

2014 IL App (2d) 130290-U  
No. 2-13-0290  
Order filed July 29, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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|-------------------------|---|-------------------------------|
| THE PEOPLE OF THE STATE | ) | Appeal from the Circuit Court |
| OF ILLINOIS,            | ) | of Lake County.               |
|                         | ) |                               |
| Petitioner-Appellee,    | ) |                               |
|                         | ) |                               |
| v.                      | ) | No. 90-MR-706                 |
|                         | ) |                               |
| DEAN F. SPETNAGEL,      | ) | Honorable                     |
|                         | ) | Mark L. Levitt,               |
| Respondent-Appellant.   | ) | Judge, Presiding.             |

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JUSTICE JORGENSEN delivered the judgment of the court.  
Justices Hutchinson and Hudson concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court's order committing respondent under the Sexually Dangerous Persons Act was void, as there were no criminal charges pending, a statutory prerequisite, when it was entered.

¶ 2 Respondent, Dean F. Spetnagel, appeals a judgment denying his petition for relief under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)). The petition contended that a 1991 order declaring respondent sexually dangerous as defined by the Sexually Dangerous Persons Act (Act) (Ill. Rev. Stat. 1989, ch. 38, ¶ 105 *et seq.*) and committing him to the custody of the Department of Corrections (DOC) is void. We reverse.

¶ 3 On December 28, 1990, the State petitioned to declare respondent sexually dangerous as defined by the Act and to commit him to the DOC. The petition alleged as follows. Respondent was sexually dangerous (see Ill. Rev. Stat. 1989, ch. 38, ¶ 105-1.01) in that he suffered from a mental disorder, antisocial personality syndrome (ASPS); he had suffered from ASPS for no less than a year before December 28, 1990; his disorder was coupled with a criminal propensity to committing sex offenses; and he had demonstrated propensities toward acts of sexual assault or acts of sexual molestation of children. Specifically, (1) on July 1, 1990, with the intent to commit a criminal sexual assault, respondent committed the attempted aggravated kidnapping of Pamela S. (Ill. Rev. Stat. 1989, ch. 38, ¶¶ 8-4(a), 10-2(a), 12-13(a)(1)); (2) on July 12, 1978, in Michigan, he committed third-degree criminal sexual conduct against Lori R., a 14-year-old, and was sentenced to 3 to 15 years in prison; and (3) on July 12, 1978, in Michigan, he committed third-degree criminal sexual conduct against Peggy L., a 15-year-old, and was sentenced to 3 to 15 years in prison. The petition requested that psychiatrists examine respondent to ascertain whether he was sexually dangerous and to file written reports.

¶ 4 On December 28, 1990, the trial court appointed Drs. Henry Lahmeyer and Dover Roth to examine respondent. On January 7, 1991, they filed their reports. Roth diagnosed respondent with ASPS and concluded that, because of his disorder, respondent had had, for more than a year, the propensity to commit sexual offenses and was likely to do so in the future. Roth “would leave it up to the court” to decide whether respondent’s disorder made him sexually dangerous. Lahmeyer diagnosed respondent with ASPS and stated that, for more than a year, respondent had had the propensity to commit sexual offenses and was likely to do so in the future.

¶ 5 On January 7, 1991, the trial court held a hearing on criminal charges that had been pending when the State initially petitioned to commit respondent. Respondent entered fully-negotiated guilty pleas to (1) criminal sexual assault by force, a Class 1 felony, committed against Aura S. (case No. 90-CF-1596); and (2) attempted aggravated criminal sexual assault, a Class 1 felony, committed against Kimberly K. (case No. 90-CF-1467). Per the agreement, the State dismissed “[t]he remaining pending criminal counts, charges and cases.” These charges included the one involving Pamela S., case No. 90-CF-1468, and also case No. 90-CF-1531, alleging various sex offenses committed against Jannifer C. on June 16, 1990. The trial court accepted the pleas and, in accordance with the agreement, sentenced respondent to consecutive prison terms of 30 years in case No. 90-CF-1596 and 25 years in case No. 90-CF-1467.

¶ 6 The court immediately allowed the State to file an amended petition to declare respondent sexually dangerous. The petition alleged in part that respondent had propensities to commit sex offenses and had demonstrated propensities toward acts of sexual assault by committing the attempted aggravated kidnapping of Pamela S. on July 1, 1990. By agreement, the court heard the petition that day.

¶ 7 On January 8, 1991, in a written judgment, the court found that respondent was sexually dangerous, based on his diagnosis of ASPS and the three offenses listed in the State’s petition. The court appointed the Director of the DOC (Director) as respondent’s personal guardian until he recovered and was released in accordance with the Act. Upon a showing that respondent had recovered (see Ill. Rev. Stat. 1991, ch. 38, ¶ 105-9) and the completion of a discharge hearing, respondent, upon being discharged under the Act, would be remanded to serve the remainder of his sentences in case Nos. 90-CF-1596 and 90-CF-1467, a total term of 55 years, with credit for all time spent in commitment under the Act.

¶ 8 On April 12, 2010, respondent applied for discharge or conditional release under the Act (see 725 ILCS 205/9 (West 2010) (formerly Ill. Rev. Stat. 1991, ch. 38, ¶ 105-9)), alleging that he was no longer sexually dangerous. On September 6, 2011, the Director filed the report of a psychologist stating that respondent was still sexually dangerous and must remain in the DOC for that reason.

¶ 9 On May 23, 2012, respondent filed his section 2-1401 petition to vacate the 1991 commitment order. The petition contended that the order was void because the trial court lacked the statutory authority to enter it. The petition did not challenge respondent's 1991 convictions.

¶ 10 The section 2-1401 petition alleged the following facts. In 1990, respondent was charged with offenses based on four separate incidents that had occurred on (1) May 27, 1990 (case No. 90-CF-1596); June 16, 1990 (case No. 90-CF-1531); (3) July 1, 1990 (case No. 90-CF-1468); and (4) July 14, 1990 (case No. 90-CF-1467). The State later petitioned to commit respondent under the Act. On January 7, 1991, the trial court accepted the parties' plea agreement and sentenced respondent accordingly in case Nos. 90-CF-1596 and 90-CF-1467. The court then found respondent sexually dangerous and committed him to the DOC per the Act. Since then, respondent had remained in the DOC. His application for release or conditional discharge was still pending.

¶ 11 The section 2-1401 petition contended that the order committing respondent was void because, after the trial court convicted and sentenced him for the offenses in case Nos. 90-CF-1596 and 90-CF-1467 and dismissed the other two charges, it lost the statutory authority to commit him based on any of the four charges. The petition argued as follows. Under the Act, the court could have committed respondent indefinitely as a sexually dangerous person, *or* it could have sentenced him on one or more of the criminal charges—but it could not do *both*.

The Act allows the civil commitment of a person who has suffered from a mental disorder for not less than one year before the petition to commit him has been filed and whose mental disorder is coupled with criminal propensities and who has demonstrated propensities toward certain types of sexual acts. Ill. Rev. Stat. 1991, ch. 38, ¶ 105-1.101 (now codified at 725 ILCS 205/1.01 (West 2012)). A commitment proceeding is “procedurally ancillary” to a pending criminal case:

“When any person is charged with a criminal offense and it shall appear to the Attorney General or to the State’s Attorney of the county wherein such person is so charged, that such a person is a sexually dangerous person, within the meaning of this Act, then the Attorney General or State’s Attorney of such county may file with the clerk of the court in the same proceeding wherein such person stands charged with [a] criminal offense, a petition in writing setting forth facts tending to show that the person named is a sexually dangerous person.” Ill. Rev. Stat. 1991, ch. 38, ¶ 105-3 (now codified as amended at 725 ILCS 205/3 (West 2012)).

¶ 12 The section 2-1401 petition contended first that, because a pending criminal prosecution is a prerequisite to filing a petition under the Act and the petition must be filed in the same proceeding in which the person stands charged with a criminal offense, the commitment petition had been improper, making the commitment order “improperly filed.”

¶ 13 The section 2-1401 petition contended next that, to satisfy due process (see *Kansas v. Crane*, 534 U.S. 407, 412-13 (2002)), the term “mental disorder” must be construed as “a congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in the commission of sex offenses and results in serious difficulty controlling sexual behavior.” *People v. Masterson*, 207 Ill. 2d 305, 329 (2003). Thus, because the Act is

concerned with individuals whose mental disorders predispose them to commit sex offenses, it provides for indefinite civil commitment as “an *alternative* to criminal prosecution.” (Emphasis added.) *People v. Burns*, 209 Ill. 2d 551, 571 (2004). In passing the Act, the legislature intended that sexually dangerous people be committed for treatment until they are no longer sexually dangerous, instead of being punished criminally for the acts that resulted from their volitional disorders. The legislature’s intent to make criminal punishment and commitment under the Act mutually exclusive is evidenced by section 9(e) (section 9 in 1991), which provides that, once a court has found that a person is no longer sexually dangerous, he must be discharged, and “every outstanding information and indictment, the basis of which was the reason for the present detention, shall be quashed.” 725 ILCS 205/9(e) (West 2012); see Ill. Rev. Stat. 1991, ch. 38, ¶ 105-9.

¶ 14 The section 2-1401 petition contended that, although a criminal prosecution is inconsistent with a proceeding under the Act, that was “exactly” what had happened in respondent’s case. Citing *People v. Galba*, 273 Ill. App. 3d 95 (1995), the petition asserted that, because the trial court had entered the commitment order after sentencing respondent in case Nos. 90-CF-1596 and 90-CF-1467, the order was unauthorized and thus void. Further, the criminal proceeding and the commitment proceeding were inconsistent in a crucial respect. By finding that respondent had had a mental disorder for at least a year before January 7, 1991, the trial court necessarily found that he had had this disorder when he committed all of the charged offenses, including the two of which he had been convicted. Thus, contrary to the intent of the Act, he had been prosecuted, convicted, and sentenced criminally for acts that he had committed while he was mentally ill.

¶ 15 In its response to the section 2-1401 petition, the State alleged the following facts, with documentation. In case No. 90-CF-1596, respondent pleaded guilty to one charge in a five-count indictment, that charge being the criminal sexual assault of Aura S. on or about May 27, 1990. The other four counts of the indictment, pertaining to the same incident involving Aura, were nol-prossed as part of the plea agreement. In case No. 90-CF-1467, respondent pleaded guilty to one count of a six-count indictment, the attempted aggravated kidnapping of Kimberly K. on July 14, 1990; the other counts were nol-prossed as part of the plea agreement. The other pending criminal charges against respondent, including all of those in case No. 90-CF-1468, were also nol-prossed as part of the agreement. Count I of the indictment in case No. 90-CF-1468 charged respondent with committing the attempted aggravated kidnapping of Pamela S. on July 1, 1990.

¶ 16 The State argued that *Galba* was distinguishable, because in that case the defendant was committed under the Act and then, by agreement, pleaded guilty to a criminal charge based on the same facts as the commitment order. The appellate court held that the defendant could not be committed civilly based on the exact same facts that supported his criminal conviction. Here, the State noted, the commitment order was based on case No. 90-CF-1468 and two Michigan convictions, but respondent's criminal convictions were based on the wholly separate facts in case Nos. 90-CF-1596 and 90-CF-1467.

¶ 17 In reply, respondent argued that the trial court could not both commit him civilly and punish him criminally for offenses that all occurred during a period (starting at least a year before January 7, 1991) when he had been suffering from a mental disorder, as defined by the Act. Respondent reasoned that, because the Act's purpose is to prevent people from being held criminally responsible for crimes that they committed while they were mentally ill (*People v.*

*Allen*, 107 Ill. 2d 91, 105 (1985)), the legislature could not have intended to allow the criminal conviction and punishment of a person for an offense that he committed while he was suffering from a mental illness, even if the conviction was not based on the same acts as was the commitment. Also, he noted, the State had not responded to his arguments that the petition had not been brought in the same proceeding as the criminal cases and that the commitment order was invalid because it was entered after all pending criminal charges had been dismissed.

¶ 18 The trial court denied respondent's section 2-1401 petition. The court explained that proceeding on both the criminal charges and the commitment petition "appears to have been part of a single negotiated strategy initiated by [respondent's] attorneys to essentially save him from what could have been a much more dire sentence." Further, the charges to which respondent pleaded guilty were separate from the pending charge on which the commitment petition had in part relied. Respondent timely appealed.

¶ 19 On appeal, respondent reiterates his contention that the order committing him is void. The State responds that (1) respondent did not file a valid section 2-1401 petition, meaning that his appeal is not properly before this court; (2) respondent cannot obtain relief against an alleged error that he invited; and (3) the commitment order is proper under the Act, as the offenses on which it was based were wholly independent of the charges on which his convictions were based.

¶ 20 We first address the State's procedural argument. The State appears to contend that the petition was improper because (1) it was filed beyond the two-year limitations period (735 ILCS 5/2-1401(c) (West 2010)); (2) it did not allege due diligence on respondent's part; and (3) it did not raise a meritorious defense. The State is mistaken in all three respects. First, the State forfeited its statute-of-limitations argument by failing to raise it in the trial court (see *People v. Harvey*, 196 Ill. 2d 444, 447 (2001)) and, in any event, because the petition claimed that the

commitment order is void, the two-year time limit did not apply (see *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104 (2002)). Second, because the petition alleged that the judgment is void, respondent did not need to show due diligence (see *id.*). Finally, the State's contention that the petition did not raise a meritorious defense is simply an argument on the merits of the petition, to which we turn.

¶ 21 Because the trial court dismissed the section 2-1401 petition based on the application of a legal standard to undisputed facts, our review is *de novo*. See *People v Vincent*, 226 Ill. 2d 1, 18 (2007) (dismissal of section 2-1401 petition is reviewed *de novo*); *City of Champaign v. Torres*, 214 Ill. 2d 234, 241 (2005) (application of law to undisputed facts is reviewed *de novo*). Respondent contends that the judgment committing him is void as beyond the trial court's authority under the Act. See *In re Alex T.*, 375 Ill. App. 3d 758, 763 (2007) (when an order "significantly restrict[s] a person's liberty, statutory authorization must exist for a court to have jurisdiction to enter it"). Resolving respondent's claim of error requires us to engage in statutory construction, which raises issues of law that we review *de novo*. See *People v. Baskerville*, 2012 IL 111056, ¶ 18.

¶ 22 We now address the State's second argument, that respondent may not challenge the commitment order, because it was "invited error." The State reasons that, having obtained a plea bargain and reaped its benefit, respondent may not escape the burden of his bargain. We first note that the State assumes, as the trial court did, that the State's proceeding on the commitment petition was a provision of the parties' plea agreement. This assumption is not clearly supported by the record. The record of the plea hearing, which consists of an agreed statement of facts, indicates that the plea agreement's only provisions were that respondent would be sentenced as noted on the two charges and that "[t]he remaining pending criminal counts, charges and cases"

would be dismissed.<sup>1</sup> In any event, the issue here is whether the trial court exceeded its statutory authority by entering the commitment order. The State does not explain how a respondent can confer authority on a trial court to take action that is beyond its statutory power. Of course, a respondent may not do so, and the State's argument fails. See *People v. White*, 2011 IL 109616, ¶ 23.

¶ 23 We turn to the heart of this appeal. Respondent contends that the commitment order is void as beyond the trial court's statutory authority, in two respects. First, he asserts, because no criminal charges were pending when the State filed the commitment petition, the petition was not filed "in the same proceeding wherein [respondent stood] charged with [a] criminal offense" (Ill. Rev. Stat. 1991, ch. 38, ¶ 105-3 (now codified as amended at 725 ILCS 205/3 (West 2012))).

¶ 24 Second, respondent asserts, the commitment order was inconsistent with the criminal convictions entered the previous day and violated the legislature's intent to make a proceeding under the Act an alternative to criminal prosecution. Respondent notes in particular that the trial court convicted and sentenced him for acts that he had committed no more than a year before January 7, 1991. He notes next that the commitment order was based on a finding that, during that same period, he had suffered from a mental disorder that negated his criminal responsibility for the acts on which his convictions had been based. Respondent reasons that the legislature could not have intended to allow this absurd result.

¶ 25 We agree with respondent that the commitment order is void because the trial court lacked the statutory authority to enter it. However, we do not endorse all of respondent's reasoning. Briefly, we hold that, because a pending criminal charge is a prerequisite to a

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<sup>1</sup> We acknowledge that, on the other hand, the commitment order states that the order was entered after a "stipulated hearing pursuant to a plea agreement."

commitment order under the Act, and no criminal charge was pending when the trial court entered the commitment order here, the order is void and must be vacated. We need not, and do not, resolve whether the commitment order would have been valid had it been based on pending criminal charges. We also do not address whether respondent may be subject to commitment based on any other statute.

¶ 26 Resolving the issues on appeal requires us to construe the Act. The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent. *People v. Martin*, 2011 IL 109102, ¶ 21. The best guide to the legislature’s intent is the statutory language itself, given its plain and ordinary meaning to the extent possible. *People v. Giraud*, 2012 IL 113116, ¶ 6.

¶ 27 As noted, at the time of the commitment order, section 3 of the Act stated, “*When any person is charged with a criminal offense \*\*\* the Attorney General or State’s Attorney \*\*\* may file with the clerk of the court in the same proceeding wherein such person stands charged with [a] criminal offense, a petition in writing setting forth facts tending to show that the person named is a sexually dangerous person.*” (Emphases added.) Ill. Rev. Stat. 1991, ch. 38, ¶ 105-3 (now codified as amended at 725 ILCS 205/3 (West 2012)). Our supreme court has stated:

“\*\*\* [The Act] permits the State to seek an involuntary and indefinite commitment in lieu of criminal prosecution *when a person* believed to be sexually dangerous *is charged with a criminal offense.* [Citation.] Notably, *the pending criminal charge underlying the \*\*\* petition* need not be a sex-related offense. See 725 ILCS 205/3 (West 1998) (requiring only a pending criminal charge as a prerequisite to filing [a] petition [under the Act]).” (Emphases added.) *People v. Masterson*, 2011 IL 110072, ¶ 27.

¶ 28 The Act sets out the following procedure. First, under section 3 of the Act, the State files criminal charges, which remain pending. Next, the State, instead of proceeding to a prosecution on the charges, files a petition to commit the respondent under the Act. If that petition is granted, the respondent is committed under the Act. Upon the respondent's discharge from commitment, "every outstanding information and indictment, the basis of which was the reason for the present detention, shall be quashed." Ill. Rev. Stat. 1991, ch. 38, ¶ 105-9 (now codified at 725 ILCS 205/9(e) (West 2012)); see also *Galba*, 273 Ill. App. 3d at 101 ("[T]he Act contemplates that proceedings to commit are in lieu of a criminal prosecution. The State makes a determination to seek civil remedies—the treatment of the defendant—rather than criminal punishment. The underlying charges remain until the defendant is successfully treated. At which time, the Act mandates that those underlying charges be dismissed.").

¶ 29 Thus, the existence of pending charges is a statutory prerequisite to a respondent's commitment under the Act. Here, the State did not satisfy this prerequisite. To be sure, four charges were pending when the State initially petitioned to commit respondent. However, by the time that the State's petition, as amended, was heard, all four charges had been resolved. Per the parties' agreement, respondent pleaded guilty to two, and the other two were dismissed. Thus, all four pending charges were "prosecuted"; the State gave up two to secure convictions on the other two. The commitment proceeding went on anyway, without any prosecution to forgo and, indeed, without any charges to be dismissed upon respondent's discharge from commitment.

¶ 30 We acknowledge that, to some extent, our enforcement of the statutory prerequisite places form over substance; we are holding not that the charges should not have been dismissed but that they should have been dismissed *only at a later date*. However, this case illustrates the importance of the prerequisite. By definition, a charge's pendency during the civil proceeding

establishes that the charge has not been resolved criminally; that is, it ensures that the civil proceeding is truly in lieu of a criminal prosecution. Here, by contrast, the State invoked the charges in both: first (by dismissing them) to secure respondent's criminal sentence, and then to secure his civil commitment. The Act simply does not allow this.

¶ 31 Because pending charges are a statutory prerequisite, and because that prerequisite was not satisfied, the trial court's order was unauthorized by statute and is therefore void.

¶ 32 As noted, we need not, and do not, decide whether the order would have been within the trial court's statutory authority had any of the pending charges remained unresolved, nor do we decide whether respondent may be subject to commitment based on any other statute.

¶ 33 For the foregoing reasons, we reverse the judgment of the circuit court of Lake County, and, per Illinois Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994), we vacate the commitment order.

¶ 34 Reversed.