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2013 IL App (4th) 120668-U

NO. 4-12-0668

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
March 4, 2013
Carla Bender
4th District Appellate
Court, IL

In re: the Detention of KENNETH E. SEIDLER,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Sangamon County
v.)	No. 06MR145
KENNETH E. SEIDLER,)	
Respondent-Appellant.)	Honorable
)	John W. Belz,
)	Judge Presiding.

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

ORDER

- ¶ 1 *Held:* The State proved by clear and convincing evidence respondent had not made sufficient progress to be conditionally released under the Sexually Violent Persons Commitment Act.
- ¶ 2 In September 2008, a jury determined respondent, Kenneth E. Seidler, was a sexually violent person under the Sexually Violent Persons Commitment Act (SVPA) (725 ILCS 207/1 to 99 (West 2006)). Following his trial, the circuit court placed respondent in the custody and care of the Department of Human Services (Department) until he is no longer sexually violent.
- ¶ 3 In December 2010, respondent filed a petition for conditional release pursuant to section 60(a) of the SVPA (725 ILCS 207/60(a) (West 2010)). The trial court found respondent had not made sufficient progress to be conditionally released and denied respondent's petition.

¶ 4 Respondent appeals, arguing the State did not prove by clear and convincing evidence he had not made sufficient progress to be conditionally released. We affirm.

¶ 5 I. BACKGROUND

¶ 6 In 1984, respondent was convicted of rape for a 1983 offense involving an 8-year-old girl, her 14-year-old sister, and their mother. Respondent entered the basement of the victims' home and grabbed the youngest daughter. He instructed the girl to call for her mother. The victim called for her mother but her older sister appeared instead. Respondent told the older sibling to call for her mother. After the mother descended to the basement, respondent blindfolded and tied up all three victims. Respondent then raped the mother and attempted to rape the oldest daughter. One of the girls reported respondent was armed with a pocketknife.

¶ 7 Following his conviction, the trial court sentenced respondent to 40 years' imprisonment for the 1983 offense, with 3 years of mandatory supervised release (MSR). While on MSR, respondent was electronically monitored and authorized to travel between his home and his job. In July 2005, authorities discovered respondent engaged in unauthorized movement when he was found at a wildlife sanctuary. The officers who located respondent searched him and found a knife and rope in his pockets. Respondent admitted to the officers he was getting his "old urges" back. Respondent's MSR was revoked and he returned to prison.

¶ 8 In March 2006, the State filed a petition to have respondent committed as a sexually violent person. In September 2008, a jury determined respondent was sexually violent, and the trial court ordered the Department to take custody and care of respondent for treatment. Respondent appealed in *People v. Seidler*, No. 4-09-0464 (Oct. 7, 2010) (unpublished order under Supreme Court Rule 23), and this court affirmed respondent's commitment.

¶ 9 On December 1, 2010, respondent filed a petition for conditional release. On December 21, 2010, the trial court appointed Dr. Leslie Kane, a licensed clinical psychologist, to perform an examination of respondent. On April 5, 2011, the State moved to have the court appoint an evaluator for the State to examine and evaluate respondent. The court granted the State's motion and appointed Dr. Steven Gaskell, a licensed clinical psychologist, to examine respondent.

¶ 10 On November 9, 2011, the State moved for a finding of no probable cause based upon a 30-month reevaluation of respondent conducted pursuant to section 55 of the SVPA (725 ILCS 207/55 (West 2010) (requiring reevaluation after the first six months of commitment, followed by yearly reevaluations for as long as the respondent remains committed)). In the 30-month reevaluation, Gaskell concluded with a reasonable degree of psychological certainty respondent remained sexually violent.

¶ 11 On February 16, 2012, the trial court entered three separate orders. The court's first order was entitled "ORDER 18-Month Re-Evaluation." The court found, based on an 18-month reevaluation of respondent, performed by Gaskell, "there [wa]s no probable cause to warrant an evidentiary hearing to determine whether *** [respondent] [wa]s still a sexually violent person." The court granted the State's motion for a finding of no probable cause. (We note, the State moved for a finding of no probable cause based on the 30-month reevaluation of respondent. However, the court granted the State's motion based on Gaskell's 18-month reevaluation and 30-month reevaluation, in two consecutive orders.)

¶ 12 The trial court's second order was entitled "ORDER 30-Month Re-Evaluation." The court found, based on Gaskell's 30-month reevaluation of respondent, "there [wa]s no

probable cause to warrant an evidentiary hearing to determine whether *** [respondent] [wa]s still a sexually violent person." The court granted the State's motion for a finding of no probable cause.

¶ 13 Finally, on February 16, 2012, the trial court ruled on respondent's December 1, 2010, petition for conditional release. The court found, based on the reports submitted by Kane and Gaskell, cause existed to believe it was not substantially probable respondent would engage in acts of sexual violence if on conditional release. The court ordered an evidentiary hearing on respondent's petition for conditional release.

¶ 14 On May 22, 2012, at the evidentiary hearing, the State called Gaskell to testify as an expert witness in the field of clinical psychology—with particular regard to sex offender evaluations. Gaskell is contracted by the Department to perform sexually violent person evaluations and has performed approximately 405 such evaluations. He evaluated respondent on October 28, 2011. For the evaluation, Gaskell reviewed respondent's entire master file, which included his criminal history, police reports, Illinois Department of Corrections information, and records from the treatment and detention facility. In September 2011, prior to preparing the evaluation, Gaskell attempted to interview respondent, but respondent refused to participate.

¶ 15 Respondent's criminal history included the 1983 rape offense, as well as an incident that occurred a month prior to the 1983 case. Respondent was charged with dragging two girls, one eight years old and one nine years old, into the woods of a park, where he tied them up, blindfolded them, and orally and anally raped the nine-year-old girl. The State dismissed the charges after respondent was convicted in the 1983 case. Respondent's criminal history also included a police contact wherein respondent fit the description of a man who had

exposed himself to park visitors, on three separate occasions, at the same park involving the eight- and nine-year-old girls. Respondent's nonsexual criminal history included criminal damage to property, theft, burglary, possession of burglary tools, armed robbery, and attempted murder. Finally, Gaskell testified about respondent's 2005 MSR violation, in which officers found him in the park, with a knife and rope, having the "old urges that he had in the past."

¶ 16 While in the Department of Corrections, respondent had "both major and minor disciplinary violations." Respondent did not have a history of mental health treatment prior to entering the Department of Corrections and did not participate in sex offender treatment until he was on MSR.

¶ 17 Gaskell diagnosed respondent with paraphilia, not otherwise specified, sexually attracted to nonconsenting persons, because over a period of six months, respondent had "recurrent, intense sexually arousing fantasies, sexual urges or behaviors involving sexual activity with a nonconsenting person." Respondent admitted exposing himself to strangers and having "fleeting thoughts of rape." Gaskell also diagnosed respondent with alcohol abuse, by history, in a controlled environment; cannabis use, by history, in a controlled environment; and antisocial personality disorder. Respondent's paraphilia predisposed him to engage in sexual violence.

¶ 18 Gaskell conducted a risk assessment using the Static-99R and the MnSOST-R. On the Static-99R, respondent scored in the moderate- to high-risk category. Upon respondent's attainment of the age of 60 in January 2012, his Static-99R score would lower and he would fall into the moderate- to low-risk category. This did not affect Gaskell's opinion or conclusion as to respondent's status as a sexually violent person. Respondent scored in the highest risk category

on the MnSOST-R.

¶ 19 Respondent began sex offender treatment when he was on MSR in 2005. Gaskell described respondent's treatment as being at a beginner level, where respondent "hadn't gotten to a point where he discussed his pattern of offending or looked at relapse prevention or made a relapse prevention plan, and he still was noted to have difficulties talking about his sadomasochistic urges." Respondent did not engage in sex offender treatment prior to his MSR or after he returned to prison for violating his MSR. After respondent was committed to the Department's care, he was involved in an orientation group, which he did not complete, and has "consistently declined sex offender specific treatment."

¶ 20 Gaskell opined it was substantially probable respondent would commit acts of sexual violence if he was under supervision and treatment on conditional release and respondent had not made significant progress to be released.

¶ 21 Respondent called Kane to testify as an expert witness concerning sex offender evaluations and analysis. On August 21, 2011, Kane interviewed respondent and prepared an evaluation of him. Respondent admitted he committed the 1983 rape and expressed remorse for his actions. Respondent denied having involvement in any other sex offenses.

¶ 22 Respondent participated in sex offender treatment while on MSR, where he was a "leader in group." He was also employed "the majority of the time" he was on MSR, and at least one employer found respondent to be "reliable" and would employ him again. Respondent lived with a girlfriend with whom he had "an appropriate relationship."

¶ 23 While under the care and custody of the Department, respondent completed a drug education group. Respondent reacted "very well" to his primary therapist and got along well with

the other residents at the detention facility. Respondent did not believe he needed sex offender treatment but would be willing to go. Kane's evaluation of respondent indicated he needed a "sexual arousal reconditioning program." Gaskell testified no such program was available for persons on conditional release.

¶ 24 Kane diagnosed respondent with paraphilia, not otherwise specified, but said it was difficult to determine if he had suffered from paraphilia for six months or more because he was only convicted of one sex offense and charged with another offense one month prior to the second offense. Respondent achieved a score of 2 on the Static-99R after factoring in a 2-point deduction for attaining the age of 60, placing him in the low-moderate risk to reoffend with a recidivism rate of a "typical sex offender." Kane opined respondent could be conditionally released and be safely managed.

¶ 25 Based on the testimony, the trial court found the State proved by clear and convincing evidence respondent had not made significant progress to be conditionally released. The court found Gaskell's testimony was "persuasive." Important to the court's ruling was respondent has "done no counseling for this sex offense." The court explained, "There's been no core counseling that's been completed in this case. I have no confidence that [respondent] would do counseling if he was released. He doesn't do it now; why would he do it if he was released?" The court ordered respondent to remain in the care and custody of the Department.

¶ 26 This appeal followed.

¶ 27 II. ANALYSIS

¶ 28 Respondent's only contention on appeal is the State did not prove by clear and convincing evidence he had not made sufficient progress to be conditionally released.

¶ 29 Under section 60 of the SVPA, a respondent may petition the court for conditional release. See 725 ILCS 207/60(a) (West 2010). The trial court shall grant the petition unless the State proves by clear and convincing evidence the respondent has not made sufficient progress to the point it is not substantially probable he will commit acts of sexual violence, such that conditional release is appropriate. 725 ILCS 207/60(d) (West 2010). Sufficient progress refers to the respondent's treatment. See *In re Commitment of Sandry*, 367 Ill. App. 3d 949, 976, 857 N.E.2d 295, 316 (2006) ("Of course, what a person is 'making sufficient progress' in is treatment."). We will not reverse the trial court's decision unless it is against the manifest weight of the evidence. *Sandry*, 367 Ill. App. 3d at 978, 857 N.E.2d at 318.

¶ 30 In ruling on a petition for conditional release, the trial court must consider (1) "the nature and circumstances of the behavior that was the basis of the allegation in the [commitment] petition," (2) respondent's mental history and current mental condition, and (3) available arrangements to ensure access to and participation in sex offender treatment. 725 ILCS 207/60(d) (West 2010).

¶ 31 After reviewing the record, we conclude the trial court's ruling was not against the manifest weight of the evidence. The evidence showed respondent was committed under the SVPA after he violated his MSR by walking through a park he was not supposed to be in, carrying rope and a knife. When confronted by officers, respondent admitted having his "old urges." Respondent's behavior was consistent with the 1983 rape conviction and the allegations of him tying up, blindfolding, and raping two girls in the park only one month prior to the 1983 rape incident.

¶ 32 Further, although Kane reported it was "difficult" to say respondent had a mental

disorder for a period of six months or more, Gaskell testified respondent suffered from paraphilia and antisocial personality disorder. Gaskell opined it was substantially probable respondent would engage in acts of sexual violence if conditionally released. The court found Gaskell's testimony "persuasive."

¶ 33 Finally, Kane's evaluation of respondent indicated he needed a "sexual arousal reconditioning program." Gaskell testified no such program was available for persons on conditional release. Moreover, the only time respondent spent in sex offender treatment was when he was on MSR in 2005. Although respondent has participated in drug education programs while under the Department's care, respondent has not participated in *any sex offender treatment*. This was significant to the trial court's decision, as the court did not believe respondent would participate in treatment if conditionally released. On this evidence, we agree respondent has not made sufficient progress to be conditionally released.

¶ 34 III. CONCLUSION

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

¶ 36 Affirmed.