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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of De Kalb County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 98-CF-126
	)	
JAMES C. WALLS,	)	Honorable Robbin J. Stuckert,
	)	Judge, Presiding.
Defendant-Appellant.	)	

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PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.  
Justices Zenoff and Spence concurred in the judgment.

**ORDER**

¶ 1 *Held:* The defendant was not denied his due process right to a speedy trial and the tendered jury instructions were not improper.

¶ 2 On April 9, 2002, following a hearing, the defendant, James Walls, was adjudicated a sexually dangerous person under the Sexually Dangerous Persons Act (the Act) (725 ILCS 205/0.01 through 12 (West 1998)) and the circuit court ordered him committed. On May 27, 2008, the defendant filed an application for discharge or conditional release. On June 29, 2010, the defendant filed a motion for release based on a violation of his right to a speedy trial. On December 21, 2010, the trial court denied the motion for release, finding that there had been no

speedy trial violation. On July 31, 2013, following trial, a jury found that the defendant was still a sexually dangerous person. The defendant appeals from these orders. We affirm.

¶ 3

### BACKGROUND

¶ 4 On April 8, 1998, the defendant was charged by a seven-count indictment with aggravated criminal sexual assault (720 ILCS 5/12-14(b)(1) (West 1998)), criminal sexual assault (720 ILCS 5/12-13(a)(1) (West 1998)), attempted criminal sexual assault (720 ILCS 5/8-4(a) (West 1998)), and domestic battery (720 ILCS 5/12-3.2(a)(2) (West 1998)). The State later filed a civil commitment petition under the Act. 725 ILCS 205/1.01 *et seq.* (West 1998). The defendant waived trial by jury and the matter proceeded to a bench trial. On April 9, 2002, following the bench trial, the defendant was found to be a sexually dangerous person and committed to the Illinois Department of Corrections (IDOC).

¶ 5 This court affirmed the trial court's order of commitment. *People v. Walls*, No. 2-02-0380 (2003) (unpublished order under Supreme Court Rule 23). The defendant filed a petition for leave to appeal. Our supreme court denied the defendant's petition but, under its supervisory authority, directed this court to vacate our judgment and reconsider it in light of *People v. Masterson*, 207 Ill. 2d 305 (2003). Pursuant to that order, we vacated our judgment and remanded the cause to the trial court for a determination of whether the defendant was a sexually dangerous person under the standards announced in *Masterson*. *People v. Walls*, No. 2-02-0380 (2004) (unpublished order under Supreme Court Rule 23). On remand, the defendant was once again adjudicated a sexually dangerous person under the Act. This court affirmed that order of commitment. *People v. Walls*, No. 2-05-1003 (2007) (unpublished order under Supreme Court Rule 23).

¶ 6 On May 27, 2008, the defendant filed an application for discharge or conditional release, as well as a motion for speedy trial, a jury demand, a motion for an independent examination, and a motion for appointment of counsel other than the public defender. On June 19, 2008, the trial court appointed the public defender to represent the defendant. At a hearing on that date, the defendant was not present but the parties agreed to a continuance until July 3, 2008. On July 3, 2008, with the defendant not present in court, the parties agreed to a continuance until August 4, 2008. At a status hearing on August 4, 2008, the state's attorney indicated that he had contacted the attorney general's office to determine who would handle the case. The State requested a continuance to August 19, 2008, so as to determine who would lead the case. The defendant agreed to this continuance.

¶ 7 On August 19, 2008, the State requested a continuance until October 27, 2008, to allow time for the State to file a brief, for the defense to respond, and for the State to reply. The defendant agreed to this continuance. The October 27, 2008, order indicated that the case was continued by agreement until November 24, 2008, for further status. It also indicated that the defendant was not present and the State was petitioning the attorney general to accept this case. On November 24, 2008, the case was again continued by agreement until December 16, 2008; the written order indicated that the defendant was not present and that the continuance was again for the purpose of determining the attorney general's position.

¶ 8 On December 16, 2008, the defendant was again not present in court. The case was continued by agreement until January 22, 2009. The written order of continuance ordered the State to writ the defendant from IDOC so that he could be present on the next date. On January 22, 2009, the defendant was present in court. The public defender indicated that the defendant had requested the appointment of private counsel. After finding that the defendant was indigent,

the trial court ordered that private counsel be appointed for the defendant but indicated that it would take time to determine who would be appointed. The case was continued by agreement until February 5, 2009.

¶ 9 On February 3, 2009, private counsel entered his appearance on behalf of the defendant. On February 5, 2009, the defendant was present in court. The defendant's new counsel reasserted the defendant's right to a speedy trial and demanded a psychological evaluation of the defendant. Defense counsel argued that the psychological evaluation should have been triggered by the filing of the application for discharge and, therefore, any further continuances necessary to complete an evaluation would not be by agreement. Beginning February 5, 2009, the State requested a series of continuances until May 26, 2010, to allow time for IDOC to complete a psychological exam of the defendant. On March 23, 2009, an order was entered indicating that IDOC was to complete the socio-psychiatric report within 30 days.

¶ 10 On May 26, 2010, the parties acknowledged that a psychological report had been filed. However, rather than setting the matter for hearing, the defendant requested a continuance so that he could file a motion for release based on speedy trial grounds. On June 29, 2010, the defendant filed a motion for an order releasing him from custody. In that motion, the defendant alleged that (1) between May 27, 2008, and March 23, 2009, he had not waived his right to a speedy trial and (2) between August 26, 2009, and April 28, 2010, he did not occasion delay and did demand his right to a speedy trial. Thereafter, the case was repeatedly continued by agreement or upon the defendant's request, until the hearing commenced on his motion for release.

¶ 11 A hearing on the defendant's motion for release on speedy trial grounds commenced in October 2010. The State submitted an affidavit of Dr. Mark Carich, a correctional administrative

psychologist employed by IDOC. Dr. Carich stated that he, along with a psychiatrist and a social worker, prepared the defendant's socio-psychiatric report for the recovery hearing. He further stated that he received the order for the defendant's evaluation on June 5, 2009, and that the report was complete on April 29, 2010. The nine-month period from receipt of the order for evaluation and the completion of the report is a typical response time. The defendant testified that he filed a petition for discharge or conditional release in May 2008. Despite his request for appointment of counsel, he received no correspondence from the public defender's office. On January 22, 2009, he appeared in court for the first time and learned he was being represented by counsel. The defendant argued that considering the length of the delay, the reason for the delay, that his rights were asserted and he suffered prejudice, his motion should be granted.

¶ 12 On December 21, 2010, the trial court denied the defendant's motion for release on speedy trial grounds. The trial court noted that there was a delay caused by several factors, including the trial court's failure to appoint private counsel and instead appointing the public defender; the failure of the attorney general to become involved in a timely manner; the failure of IDOC to complete the socio-psychiatric evaluation in a more timely manner; and the failure of the clerk's office as required by statute to send the order to prepare the evaluation. The trial court also noted that there was a difference between a person already declared to be a sexually dangerous person and a person not yet found to be sexually dangerous under the Act. The trial court concluded that there had been no constitutional speedy trial violations.

¶ 13 Thereafter, the parties agreed to a series of continuances until June 15, 2011, while the State complied with the defendant's discovery requests. On June 15, 2011, the State requested two continuances, until July 21, 2011, to allow time to acquire the defendant's treatment records from IDOC. On July 21, 2011, the defendant requested or agreed to a series of continuances until

the date of the hearing (July 29, 2013) on his application for discharge or conditional release. The record indicates that the State was represented by the state's attorney until December 22, 2011. On that date, the attorney general appeared for the first time and represented the State from that point forward.

¶ 14 On July 29, 2013, a jury trial commenced on the defendant's application for discharge or conditional release. The State presented testimony from Dr. Jagannathan Srinivasaraghavan (Dr. Van), a licensed psychiatrist who had examined the defendant. The parties stipulated that Dr. Van was an expert in the field of evaluating sex offenders. Dr. Van opined that the defendant was still a sexually dangerous person and should continue to be committed to institutional care. Dr. Van testified that the defendant had suffered from pedophilia for more than one year and that pedophilia was a qualifying mental disorder under the Act. Dr. Van testified that the defendant continued to deny that he suffered from pedophilia. Due to that denial, the defendant had failed to participate in any treatment and had thus failed to make any improvement in his ability to manage the disorder. On cross-examination, Dr. Van acknowledged that the defendant had not been sexually acting out in the treatment facility but noted that the defendant's behavior in a controlled environment is not necessarily indicative of his potential behavior outside the treatment facility.

¶ 15 The State also called Dr. Kristopher Clouch, a licensed clinical psychologist who also examined the defendant. The parties stipulated that Dr. Clouch was an expert in the field of evaluation and risk analysis of sex offenders. Dr. Clouch testified that the defendant suffered from pedophilia and had suffered with this mental disorder for more than one year. Dr. Clouch opined that the defendant was still a high risk to commit additional acts of sexual assault or child molestation if released from institutional care. Dr. Clouch testified that the defendant had a

high sexual preoccupation, an attraction to children, a general lack of concern for others, and a belief that it was appropriate to use others for his own sexual gratification. Dr. Clouch further testified that the defendant had a history of alcohol abuse and that substance abusers have an increased risk for future recidivism. Dr. Clouch noted that the defendant continued to deny that he committed any sex offenses and that this had impeded his ability to progress in treatment.

¶ 16 During the jury instruction conference, the defendant proffered a verdict form with the following options: (1) defendant is still a sexually dangerous person; (2) defendant is not a sexually dangerous person; and (3) defendant “appears no longer to be dangerous, but \*\*\* it is impossible to determine with certainty under conditions of institutional care that [he] has fully recovered.” The State argued that the statute, 725 ILCS 205/9(e) (West 2012), did not permit the jury to choose the third option; rather, such a determination was exclusively left to the trial court. The trial court ruled in favor of the State, finding that the plain language of the statute instructs the court, not the jury, to assess whether the conditions of institutional care make it impossible to assess whether the defendant has fully recovered. Accordingly, the jury was only given verdict forms with options (1) and (2). Following deliberations, the jury found that the defendant was still a sexually dangerous person. The trial court denied the defendant’s application and ordered that he remain in institutional care. Following the denial of his motion to reconsider, the defendant filed a timely notice of appeal.

¶ 17

#### ANALYSIS

¶ 18 The defendant’s first contention on appeal is that the trial court erred in denying his motion for release based on the violation of his constitutional right to a speedy trial. The standard of review for determining whether an individual’s constitutional rights have been violated is *de novo*. *People v. Burns*, 209 Ill. 2d 551, 560 (2004).

¶ 19 Proceedings under the Act are civil in nature. *People v. Lawton*, 212 Ill. 2d 285, 295 (2004). Nonetheless, because such proceedings may result in the deprivation of one’s liberty and incarceration for psychiatric treatment, a defendant, in proceedings under the Act, is entitled to the same protections available to criminal defendants, such as the right to a speedy trial. *Id.* It is well settled that the Speedy-Trial Act, section 103-5 of the Code of Criminal Procedure of 1963 (725 ILCS 5/103-5 (West 2012)), is limited to criminal proceedings and is thus not applicable to proceedings under the Act. *In re Detention of Hughes*, 346 Ill. App. 3d 637, 646 (2004). Further, the right to a speedy trial guaranteed by the sixth amendment (U.S. Const., amend. VI) applies only within the confines of a formal criminal prosecution. *People v. Totzke*, 2012 IL App (2d) 110823, ¶ 19. Accordingly, as acknowledged by the defendant, he has only a due process right to a speedy trial. *Id.* “ ‘To constitute a due process violation it must be shown that the delay \*\*\* caused substantial prejudice to the defendant’s right to a fair trial and that the delay was an intentional device to gain a tactical advantage over the accused.’ ” *Id.* ¶ 27 (quoting *People v. Sanders*, 86 Ill. App. 3d 457, 472 (1980)). “Both of these prongs—substantial prejudice and intentional tactical maneuvering by the State—must be established before a delay will be considered to violate due process.” *Id.*

¶ 20 In the present case, the defendant has failed to establish either prong. First, the defendant failed to establish substantial prejudice to his right to a fair trial. The defendant argues that as a result of the delay between the time he filed his application and the time he filed his motion for release based on speedy trial grounds, he suffered pretrial anxiety and lengthy pretrial incarceration. However, in a recovery proceeding, the defendant has already been adjudicated a sexually dangerous person and society has an interest in treating a mental illness until such time as the defendant is found to be recovered. See *People v. Allen*, 107 Ill. 2d 91, 102 (1985) (“the

State has a substantial interest in treating as well as protecting the public from sexually dangerous persons \* \* \* ”). As such any anxiety or pretrial incarceration is not sufficient to establish substantial prejudice. *People v. Donath*, 2013 IL App (3d) 120251, ¶ 54 (“[n]o prejudice exists just by being in custody during pendency of [a recovery] application”). Moreover, the evaluators and the jury ultimately determined that the defendant was still sexually dangerous. Thus, the delay in this case did not unduly deprive the defendant of his freedom.

¶ 21 Furthermore, the defendant’s ability to present his case in support of his application was not impaired. In a recovery proceeding, the only potential witnesses are the defendant’s doctors and therapists and the only relevant evidence is the defendant’s progress in treatment. The defendant suffered no prejudice to the ability to present his case because all the relevant evidence was able to be presented and considered. Accordingly, as the defendant was already in custody due to his previous adjudication as sexually dangerous and because he suffered no prejudice to the ability to defend his case, we decline to find that the delay caused substantial prejudice.

¶ 22 The defendant also failed to establish the second prong—that the delay was attributable to intentional tactical maneuvering by the State. The original reason for delay was that the state’s attorney was contacting the attorney general to determine who would represent the State. However, the public defender represented the defendant during this time and agreed to all the continuances up until the time that private counsel was appointed. Accordingly, the delays are not attributable to the State alone. *Id.* ¶ 51 (the defendant is bound by the acts and omissions of his attorney). The fact that the public defender was appointed, rather than private counsel, was an error by the trial court, not the State. The delay between the time private counsel was appointed (February 5, 2009) and May 26, 2010, was due to the preparation of the defendant’s evaluation by IDOC. The record indicates that the delay was due to a backlog in IDOC, not

intentional tactical maneuvering by the State. Additionally, the delay in ordering the socio-psychiatric report was an oversight by the clerk's office. Finally, after May 26, 2010, the majority of the delay was agreed to by the defendant. Accordingly, based on our review of the record, the reasons for the lengthy delay do not demonstrate that the defendant was deprived of his due process right to a speedy trial.

¶ 23 In so ruling, we note that the defendant argues that whether he was deprived of his due process right to a speedy trial should be determined by applying the four-factor test set forth in *Barker v. Wingo*, 407 U.S. 514, 530 (1972). Normally, these factors are used to determine whether a defendant's sixth amendment constitutional right to a speedy trial has been violated and, thus, do not apply to a due process analysis. See *Totzke*, ¶ 32. Nonetheless, even if we applied the *Barker* analysis to determine whether the defendant was denied his due process right to a speedy trial, our result would not change.

¶ 24 Under *Barker*, four factors are considered when determining whether a defendant's constitutional right to a speedy trial has been violated: (1) the length of the delay; (2) the reasons for the delay; (3) the defendant's assertion of his or her right; and (4) the prejudice to the defendant as a result of the delay. *Barker*, 407 U.S. at 530.

¶ 25 As to the first factor, the five years between the defendant's recovery application and the hearing thereon is presumptively prejudicial. *People v. Crane*, 195 Ill. 2d 42, 53 (2001). While this does not establish actual prejudice, it is sufficient to trigger a further *Barker* inquiry. *Id.* As to the reasons for the delay, the majority of the delays were by agreement of the parties. However, the following requests by the State were not agreed to by the defendant. The continuances requested by the State between February 5, 2009, and May 26, 2010, were to allow for an IDOC evaluator to complete the requisite psychiatric exam of the defendant. The delay

between June 15 and July 21, 2011, was requested by the State to acquire the defendant's treatment records from IDOC. The nine-month delay between the defendant's filing of his application and the placing of the order for the socio-psychiatric evaluation was the result of the court clerk's failure to transmit the order in a timely manner. Accordingly, the delays not agreed to by the defendant were caused by an overburdened IDOC and an oversight by the clerk's office. This type of reason for delay is weighed less heavily against the State. *Id.*

¶ 26 As to the third factor, the defendant asserted his right to a speedy trial when he filed his application and when private counsel was appointed. Nonetheless, the defendant agreed to a majority of the continuances. As to the fourth factor, as we determined above, the delay did not cause the defendant substantial prejudice. Accordingly, if we were to apply the four *Barker* factors in the context of a recovery proceeding, we would again hold that the defendant's due process right to a speedy trial was not violated. Although the delay was presumptively prejudicial, the defendant agreed to the majority of continuances, the remainder of the delay was unintentional on the part of the State, and the defendant's defense was not prejudiced by the delay.

¶ 27 The defendant's second contention on appeal is that the jury instructions did not convey the applicable law. Specifically, the defendant had requested the following instruction:

“We, the jury, find that the Respondent, James C. Walls, appears no longer to be dangerous, but that it is impossible to determine with certainty under conditions of institutional care that the Respondent has fully recovered.”

The basis for the defendant's tendered instruction can be found in the second sentence of section 9(e) of the Act. That section of the Act states, in relevant part:

“If the person is found to be no longer dangerous, the court shall order that he or she be discharged. If the court finds that the person appears no longer to be dangerous but that it is impossible to determine with certainty under conditions of institutional care that the person has fully recovered, the court shall enter an order permitting the person to go at large subject to the conditions and supervision by the Director as in the opinion of the court will adequately protect the public.” 725 ILCS 205/9(e) (West 2012).

The trial court refused to tender the defendant’s requested instruction, finding that the plain language of the Act instructed the court, not the jury, to assess whether the conditions of institutional care made it impossible to assess whether the defendant had fully recovered.

¶ 28 The defendant argues that the trial court erred in refusing to give the subject jury instruction. In so arguing, the defendant relies on *People v. Sweeney*, 114 Ill. App. 2d 81, 89 (1969), *abrogated on other grounds by People v. Trainor*, 196 Ill. 2d 318, 334-35 (2001). In *Sweeney*, the defendant had requested the following instruction:

“ ‘If you find that [the defendant] appears to be no longer sexually dangerous, but that is (*sic*) is impossible to determine with certainty under conditions of institutional care that he has fully recovered, you will bring (*sic*) in a verdict to the effect.’ ” *Id.* at 88-89.

The trial court refused to tender the instruction. *Id.* at 88. On appeal, the reviewing court held that the failure to give the instruction and a corresponding verdict form was error. *Id.* at 89. The reviewing court noted that one of the psychiatrists testified that it was not possible to determine with certainty, under the conditions of institutional care, whether the defendant had recovered. Because there was evidence to support the tendered jury instruction, the reviewing court held that it should have been given. *Id.*

¶ 29 In the present case, the trial court did not err in refusing to give the subject jury instruction because, in contrast to *Sweeney*, there was no evidence to support such an instruction. *People v. Maclin*, 2014 IL App (1st) 110342, ¶ 33 (a defendant is entitled to have the jury instructed on any theory of defense that is supported by the evidence). Drs. Van and Clouch both opined that the defendant was still sexually dangerous. In his brief, the defendant summarizes the experts' testimony and then argues that there was at least "slight evidence" that could warrant a finding that he was no longer dangerous but that it was impossible to determine with certainty under conditions of institutional care whether he had fully recovered. However, the defendant fails to identify the exact evidence on which he relies, and our own review of the record does not support his contention.

¶ 30 We note that, in summarizing the experts' testimony, the defendant cites Dr. Van's testimony that, in terms of sexually acting out, a controlled environment differs from an uncontrolled environment. When read in context, Dr. Van's testimony was that, even though the defendant had not sexually acted out while committed, this did not necessarily mean he would not act out if released. The defendant also cited Dr. Clouch's testimony that denial is not considered a risk factor for sexual recidivism, (although both experts testified that the defendant's denial of his mental disorder had impeded his progress in treatment). In sum, nothing in either Dr. Van's or Dr. Clouch's testimony conflicted with their opinions that the defendant was still sexually dangerous or suggested that they could not determine whether he was still sexually dangerous. Accordingly, the defendant's reliance on *Sweeney* is unpersuasive.

¶ 31 In so ruling, we note that the State argues that the subject jury instruction is never warranted. The State argues that the possibility of conditional release is only triggered if the jury finds that the defendant is no longer dangerous. In that instance, the State argues, the trial court

can either fully discharge the defendant or order conditional release. There is no case law directly addressing whether the second sentence of section 9(e) of the Act is an appropriate jury instruction or whether it is a matter strictly for the trial court. However, we need not reach the issue because, even if the tendered instruction was a proper issue for the jury, the instruction was not warranted based on the evidence in this case. While the trial court found that the subject jury instruction was never proper and was a matter strictly for the court, we can affirm on any basis appearing in the record. *People v. Wilson*, 2014 IL App (1st) 113570, ¶ 41. Accordingly, we affirm on the basis that the evidence did not support the requested jury instruction. The determination of whether the second sentence of section 9(e) of the Act is a matter for the jury or a determination strictly for the court is left to be decided in a case where its determination will affect the result.

¶ 32

#### CONCLUSION

¶ 33 For the foregoing reasons, we affirm the judgment of the circuit court of De Kalb County.

¶ 34 Affirmed.