

NOTICE
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2013 IL App (4th) 120616-U

NO. 4-12-0616

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
February 13, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
ROY SHIVERS,)	No. 98CF1238
Defendant-Appellant.)	
)	Honorable
)	John R. Kennedy,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Appleton and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court did not abuse its discretion in denying defendant's request for an independent psychiatric evaluation, and (2) the State proved defendant to be a sexually dangerous person by clear and convincing evidence.

¶ 2 On June 30, 1999, the circuit court of Champaign County civilly committed respondent, Roy Shivers, as a sexually dangerous person under the Sexually Dangerous Persons Act (SDPA) (725 ILCS 205/0.01 to 12 (West 2010)).

¶ 3 In May 2010, respondent filed an application for showing of recovery, and on August 13, 2010, respondent filed a motion for an independent psychiatric expert. On November 18, 2010, the trial court denied respondent's motion and on June 29, 2012, held a hearing on respondent's application for showing of recovery. The court denied respondent's application.

¶ 4 Respondent appeals, arguing (1) the trial court abused its discretion in denying his

request for the appointment of an independent psychiatric expert and (2) the State failed to prove by clear and convincing evidence respondent remains a sexually dangerous person. We disagree and affirm.

¶ 5

I. BACKGROUND

¶ 6 On May 5, 2010, respondent filed a *pro se* application for showing of recovery under section 205-9 of the SDPA and a motion for the appointment of counsel other than a public defender. On May 17, 2010, the trial court appointed counsel to represent respondent.

¶ 7 On August 13, 2010, respondent filed a motion for an independent psychiatric expert, alleging the State's psychiatric expert, Dr. Mark Stephen Carich, would provide an evaluation that was "inherently prejudicial" to respondent. Respondent asserted Carich would "predictably" opine respondent remains sexually dangerous because "to do otherwise would impeach his own professional competence and undermine the petitioner's petition." Respondent also alleged Carich's opinion was inconsistent with that of Dr. Robert Chapman, who evaluated respondent and concluded respondent is no longer sexually dangerous.

¶ 8 On September 10, 2010, respondent filed an amended motion for an independent psychiatric expert, further alleging Carich transferred respondent out of the treatment wing at Big Muddy River Correctional Center (Big Muddy) "for no given or valid reason," depriving respondent of treatment.

¶ 9 On November 18, 2010, the trial court held a hearing on respondent's petition for an independent psychiatric evaluation. Carich testified he was employed as a psychologist administrator and he was in charge of respondent's treatment. Respondent refused to participate in treatment because of where he was being housed within the prison. Carich moved respondent

to B wing because the other sexually dangerous inmates housed in C wing felt respondent was aggressive toward them, "bullied" them, and "intimidated" them. Respondent was never denied an opportunity to participate in treatment because of his placement in B wing. Carich testified he liked respondent and recommending him for release would not impeach his professional credibility.

¶ 10 Respondent testified he was not aggressive with the other sexually dangerous inmates; he prefers not to talk to them. Respondent stated Carich refused his participation in treatment but also admitted individuals staying in B wing were allowed to participate in treatment.

¶ 11 The trial court denied respondent's motion for an independent psychiatric evaluation. The court found respondent had not established Carich would not give an honest or unprejudiced opinion. The court noted Carich supported conditional discharge. Also significant to the court's ruling was that, because a psychiatrist and social worker also participated in the ultimate evaluation of respondent, Carich's opinion alone was not enough to result in the continued commitment of respondent. Further, the evidence showed the individuals involved in respondent's evaluation, who were employed by the State, would not have placed themselves in professional or financial jeopardy by changing their opinion and supporting release.

¶ 12 On June 29, 2012, the trial court held a hearing on respondent's application for a showing of recovery. Jessica Stover, a licensed clinical social worker employed at Big Muddy, testified she was a treatment staff therapist for the sexually dangerous persons population at Big Muddy. Prior to November 2008, respondent was an active participant in the sex offender treatment at Big Muddy. In November 2008, respondent was moved from C wing, the primary

treatment wing, to B wing, "due to behaviors he was exhibiting at that time." Respondent refused to participate in treatment until he was moved back to C wing. Inmates in B wing have access to sex offender treatment. Respondent was never moved back to C wing and has continued to refuse treatment. In March of 2012, respondent told Stover he would resume treatment once the program director, Carich, retired. In May 2012, Carich retired. Respondent did not resume treatment after Carich retired.

¶ 13 Dr. Angeline Stanislaus testified she is a licensed forensic psychiatrist who has been working with sex offenders since 2004. Stanislaus evaluated respondent on multiple occasions, including an evaluation in December 2011. Stanislaus prepared the evaluation in conjunction with Stover and Carich. Stanislaus formed an expert opinion as to respondent's current mental condition, utilizing various sources of information in arriving at her opinion. One such source was respondent's criminal sexual history.

¶ 14 In 1971, at the age of 16, respondent was sentenced to the juvenile facility of the Illinois Department of Corrections for attempted rape. In 1973, respondent was convicted of rape. In 1980, respondent was convicted of rape of a University of Illinois student. Respondent choked each of his victims while raping or attempting to rape them. In 1996, respondent was released from prison and participated in an outpatient sex offender treatment program. In 1997, a prostitute reported respondent had choked her and held her captive for four hours. Less than two weeks later, another individual reported to police respondent choked her and attempted to rape her in the back of his car. The police arrested respondent for these two reported incidents. In 1998, respondent was arrested for attempting to rape a mentally ill woman in an alleyway while choking her.

¶ 15 Stanislaus diagnosed respondent with sexual sadism because he "committed physical suffering for sexual excitement on [his] victims." Sexual sadism requires long-term treatment and full motivation for recovery on behalf of the patient. She also diagnosed respondent with antisocial personality disorder and narcissistic personality disorder. Stanislaus opined with a reasonable degree of medical certainty respondent continues to suffer from sexual sadism and is sexually dangerous. She also opined respondent's mental disorder predisposes him to engage in acts of sexual violence and causes a criminal propensity to the commission of sex offenses.

¶ 16 Stanislaus testified she used various actuarial instruments in assessing respondent's risk of recidivism. On the Static-99, respondent scored an 8 out of 12, placing him at a high risk to reoffend. To further assist the court in understanding the significance of respondent's score, Stanislaus explained, "if you took 100 sex offenders and make them stand in a line, [respondent] would take the position somewhere around 95, 96 percentile amount other sex offenders[,] meaning 95 of those 100 individuals would be less likely to recidivate than respondent. Stanislaus opined with a reasonable degree of certainty it was substantially probable respondent would reoffend if released. Respondent has serious difficulty controlling his sexual behavior and his refusal to participate in treatment "shows that his risk still remains very high."

¶ 17 Carich testified he is the treatment director for sexually violent persons at Southeast Hospital in Farmington, Missouri. Carich retired as the program director at Big Muddy on May 31, 2012. Respondent began Carich's sex offender treatment program in 1999 and started refusing treatment in 2008. He described respondent's progress as "inconsistent" due to his varying levels of motivation, repeated program violations, and voluntary lapse in treatment

on two occasions. In November 2008, they moved respondent to B wing because he continuously intimidated other inmates. Respondent refused to participate in treatment until he was moved back to C wing.

¶ 18 Carich testified respondent "has not sufficiently addressed his sexual sadism" and he "hasn't demonstrated any arousal control skills or sexual regulation skills." There is no effective form of self-help for sexual sadism and respondent continues to refuse to participate in treatment. In Carich's expert opinion, respondent has serious difficulty controlling his sexual behavior and will engage in sexually dangerous behavior in the future if not confined.

¶ 19 Respondent testified he consistently participated in treatment from 1999 to 2008. Respondent denied quitting treatment. He said Carich and Stanislaus suspended him from the program in 2008 and did not put him back into treatment. Respondent's breakdown with Carich came in 2005 or 2006 after Carich "made a statement to [respondent] about *** hang[ing] his foot in [respondent's] ass." Respondent testified he "still go[es] to group now if [he] can." Respondent has "changed" and has learned empathy and how to stay in control. Respondent denied intimidating other inmates. He believed he could survive outside of prison by "adjust[ing] to the environment and the rules and regulations of society."

¶ 20 Based on this evidence, the trial court found respondent remained a sexually dangerous person and that he "[wa]s diagnosed and still is a sexual sadist as defined in the various psychiatric and psychological literature and meets that definition of a mental disorder." The court also found (1) respondent's mental disorder causes criminal propensities to the commission of sex offenses, (2) respondent has demonstrated propensities toward the commission of sex offenses, (3) he continues to have serious difficulty controlling his sexual behavior,

and (4) it is substantially probable respondent would engage in sex offenses in the future if not confined.

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 Respondent appeals, arguing (1) the trial court abused its discretion in denying his request for the appointment of an independent psychiatric expert and (2) the State failed to prove by clear and convincing evidence respondent remains a sexually dangerous person. We consider each in turn.

¶ 24 A. Independent Psychiatric Expert

¶ 25 "[A] respondent filing a recovery petition under section 9 of the SDPA is not entitled to an independent psychiatric expert unless he can show that the experts employed by the State will not give an honest and unprejudiced opinion of the respondent's mental condition." *People v. Burns*, 209 Ill. 2d 551, 562, 809 N.E.2d 107, 115 (2004). Professionals working for the Department of Corrections (Department) are not presumed to be biased and prejudiced in their socio-psychiatric reports. *Burns*, 209 Ill. 2d at 567, 809 N.E.2d at 118. Moreover, they are in a position to be most knowledgeable about a respondent's condition, his progress in treatment, and whether he has recovered. *Burns*, 209 Ill. 2d at 568, 809 N.E.2d at 118. We review the trial court's denial of respondent's request for the appointment of an independent psychiatric expert for an abuse of discretion. See *People v. Botruff*, 212 Ill. 2d 166, 178, 817 N.E.2d 463, 470 (2004) (the respondent was not denied equal protection where trial court did not abuse its discretion in denying the respondent's request for an independent evaluation).

¶ 26 At the hearing on respondent's motion for an independent psychiatric expert, the

trial court found respondent had not shown "that the experts, including Dr. Carich, would—will not give an honest and unprejudiced opinion."

¶ 27 The record shows Carich was not prejudiced in his evaluation of respondent. Carich testified he liked respondent and he made it his "goal *** to effect recovery in [respondent]." Carich did not prevent respondent from participating in treatment and he supported conditional discharge when it was appropriate. He also testified it would not hurt his career or professional credibility if he were to find respondent had progressed to a stage in treatment where conditional discharge was appropriate. Carich believed such a finding would actually bolster his reputation, especially because respondent's committing psychiatrist had "said that [respondent] was basically untreatable."

¶ 28 Additionally, because Carich treated respondent for almost 10 years, he was in the best position to be most knowledgeable about respondent's condition, his progress in treatment, and whether he had recovered. Carich testified respondent refused treatment beginning in November 2008, and he did not bar respondent from treatment because of his placement on B wing. This was contradictory to respondent's testimony that Carich barred him from treatment, but consistent with respondent's admission that inmates on B wing could participate in treatment. On this record, we conclude the trial court did not abuse its discretion in denying respondent's motion.

¶ 29 B. Mental Disorder

¶ 30 Respondent next contends that the State failed to prove by clear and convincing evidence that he remained a sexually dangerous person under the SDPA. More specifically, respondent asserts the State failed to prove respondent suffers from a mental disorder which

predisposes him to the commission of sex offenses. We disagree.

¶ 31 At a recovery hearing, the State has the burden of proving by clear and convincing evidence the respondent is still a sexually dangerous person. 725 ILCS 205/9(b) (West 2010). We will reverse a trial court's ruling on an application for recovery only when it is against the manifest weight of the evidence. See *People v. Sizemore*, 311 Ill. App. 3d 917, 926, 726 N.E.2d 204, 211 (2000), *abrogated on other grounds by People v. Trainor*, 196 Ill. 2d 318, 752 N.E.2d 1055 (2001).

¶ 32 Respondent's only challenge to the court's ruling is whether he suffers from a mental disorder as defined by the SDPA. To meet its burden, the State must show (1) respondent has a mental disorder that "is associated with criminal propensities to the commission of sex offenses" and respondent has actually demonstrated such propensity. *People v. Masterson*, 207 Ill. 2d 305, 318-19, 798 N.E.2d 735, 743 (2003). Respondent argues the State failed to prove by clear and convincing evidence he suffers from sexual sadism, and at best, the State proved respondent has antisocial personality disorder and narcissistic personality disorder; neither of which predispose him to engage in the commission of sex offenses. We disagree.

¶ 33 The trial court found respondent continues to suffer from sexual sadism. Our review of the record confirms the trial court's ruling. Stanislaus testified to six different instances where respondent "committed physical suffering for sexual excitement on [his] victims." Stanislaus gave examples of respondent's sexual sadist behavior during rape, such as choking his victims, telling one victim to "faint, bitch, faint," and cutting off his victims' ability to breath. Stanislaus further explained sexual sadism requires long-term treatment and full motivation for recovery on behalf of the patient., but respondent has refused to participate in treatment since

November 2008. She opined respondent continues to suffer from sexual sadism and this mental disorder predisposes him to engage in acts of sexual violence and causes a criminal propensity to the commission of sex offenses.

¶ 34 Carich testified "it is reflected throughout his cases historically where he would grab the female victims, he would suffocate or choke the female victims, *** and he would humiliate them as well," which would cause respondent to be "aroused." Carich testified respondent "has not sufficiently addressed his sexual sadism" and he "hasn't demonstrated any arousal control skills or sexual regulation skills." Carich also explained there is no effective form of self-help for sexual sadism and respondent has refused to participate in treatment.

¶ 35 III. CONCLUSION

¶ 36 For the reasons stated, we affirm the trial court's judgment.

¶ 37 Affirmed.