

NOTICE
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2013 IL App (4th) 120624-U

NO. 4-12-0624

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
January 29, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Sangamon County
DMYTRYCK HENDERSON,)	No. 11CF528
Defendant-Appellant.)	
)	Honorable
)	Leslie J. Graves,
)	Judge Presiding.

PRESIDING JUSTICE STEIGMANN delivered the judgment of the court.
Justices Pope and Knecht concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed, concluding that the State proved defendant to be a sexually dangerous person beyond a reasonable doubt.
- ¶ 2 On January 5, 2012, the State filed a petition to have defendant, Dmytryck Henderson, committed as a sexually dangerous person under the Sexually Dangerous Persons Act (SDPA) (725 ILCS 205/1.01 to 12 (West 2010)). Shortly thereafter, a jury found defendant to be a sexually dangerous person beyond a reasonable doubt, and the trial court ordered that defendant be committed to the Department of Corrections indefinitely.
- ¶ 3 Defendant appeals *pro se*, arguing that (1) the State failed to prove beyond a reasonable doubt that he was a sexually dangerous person, and (2) his counsel was ineffective for failing to (a) raise a speedy-trial issue, (b) correct a statement made by one of the State's expert witnesses, (c) preserve defendant's innocence by making a statement that he was guilty, and (d)

strike a juror for being biased. We disagree and affirm.

¶ 4

I. BACKGROUND

¶ 5 At 6 a.m. on July 19, 2009, Victoria G. woke to find defendant standing in her hallway. Victoria asked defendant how he got into her apartment and he responded that "James" let him in. Victoria did not know anyone named James. Defendant walked down the hallway toward Victoria's bedroom with his face covered. Defendant pulled out a knife and instructed Victoria to get on her bed. Defendant then took \$100 cash, a cellular telephone, and a laptop computer from Victoria. Before leaving the apartment, defendant sexually assaulted Victoria. After defendant left, Victoria got in her car and, while driving, spotted a police officer and explained to him what had happened.

¶ 6 On June 16, 2011, a grand jury indicted defendant for aggravated criminal sexual assault (720 ILCS 5/12-14(a)(1) (West 2010)), home invasion (720 ILCS 5/12-11(a)(6) (West 2010)), and armed robbery (720 ILCS 5/18-2(a)(1) (West 2010)).

¶ 7 On January 5, 2012, the State filed a petition to proceed under the SDPA. The State alleged that defendant had committed the following sex crimes: (1) in 2000, defendant had sex with a 13-year-old female and was charged with aggravated criminal sexual abuse; (2) in June 2002, defendant sexually assaulted a 14-year-old female by pulling down her pants and fondling her; (3) in July 2002, defendant sexually assaulted an 18-year-old female—the victim submitted to a sexual assault evidence kit and defendant's deoxyribonucleic acid (DNA) was found in the vaginal swabs of the victim; (4) in September 2002, defendant sexually assaulted a 14-year-old female at knifepoint after entering her home and was charged with two counts of aggravated criminal sexual assault; (5) in October 2002, defendant assaulted the same 14-year-

old female a second time; (6) in June 2003, defendant sexually assaulted a 16-year-old female inside his house—defendant's semen was found in the victim's underwear and he was charged with criminal sexual assault; (7) in October 2003, defendant sexually assaulted a 15-year-old female, while "holding a sharp object to her neck"; (8) in June 2009, defendant entered the home of an 11-year-old female and pulled down her pants and touched her buttocks, while attempting to convince her to go outside with him; and (9) in July 2009, defendant sexually assaulted Victoria, which is the incident that led to the State's petition in this case.

¶ 8 In June 2012, the trial court empaneled a jury and conducted a hearing on the State's petition. Dr. Terry Killian, a psychiatrist, diagnosed defendant with antisocial personality disorder and paraphilia. Killian testified that defendant "accumulated eight separate alleged victims, nine separate incidents *** and that *** [defendant] was accused of a sexual assault on average about every four months when he is not incarcerated." Killian utilized three different actuarial instruments in evaluating defendant. Two of the three tests placed defendant at a high or very high risk of reoffending. Killian opined with a reasonable degree of medical certainty that defendant had a mental disorder that predisposed him to engage in the commission of sex offenses and resulted in defendant having serious difficulty controlling his sexual behavior. Killian further testified it was substantially probable defendant would engage in the commission of sex offenses in the future if not confined.

¶ 9 Dr. Lawrence Jeckel, a forensic psychiatrist, also evaluated defendant. Jeckel testified that in his "clinical judgment," "[defendant wa]s a serial rapist." Jeckel explained that defendant had a history of predatory behavior that went back "at least 12 years." Jeckel diagnosed defendant with antisocial personality disorder "characterized by long-standing mal-

adaptive antisocial behavior." Jeckel opined that defendant's mental disorder was coupled with a propensity to commit sex offenses, it was substantially likely defendant would engage in the commission of sex offenses in the future, and if defendant was not confined he would continue his "pattern of predatory behavior toward vulnerable women."

¶ 10 On this evidence, the jury found beyond a reasonable doubt that defendant was a sexually dangerous person.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 Defendant appeals, arguing that (1) the State failed to prove beyond a reasonable doubt that he was a sexually dangerous person, and (2) his counsel was ineffective for failing to (a) raise a speedy-trial issue, (b) correct a statement made by one of the State's expert witnesses, (c) preserve defendant's innocence by making a statement that he was guilty, and (d) strike a juror for being biased. We address defendant's contentions in turn.

¶ 14 A. The State Proved Beyond A Reasonable Doubt That Defendant Was A Sexually Dangerous Person

¶ 15 Defendant first contends that the State failed to prove beyond a reasonable doubt that he was a sexually dangerous person under the SDPA. Specifically, defendant asserts that the trial court erred by failing to appoint "an expert witness sensitive to nonphysical or supernatural forces" to prove that, if not confined, it is substantially probable that defendant will engage in the commission of sex offenses in the future. We disagree.

¶ 16 Under the SDPA, the State must prove beyond a reasonable doubt that defendant (1) has a mental disorder that has been in existence for at least one year prior to the filing of a

SDPA petition, (2) exhibits criminal propensities to the commission of sex offenses, and (3) has "demonstrated propensities toward acts of sexual assault or acts of sexual molestation of children." *People v. Bailey*, 405 Ill. App. 3d 154, 170, 937 N.E.2d 731, 744 (2010). For a finding of sexually dangerous to be valid under the SDPA, the fact finder must find that it is substantially probable that defendant, if not confined, would engage in the commission of sex offenses in the future. *Bailey*, 405 Ill. App. 3d at 170, 937 N.E.2d at 745.

¶ 17 On review of a jury's finding that a defendant is a sexually dangerous person under the SDPA, "we must consider all of the evidence introduced at trial in the light most favorable to the State." *Bailey*, 405 Ill. App. 3d at 171, 937 N.E.2d at 745. We will affirm the jury's ruling if we conclude that any rational trier of fact could have found the essential elements to have been proved beyond a reasonable doubt. *Bailey*, 405 Ill. App. 3d at 171, 937 N.E.2d at 745.

¶ 18 Defendant attacks the sufficiency of the State's evidence in that the State did not prove that it was substantially probable that he would engage in the commission of sex offenses in the future. Defendant appears to argue that the State could not have proved "substantial probability" because the trial court did not appoint a "psychic" as an expert witness to predict defendant's future behavior. The absurdity of this argument is clear on its face. Nevertheless, we conclude the State proved "substantial probability."

¶ 19 Killian and Jeckel both evaluated defendant and testified that it was substantially probable defendant would engage in the commission of sex offenses in the future if not confined. In addition, both psychiatrists testified to defendant's long-standing history of criminal sexual behavior. For his part, defendant did not present any evidence to rebut the State's evidence. On

this record, a rational trier of fact could have found the State proved substantial probability.

¶ 20 B. Counsel Was Not Ineffective

¶ 21 Defendant next contends that his trial counsel was ineffective. We disagree.

¶ 22 To prevail on a claim of ineffective assistance of counsel, defendant must show (1) that counsel's performance was deficient and (2) defendant was prejudiced by the deficient performance. *People v. Mars*, 2012 IL App (2d) 110695, ¶ 15, 2012 WL 6689748, at *4. To establish prejudice, defendant must show a reasonable probability that the outcome would have been different if it were not for counsel's deficient performance. *Mars*, 2012 IL App (2d) 110695, ¶ 15, 2012 WL 6689748, at *4.

¶ 23 Defendant initially posits that counsel was ineffective for failing to file a speedy-trial demand. We are not impressed. The Speedy-Trial Act, section 103-5 of the Code of Criminal Procedure of 1963 (725 ILCS 5/103-5 (West 2010)), is limited to criminal proceedings. *In re Detention of Hughes*, 346 Ill. App. 3d 637, 646, 805 N.E.2d 725, 732 (2004). Proceedings under the SDPA are civil proceedings, and thus the Speedy-Trial Act does not apply to the SDPA. *Hughes*, 346 Ill. App. 3d at 646, 805 N.E.2d at 732. Therefore, counsel could not have been ineffective for failing to file a speedy-trial demand.

¶ 24 Defendant next posits that counsel was ineffective for failing to remedy a comment made by one of the State's expert witnesses. Killian testified as to his opinion about whether defendant was a sexually dangerous person. While providing his opinion during questioning by the prosecutor, Killian added that "beyond any reasonable doubt" defendant was a sexually dangerous person. Killian concluded his testimony after he made that statement and the trial court took a recess. Defense counsel stated to the court that "it [wa]s entirely improper for

[Killian] to use the phrase reasonable doubt in front of the jury." Counsel asked that Killian's statement be stricken. The court agreed with defense counsel and ruled that the statement would be stricken and the jury would be instructed that it was to disregard Killian's statement.

Accordingly, the record clearly shows that defense counsel remedied the allegedly improper statement and was therefore not ineffective.

¶ 25 Defendant also posits that counsel was ineffective for failing to maintain defendant's claim of innocence by telling the jury that defendant was guilty. Defendant points to defense counsel's closing arguments for his allegation of ineffective assistance. During closing, in an effort to show that defendant was not sexually dangerous and that the State could not prove the SDPA petition, counsel chose to argue that, at most, defendant was a criminal whose goal was to rob Victoria. Counsel made the following statements:

"[Defendant] is a criminal. He does bad things. He has got antisocial personality disorder, but a qualifying mental disorder does not drive his bad behavior.

* * *

There is an appropriate forum for dealing with people who are just criminals. It's criminal court. People get convicted every day, sent to prison. This forum is not appropriate in this particular case."

Thus, counsel evidently deemed it advantageous to argue that defendant was simply a criminal who should be prosecuted in criminal court as opposed to a sexually dangerous person. This decision was a matter of sound trial strategy. "[M]atters of trial strategy generally will not support a claim of ineffective assistance of counsel." *People v. Max*, 2012 IL App (3d) 110385,

¶ 65, 2012 WL 5936776, at *15. Accordingly, we reject defendant's claim of ineffective assistance of counsel on this basis.

¶ 26 Finally, defendant posits that defense counsel was ineffective for failing to strike a juror due to her bias as to Killian. The juror was a psychiatric social worker at St. John's who sometimes worked with victims of sexual assault. The juror was acquainted with Killian but had not had professional contact with him for "several years." During *voir dire*, the State had the following exchange with the juror:

"[THE STATE]: You indicated that you thought well of Dr. Killian. However, if Dr. Killian said something that didn't jibe with the rest of the case, would what he said overpower the rest of the case?

[JUROR]: No.

[THE STATE]: If he said, you know, the sky is blue, but all the evidence said the sky is actually gray, would you still listen to Dr. Killian?

[JUROR]: I would weigh the evidence. I wouldn't make his statement my belief.

[THE STATE]: You would not?

[JUROR]: Would not."

Thus, the record shows that the juror was not biased and counsel would not have been successful in challenging her based on bias.

¶ 27

III. CONCLUSION

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

¶ 29 Affirmed.