2015 IL App (1st) 123694-U

SECOND DIVISION
March 24, 2015

No. 1-12-3694

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 97 CR 7342
	)	
LARRY FILLIUNG,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Simon and Justice Liu concurred in the judgment.

O R D E R

¶1 *Held*: The circuit court's order revoking defendant's conditional release and remanding him to the custody of the Department of Human Services is affirmed where the court's finding that he was in need of mental health services on an inpatient basis was not against the manifest weight of the evidence.

¶2 Defendant Larry Filliung appeals from an order of the circuit court of Cook County revoking his conditional release and remanding him to the custody of the Department of Human Services based on its findings that he violated the terms of his release and was in need of mental health services on an inpatient basis. On appeal, defendant contends that the trial court's order

must be reversed because the court failed to make the required finding that he was "reasonably expected" to inflict serious physical harm upon himself or another, but instead, merely found that he "could" present a danger to the public. He also contends that the court failed to state its factual findings and conclusions of law on the record as required by section 3-816(a) of the Mental Health and Developmental Disabilities Code (405 ILCS 5/3-816(a) (West 2012)), and that its decision to revoke his conditional release was against the manifest weight of the evidence.

¶3 Documents contained in the record show that in 1997 defendant strangled his girlfriend with a clothesline and was charged with first degree murder. Following a November 2000 bench trial, defendant was found not guilty by reason of insanity pursuant to section 115-3(b) of the Code of Criminal Procedure (725 ILCS 5/115-3(b) (West 2000)), and was ordered to the custody of the Department of Human Services, which placed him in the Elgin Mental Health Center (Elgin) (730 ILCS 5/5-2-4 (West 2000)).

¶4 In 2004, defendant filed a petition for discharge or conditional release which was denied by the trial court and affirmed by this court on appeal. *People v. Filliung*, No. 1-05-3220 (2007) (unpublished order under Supreme Court Rule 23). In April 2009, the trial court denied defendant's subsequent petition for conditional release, specifically finding that he was still in need of mental health services on an inpatient basis.

¶5 In May 2009, defendant filed another petition for conditional release supported by treatment plan reports and a recommendation from the clinical staff at Elgin, based on the opinion that he was no longer in need of mental health services on an inpatient basis. A psychiatrist with the circuit court's Forensic Clinical Services, Dr. Roni Seltzberg, also examined defendant and reviewed his records, and found that conditional release was appropriate.

¶6 On August 16, 2010, the trial court granted defendant's release under the conditions that he reside at a facility operated by Lutheran Social Services pursuant to the requirements in his treatment plan, that he participate in daily counseling and psychological treatment, and that he be subject to random and frequent drug tests. In addition, the court specified that Lutheran Social Services would submit monthly progress reports to the court, and "If the defendant violates strict sobriety or fails to perfectly cooperate with treatment regimes, he shall be remanded back to inpatient DHS custody forthwith."

¶7 In August 2011, Lutheran Social Services reported that defendant was not in compliance with its house rules regarding rent payment, work status, and adherence to the daily schedule. Defendant was fired from his job, delinquent with his program fees, and frequently left the facility late in the mornings. When asked about his conduct, defendant became argumentative and disrespectful to the house managers and staff. Based on this report, the Department of Human Services notified the trial court that defendant was not in compliance with the treatment plan ordered by the court, and requested a status hearing pursuant to section 5-2-4 of the Unified Code of Corrections (730 ILCS 5/5-2-4 (West 2010)).

¶8 In January 2012, the State filed an emergency motion to revoke defendant's conditional release asserting that he was willfully non-compliant with the rules and regulations of his residential placement, and thus, not in compliance with the conditions of his release. The following month, defendant was transferred to Step Two North, a sober living group residence.

¶9 At the hearing on the State's motion on April 6, 2012, testimony was received from Eric Williams, who assists new residents at Step Two North. He testified that defendant had been living there for over a month, that he was not taking his medication as needed, that he had not

found a therapist, and tested positive for marijuana. Williams opined that Step Two North was not an appropriate placement for defendant, and suggested that perhaps he was ready for independent living. Williams did not observe any signs that defendant was violent, nor that he had threatened anyone.

¶10 Defendant testified that Williams' testimony was credible and that the recovery program at Step Two North was not working for him. Prior to taking the drug test, he admitted to Williams that the results would show that he had used drugs. Defendant testified that he had sidestepped many temptations, but had a lapse in judgment. He recognized that it was important for him to be accountable to the court, and offered to report directly to the court and to submit to testing at any time the court deemed necessary. On his own initiative, defendant tried taking the medications Concerta and Ritalin for attention deficit disorder due to the constant complaints he received about being sloppy and running late. However, he decided that the benefits of these medications were not substantial enough for him to continue using them, and he stopped taking them. Defendant denied using any other street drugs during his conditional release. He acknowledged struggling with employment and money management, but testified that he had a stable, semi-full-time job in a picture frame shop that he wanted to maintain.

¶11 The trial court stated that it considered the testimony at the hearing, along with all of the evidence it heard about defendant over the years. The court noted that defendant was indicted for murder, and after several years, his treating psychiatrist opined that his mental illness was in remission. There had been concern that if defendant smoked marijuana he could place himself and others at risk, but his doctor and the court had believed that such use was under control. The court was particularly concerned with defendant's use of street drugs, even a small amount,

because the psychiatrist's reports indicated that drug use would be a major problem. In addition, defendant had claimed that drugs were his problem, as opposed to any other mental health issues, and would be the factor that could place him and the public back at risk. The court thus found that it could not risk any further relapse if defendant was smoking marijuana. The court also found that defendant failed at each location where he was placed, that he was having trouble with being late and managing his affairs, and it wanted to insure that he returned to Elgin as soon as possible. The trial court then revoked defendant's conditional release and remanded him to the Department of Human Services for treatment.

¶12 Defendant returned to Elgin on May 1, 2012, and later that month, Elgin issued a treatment plan report stating that defendant was in need of mental health services on an inpatient basis as he was reasonably expected to inflict serious harm upon himself or another. This finding was based on defendant's major mental illness, history of substance abuse, and his noncompliance with treatment recommendations. Defendant refused to have his blood drawn, engaged in verbal conflicts with several patients, and walked behind another patient mocking him. Consequently, Elgin placed defendant on special precautions for unpredictable behavior to protect him and others.

¶13 Thereafter, defendant refused to sign his treatment plan or participate in his psychological evaluation. He engaged in another conflict with a patient, refused to meet with the dietician, altered the doctor's diet order in his chart, and at times he refused to eat. He was also demanding and became frustrated when his demands were not met within his timeframe. Defendant took notes during every conversation, and wrote long letters and made calls to the administrative staff. He exhibited active mood and psychotic symptoms, irritability and paranoia. Defendant refused

to meet with his psychiatrist, to participate in substance abuse treatment or any other clinical activities, and refused to take his psychotropic medication, prompting Elgin to file a petition for enforced medication.

¶14 In July 2012, defendant filed a motion to reconsider the revocation of his conditional release. He argued that he was entitled to an independent psychiatric evaluation and a hearing to determine if there was clear and convincing evidence that he was in need of mental health services on an inpatient basis.

¶15 In a July 2012, treatment plan report, Elgin indicated that defendant refused to take psychotropic medication, continued to refuse all treatment and clinical activities, and remained on special precautions due to his unpredictable behavior and to protect himself and others. Defendant also refused to meet with staff members, including his psychiatrist and primary care physician. He remained isolated, argued with his peers, was not receptive to staff redirection, and had difficulty following unit expectations. He called one patient "crazy and stupid," then denied doing so and claimed that the patient had threatened him. He argued with another patient who he claimed sat in his chair, used profanity towards a staff member, and two patients reported that defendant confronted them and accused them of mindless chatter. Defendant showed no improvement since arriving, remained irritable and paranoid, continued to exhibit mood disorder and psychotic symptoms, and placed himself in harm's way by provoking other patients. Elgin opined that defendant required confinement in a secure setting, remained in need of mental health services on an inpatient basis, and was reasonably expected to inflict serious harm upon himself or another.

¶16 In a September 2012 treatment plan report, Elgin stated that, pursuant to the order for enforced medication, defendant was given antipsychotic medication and showed significant improvement. He met with his treatment team, attended group meetings, got along well with staff and peers, and was calm and cooperative. Elgin opined, however, that defendant still required confinement in a secure setting, remained in need of mental health services on an inpatient basis, and was reasonably expected to inflict serious harm upon himself or another.

¶17 On October 24, 2012, and November 5, 2012, the trial court conducted a hearing on defendant's motion to reconsider the revocation of his conditional release. Defense counsel acknowledged that the State sufficiently proved at the April hearing that defendant had violated the terms of his conditional release, and stated that he was not challenging that finding. Counsel argued, however, that the State had not established that defendant was reasonably expected to inflict serious physical harm on himself or another.

¶18 The evidence presented at the hearing consisted of testimony from four psychiatric experts who each evaluated defendant and reviewed his records to determine if he was in need of mental health services on an inpatient basis. The State presented testimony from Eric Neu, a licensed clinical psychologist with Forensic Clinical Services of the circuit court of Cook County, and Faiza Kareemi, defendant's treating psychiatrist since his return to Elgin. The defense presented testimony from Alexis Mermigas, a forensic psychiatry fellow at Northwestern Memorial Hospital, and her supervisor, Stephen Dinwiddie, a psychiatrist and professor of psychiatry at Northwestern University.

¶19 The four expert witnesses agreed that defendant suffers from a serious mental illness of bipolar disorder, and when his mental illness severely manifests itself, he can become psychotic,

delusional and hallucinate. They also agreed that defendant has a serious substance abuse problem with marijuana, which triggered him to commit murder, and that his mental health and judgment began to deteriorate while he was on conditional release. During that time period, however, he did not injure or threaten to injure himself or anyone else.

¶20 After his conditional release was revoked, defendant was held in custody at the Cook County Department of Corrections for nearly a month, and during that time, he was not treated with psychotropic medication, and did not injure or threaten to injure himself or anyone else. From the time that defendant returned to Elgin on May 1, 2012, to the time he started taking the court-enforced psychotropic medication on August 19, 2012, his mental health was poor; however, once he started taking the psychotropic medication, he dramatically improved. Since his return to Elgin, defendant did not inflict serious harm on anyone, nor did he inflict or threaten to inflict serious harm on himself.

¶21 In light of these facts, the experts all agreed that defendant must abstain from ever using marijuana, and that he must continue taking the psychotropic medication. However, they disagreed as to whether or not defendant was in need of mental health services on an inpatient basis, or whether he should be conditionally released and subject to strict monitoring of his condition as an outpatient.

¶22 Dr. Neu opined within a reasonable degree of psychological and scientific certainty that defendant was in need of mental health services on an inpatient basis. During their meeting, defendant made comments which indicated that he lacked insight into his mental illness, that he needed treatment, and that if he neglected such treatment, he and others would be placed at risk. Defendant displayed active signs of mental illness including persecutory beliefs about the people

and staff at Elgin. He claimed that he had no major mental illness and accused the staff of writing false information in his chart. Dr. Neu testified that a person's lack of insight into his mental illness is significant because if he believes that he has no mental illness, he is less likely to seek and comply with treatment and medication when moved to a less restrictive setting.

¶23 Dr. Neu further testified that defendant demonstrated poor insight into the significance of his relapse with marijuana, stating that he was "surprised" that the drug test was positive because he had only a few puffs of marijuana, and that the staff at the sobriety house told him that his drug use was not a big deal. Dr. Neu was alarmed by defendant's reaction because it showed that he considered ways to use marijuana without it appearing on a drug test, and if he believed his drug use was not important, he may relapse again in the near future.

¶24 Dr. Neu also testified that the records from Elgin revealed that defendant made threatening comments to the staff, provoked other patients with his comments, and disregarded the rules. He explained that such impulsive behavior exacerbates a person's risk for relapsing with drugs. Based on his evaluation, Dr. Neu opined that defendant represented a significant risk of danger to either himself or the community.

¶25 Dr. Kareemi, defendant's psychiatrist, opined within a reasonable degree of medical and psychiatric certainty that defendant required inpatient treatment. She reported that when defendant returned to Elgin, he was very paranoid, isolated himself, did not speak to anyone, and refused to participate in any treatment. He was also paranoid of Dr. Kareemi and believed she wanted to harm him. Dr. Kareemi testified that at the time of the murder, defendant was paranoid that the victim had bugged his apartment, put drugs in his food and was unfaithful to him.

Accordingly, his exhibition of paranoia was very concerning because it was closely tied to the murder for which he was found not guilty by reason of insanity.

¶26 Dr. Kareemi further testified that defendant placed himself in harm's way at Elgin by provoking other patients by calling them names, telling them that they were evil, crazy and stupid, and told one patient "[g]et away from me before something happens." The other patients became upset with defendant's behavior and threatened to hit him if he continued in that manner. Defendant also wrote long, rambling letters to the administration at Elgin, complaining that the treatment team was not doing its job and not treating him well. Defendant was disrespectful and argumentative with the staff at Elgin, he violated his curfew, did not keep his room clean, and hoarded items in his room.

¶27 Defendant repeatedly refused to take any medication, and on August 17, 2012, the trial court granted Dr. Kareemi's petition for a court order to have him forcibly medicated. As a result, defendant had taken Olanzapine, an antipsychotic medication, since August 19, 2012. This medication treated his paranoia, stabilized his mood to keep him calm, and improved his sleep and impulsivity. Within a week after starting the medication, defendant showed significant improvement in his behavior. He began talking to Dr. Kareemi, participating in evaluations and attending group sessions. He was also calm and cooperative, and his sleep improved. At times, defendant acknowledged that the medication helped him; however, at other times, he asked Dr. Kareemi to reduce his dosage or switch him to a different medication. Dr. Kareemi testified that defendant's request showed that he did not fully understand why he needed to be on this medication at this dosage.

¶28 Dr. Kareemi further testified that defendant minimized his substance abuse by pointing out to her that he used marijuana only once, which indicated that he needed to complete the intensive mental illness and substance abuse program at Elgin. She opined that defendant still represented a danger to himself and others because he did not fully understand why he needed to be on medication and minimized his substance abuse, which placed him at risk for relapse. Dr. Kareemi explained that bipolar disorder is an illness of remission and relapse, and opined that defendant was able to maintain himself at that time because he was in a very structured and supervised environment at Elgin.

¶29 Dr. Mermigas testified for the defense that defendant did not require inpatient treatment, but instead, should be conditionally released under close monitoring. During her interviews with defendant, his mood was good and appropriate, he displayed no signs of psychosis, he was alert, oriented, cooperative and calm, and he had no thoughts of harming himself or others. Dr. Mermigas suggested that defendant's transfer from the more intensive living environment to the less monitored environment at the sobriety house may have contributed to his use of marijuana because many bipolar patients self-medicate with various substances, including illegal drugs.

¶30 Dr. Mermigas opined that defendant's original conditional release plan was sufficient to ensure public safety because it caught his slip early, interventions were appropriately made, and defendant did not harm himself or anyone else during his release. She suggested that the original plan could be improved by requiring intensive monitoring of his drug use, including frequent urine drug screens. Dr. Mermigas recognized that defendant required close monitoring in his living environment and needed to be placed where he could be monitored daily, such as a nursing home. Specifically, defendant needed to be monitored closely by a psychiatrist for his

psychiatric condition and for his medications so adjustments could be made accordingly. Dr. Mermigas opined that defendant should participate in a partial hospitalization program which would allow him to work part-time and also attend group meetings and more intensive treatment in the community, and to learn more about his psychiatric condition and substance abuse. She testified that her proposed treatment plan with close monitoring would reasonably insure the safety of others if defendant was conditionally released.

¶31 Dr. Mermigas acknowledged that defendant was being compelled to take his medication by court order, which expired in November 2012. Nevertheless, she opined that he would not require inpatient treatment at that time. Dr. Mermigas denied that defendant exhibited delusions and paranoia when he returned to Elgin. She acknowledged that he had disagreements with the staff, but testified that he had long held disagreements with the staff throughout his tenure of residing at Elgin. She also acknowledged that defendant was accused of making sarcastic comments to other patients and that the staff found this to be provocative behavior that could lead to violence. She noted, however, that the staff did not intervene in those situations, and she asserted that there was not a sufficient link to show that his behavior would lead to violence. Dr. Mermigas testified that defendant told her that he wanted to cooperate with his treatment plan and to continue taking his medication.

¶32 Dr. Dinwiddie opined for the defense that defendant should be conditionally released, but that it was absolutely necessary that he continue taking his medication, and that monitoring arrangements had to be in place to insure that he did so. Dr. Dinwiddie acknowledged that after defendant returned to Elgin and prior to taking psychotropic medication, he was a difficult person who was argumentative, touchy and uncooperative with the staff; however, he was not

violent or dangerous. Since taking the medication, defendant's condition had improved and he became much more cooperative, better groomed, his behavior returned to normal, and his mental illness was in remission.

¶33 Dr. Dinwiddie testified that defendant's risk of inflicting serious harm on someone had not changed, but acknowledged that while short-term risk prediction is fairly accurate, it is not an exact science, but is based on probabilities, and thus, there is always room for variance. He further acknowledged that the staff at Elgin had documented provocative behavior by defendant with other patients and noted that defendant failed to address his personal and medical needs. Dr. Dinwiddie opined that it was in defendant's best medical interest to have the medication enforced because it would help maintain remission of his bipolar illness and take the edge off of his personality disorder.

¶34 Dr. Dinwiddie further testified that substance addiction is a chronic illness that occurs by relapse or remission, and although one slip is usually not an indication of danger in and of itself, it does indicate that there was a loophole by which the illness could potentially manifest itself again. He asserted that any treatment plan must insure that the likelihood of such slips is reduced as much as possible, and if slips do occur, as in this case, that they are identified promptly and that remedial action is taken. Dr. Dinwiddie explained that it is not uncommon for slips to occur at times of transition from one level of care to another, as defendant experienced. Consequently, there should be firm monitoring and strict evaluation of defendant, particularly early on and again at times of transition, for his mood stability and evidence of recurrent poor judgment and substance use. Dr. Dinwiddie testified that these conditional terms would reasonably assure defendant's satisfactory progress, and the safety of both him and the community.

¶35 Following closing arguments and recommendations by respective counsel, the court noted that it had a long history with this case and that defendant had taken various positions regarding his mental illness at different times. When he was on trial for murder, he claimed he was very mentally ill. After some time at Elgin, he claimed he was not mentally ill at all and did not have bipolar disorder, but had a substance abuse problem with marijuana, and now he was back to being mentally ill again.

¶36 The trial court stated that during defendant's bench trial, it was shown that he had a lengthy history of mental illness involving delusions and hallucinations, and he had been hospitalized on prior occasions and voluntarily admitted himself to the hospital shortly before he committed the murder. The court noted that prior to his conditional release in 2010, defendant asserted, and his physician at Elgin agreed, that he did not suffer from a mental illness, and that whatever issues he had were related to his use of marijuana. The court then found:

> "As soon as he got the release almost immediately problems developed, and he had all kinds of problems getting along with treatment facilities. He had to go from one facility to another. There were all kinds of adjustment issues. He simply was becoming a very high maintenance client for these outpatient facilities.
>
> After years of being told that his primary issue was not really mental illness but it was actually marijuana use, he started using marijuana again. He urged the Court the only reason this murder happened was somehow related to the marijuana use.

At that point the Court fully indicated that I thought he was a danger to the public, and he was remanded to the Department for further treatment as an inpatient. His conditional release had been terminated.

Mr. Heyrman came later on board as a third pro bono counsel and indicated that the formalities of the hearing had not taken place the way the statute requires, and at his urging we have had the hearing and I have heard the evidence.

Right now Mr. Filliung is getting medications for bipolar disorder. It was always my belief I was very skeptical of the reports from Dr. Luchetta and other people from Elgin that he had no mental illness at all because I had been affirmatively persuaded that he was a very mentally ill man that required all sorts of interventions. He seemed to be functioning as an inpatient reasonably without medication. At that point he got the release that he sought.

Again, once he got released problems developed. He was not getting along with the people that were trying to manage these facilities. He was going on his own agenda and started using marijuana again. He went back to Elgin. When Elgin got him back they went to court on their own. I believe it was in Will County, and he was ordered to take medications. Now he appears to be responding to court ordered medications.

The fact is that he was not getting along at all as an outpatient. He was getting along much better as an inpatient. We have to remind ourselves that we are here because there was a homicide that took place. It was a murder that he was

found not guilty by reason of insanity of. There were issues about marijuana and mental illness.

Right now he is taking medications because he has to not because he ever volunteered to. I don't have any history of him agreeing to take medications and follow the doctor's advice.

Looking at all of it in its totality, I still think he could represent a danger to the public in that he has not done well while out. So his conditional release is again revoked."

The trial court then remanded defendant to the custody of the Department of Human Services *nunc pro tunc* April 6, 2012.

¶37 On appeal, defendant first contends that the trial court's order revoking his conditional discharge must be reversed because the court failed to find that he was "reasonably expected" to inflict serious physical harm upon himself or another as required by section 5-2-4(a-1)(B) of the Unified Code of Corrections (the Code) (730 ILCS 5/5-2-4(a-1)(B) (West 2010)), and instead, merely found that he "could" present a danger to the public. He argues that the court's finding was insufficient because it was required to find that he would or was likely to inflict harm, but only found that there was a possibility he could do so.

¶38 The State responds that the trial court sufficiently found that defendant presented a danger to the public and explained in substantial detail why he was in need of inpatient care. The State points to the evidence that defendant has a lengthy history of mental illness with delusions and hallucinations, that after his conditional release he almost immediately had problems at the

treatment facilities, and that he had a history of not taking his medication and not getting along with others, which renders him a danger to the public.

¶39 Whether the trial court's order complied with the statutory requirements in the Code is a question of law that we review *de novo*. *In re Jonathan P.*, 378 Ill. App. 3d 654, 656 (2008). We initially observe that section 5-2-4 of the Code authorizes the involuntary commitment of an insanity acquittee to the Department of Human Services "to treat the individual's mental illness, and at the same time protect him and society from his *potential* dangerousness." (Emphasis added; internal quotation marks omitted.) *People v. Jurisec*, 199 Ill. 2d 108, 115 (2002).

¶40 Section 5-2-4(i) of the Code provides that, if the trial court determines, after a hearing, that defendant has not fulfilled the conditions of his release, and after a subsequent hearing, finds that he is "in need of mental health services on an inpatient basis," then it shall enter an order remanding him to the Department of Human Services or other facility. 730 ILCS 5/5-2-4(i) (West 2010). The Code expressly defines "in need of mental health services on an inpatient basis" as "a defendant who has been found not guilty by reason of insanity but who due to mental illness is reasonably expected to inflict serious physical harm upon himself or another and who would benefit from inpatient care or is in need of inpatient care." 730 ILCS 5/5-2-4(a-1)(B) (West 2010). The trial court's determination that defendant is "in need of mental health services on an inpatient basis" must be based upon explicit medical opinion regarding his future conduct, and not merely a finding of mental illness. *Jurisec*, 199 Ill. 2d at 123.

¶41 In this case, our review of the record reveals that the trial court sufficiently found that defendant posed a danger to the public, in accordance with the requirements of section 5-2-4 of the Code. In announcing its findings, the trial court stated that when it learned defendant had

tested positive for marijuana while on conditional release, and initially terminated his release, "[a]t that point the Court fully indicated that I thought he was a danger to the public." The court specifically noted that defendant had previously claimed that the only reason he committed the murder was due to his marijuana use, and he then started using marijuana again while on release. The record thus shows that when the court found that defendant had violated the terms of his conditional release in April 2012, it further found that he was a danger to the public due to his use of marijuana.

¶42 The record also shows that the court found that defendant "was not getting along at all as an outpatient," and that he did much better as an inpatient. At this point the court again specifically noted that defendant had committed a murder due to issues with his marijuana use and mental illness. In addition, the court found that defendant was taking his psychotropic medication only because he was being forced to do so under a court order, and he had no history of voluntarily agreeing to take that medication or follow his doctor's advice. These findings further reflect the trial court's belief that defendant was in need of mental health services on an inpatient basis because he posed a danger of serious physical harm to the public.

¶43 Following these findings, the court stated "[l]ooking at all of it in its totality, I still think he could represent a danger to the public in that he has not done well while out." Although the court used the word "could" at this point, its lengthy and detailed findings clearly indicate that the court firmly believed that defendant was "reasonably expected to inflict serious physical harm" upon another person if he were released as an outpatient, and that his mental health and marijuana issues indicated that he was "in need of mental health services on an inpatient basis."

Accordingly, we conclude that the trial court's findings complied with the requirements of section 5-2-4 of the Code.

¶44 Defendant next contends that the trial court failed to state its factual findings and conclusions of law on the record as required by section 3-816(a) of the Mental Health and Developmental Disabilities Code (405 ILCS 5/3-816(a) (West 2012)). Defendant maintains that the court failed to make a factual finding that he was "reasonably expected to inflict serious physical harm upon himself or another," and therefore, the court's order must be reversed.

¶45 As stated above, our review of the record reveals that the trial court provided a lengthy and detailed explanation of its factual findings, and although it did not use the same language as the statute, the court clearly indicated that it found that defendant was reasonably expected to pose a physical danger to the public. Consequently, we find defendant's claim belied by the record. Moreover, as pointed out by the State, the supreme court has determined that section 3-816(a) of the Mental Health Code is directory, not mandatory, and therefore, the trial court's failure to comply with the statute in any sense does not invalidate its order. *In re Rita P.*, 2014 IL 115798,¶43-45, 68.

¶46 Defendant finally contends that the trial court's decision to revoke his conditional release was against the manifest weight of the evidence. Defendant argues that the evidence showed that he had not harmed or threatened to harm himself or anyone else at any point in time, including the many years he was not taking any psychotropic medication and the time he was on conditional release. He notes that both of his experts, Drs. Mermigas and Dinwiddie, testified that he would not be a danger to himself or anyone else if he was conditionally released, and

claims that the testimony from the State's experts, Drs. Neu and Kareemi, that he posed a danger to others was inconsistent with the rest of their testimony.

¶47 The State responds that the court's ruling was not against the manifest weight of the evidence where its two experts both testified that defendant posed a danger to himself and others because he failed to fully comprehend the terms of his conditional release. The State points out that all four experts agreed that defendant's behavior declined while he was on conditional release, and that he requires close monitoring and strict compliance with his medication, which he refused to take until forced to do so by a court order.

¶48 The trial court's judgment regarding conditional release is given great deference and will not be disturbed on review unless it is against the manifest weight of the evidence, even if the reviewing court would have ruled differently. *People v. Youngerman*, 361 Ill. App. 3d 888, 895 (2005). At the revocation hearing, the trier of fact is responsible for determining the credibility and weight to be given to the psychiatric testimony, and it is not obligated to accept the opinions of defendant's expert witnesses over the opinions presented by the State's experts. *People v. Urdiales*, 225 Ill. 2d 354, 431 (2007). "In reviewing decisions concerning the freedoms allowed to a person committed after an NGRI [not guilty by reason of insanity] finding, reviewing courts have long recognized that predicting the future dangerousness of an individual is an inexact medical science, and therefore, they have held that orders of commitment will not be overturned when there is a reasonable expectation that the respondent would engage in dangerous conduct." (Internal quotation marks omitted.) *Youngerman*, 361 Ill. App. 3d at 895. Defendant's psychiatric history is one of the most important factors an examining physician may consider when forming an opinion regarding his mental condition, and where there is evidence of defendant's prior

conduct along with evidence that he remains in need of mental treatment, a commitment order should be affirmed. *In re Hannah E.*, 376 Ill. App. 3d 648, 660 (2007).

¶49 In this case, the four expert witnesses agreed that defendant suffers from a serious mental illness of bipolar disorder, and when his mental illness severely manifests itself, he can become psychotic, delusional and hallucinate. They further agreed that he has a serious substance abuse problem with marijuana which triggered him to commit murder. Based on these diagnoses, the experts agreed that defendant must continue taking psychotropic medication, he must abstain from ever using marijuana, and he must be subject to strict monitoring to insure that he complies with these conditions. After considering defendant's history, status, and these expert opinions concerning defendant's condition, treatment and prognosis, the trial court determined that defendant was in need of mental health services on an inpatient basis.

¶50 Although involuntary commitment requires more than proof of mental illness alone, the State is not required to prove that defendant is a "definite danger to [him]self or society," (internal quotation marks omitted), nor is the trial court required to wait until defendant hurts himself or another person before imposing involuntary commitment. *Hannah E.*, 376 Ill. App. 3d at 661; *In re Grimes*, 193 Ill. App. 3d 119, 124 (1990). " '[A] treating psychiatrist's opinion of potential dangerousness need not be derived from firsthand observations of violence and may be based on knowledge of incidents derived from medical history records.' " *Hannah E.*, 376 Ill. App. 3d at 661.

¶51 Here, Dr. Neu and Dr. Kareemi both opined that defendant represented a significant risk of danger to himself and others, and therefore required mental health services on an inpatient basis. Dr. Neu testified that defendant expressed persecutory beliefs about the people and staff at

Elgin, and claimed that he had no major mental illness, which demonstrated that he lacked insight into his mental illness, and thus, was less likely to comply with treatment and medication if placed in a less restrictive setting. He further testified that defendant demonstrated poor insight into the significance of his relapse with marijuana and engaged in impulsive behavior, threatening the staff and provoking patients with his comments, which could cause him to relapse again.

¶52 Similarly, Dr. Kareemi testified that defendant was paranoid, which was very concerning because he was also paranoid when he committed the murder. She further testified that defendant placed himself in harm's way by provoking other patients at Elgin, and that he was disrespectful and argumentative with the staff. Significantly, defendant refused to take any medication before he was forcibly medicated pursuant to a court order, which substantially improved his behavior. Defendant sometimes acknowledged that the medication helped him, but at other times he asked Dr. Kareemi to reduce his dosage or switch him to a different medication, which showed that he did not understand why he needed to take the medication. Defendant also minimized his substance abuse, which indicated that he needed to complete the intensive mental illness and substance abuse program at Elgin. Dr. Kareemi opined that defendant's lack of understanding about his medication and minimization of his substance abuse placed him at a risk for relapse, which rendered him a danger to himself and others, and that he was in need of the structured and supervised environment at Elgin.

¶53 Conversely, Dr. Mermigas and Dr. Dinwiddie opined that defendant did not need inpatient treatment and should be conditionally released; however, both doctors testified that defendant required intensive monitoring for drug use and compliance with his medication. Both

doctors testified that the close monitoring would reasonably insure the safety of others if defendant was released.

¶54 As the trier of fact in this case, it was the responsibility of the trial court to determine the credibility and weight to be given to the conflicting psychiatric opinions (*Urdiales*, 225 Ill. 2d at 431), and here, the court found the testimony from the State's experts more credible and persuasive. The record shows that the court was extremely concerned with defendant's relapse with marijuana and his refusal to take any psychotropic medication without being forced to do so by court order. The experts were all in agreement that defendant must take his medication and abstain from marijuana use, and based on the testimony presented, the trial court concluded that, at this time, defendant was in need of mental health services on an inpatient basis to insure his compliance with those conditions and the safety of the public. The entire record contains strong and extensive support for the trial court's judgment, and therefore, we find that it was not against the manifest weight of the evidence.

¶55 Accordingly, we affirm the judgment of the circuit court of Cook County.

¶56 Affirmed.