person and both experts placed respondent in the "High" and "Highest" categories to reoffend based on actuarial risk assessments that considered respondent's age in their overall score. Both experts acknowledged respondent had not completed sex-offender treatment at the time of the hearing and had experienced problems in group treatment resulting in his suspension from group treatment for nearly one year in 2010 due to his failure to participate and a two-month delay in progress in mid-2011 due to respondent's lack of motivation. Weitzl and Stanislaus disagreed on whether sex-offender treatment in the community would be appropriate. Weitzl opined that "even though [respondent]

