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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> COMMITMENT of)	Appeal from the Circuit Court
BRADLEY A. LUNDSTRUM)	of Winnebago County.
)	
)	No. 00-MR-48
)	
(The People of the State of Illinois,)	Honorable
Petitioner-Appellee, v. Bradley A.)	John S. Lowry,
Lundstrum, Respondent-Appellant.))	Judge, Presiding.

PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

ORDER

- ¶ 1 *Held:* Trial court did not abuse its discretion in revoking the respondent's conditional release.
- ¶ 2 In this appeal, the respondent, Bradley A. Lundstrum, who in 2001 was found by a jury to be a sexually violent person (SVP) pursuant to the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/1 *et seq.* (West 2000)), challenges the trial court's order of December 9, 2013, determining that the respondent's most recent term of conditional release should be revoked and he should be re-committed to a secure treatment detention facility (TDF). No issue is raised as to the correctness of the initial determination that the respondent is an SVP, or as to any of the earlier proceedings involving the respondent. We affirm.

¶ 3

BACKGROUND

¶ 4 In 1996, the respondent was charged with seven counts of criminal sexual assault (720 ILCS 5/12-13 (West 1995)), based in part upon his conduct in placing his penis in the mouth of a three-year old girl and placing his finger in her vagina and anus. He pled guilty to one count and was sentenced to six years in prison.

¶ 5 Respondent was 29 years old at the time of the offense. In 1999, he admitted that, in addition to the offense that formed the basis for his conviction, he had committed the following sexual acts, among others: genital fondling of children; anal penetration of children; vaginal penetration of a child; masturbating in an eight-year old's hair; masturbating in front of children who were walking home from school; rubbing his penis against unsuspecting persons; showing his young sons sexually explicit videos so he could explain what he wanted to do with them; performing oral sex on an adult male friend who had passed out and could not object; and watching his female cousins and other unsuspecting persons in various states of undress.

¶ 6 In February 2000, shortly before the respondent was to enter mandatory supervised release, the State filed a petition to commit him as an SVP. During the hearing on the petition, two experts each testified that the respondent suffered from pedophilia, voyeurism, exhibitionism, paraphilia (attracted to nonconsenting persons), antisocial personality disorder, narcissistic personality disorder, and alcohol dependency. The jury found that the respondent was an SVP, and the court committed him to a secure facility for treatment.

¶ 7 The respondent was granted conditional release in March 2004. About a year later, he admitted that he had violated the terms of his release by failing to disclose his sexual fantasies about the four- and seven-year old girls who lived next door to him. He only disclosed these fantasies immediately before a scheduled polygraph examination. His conditional release was revoked and he was again committed to a secure facility.

¶ 8 On April 8, 2011, the respondent was again granted conditional release. Less than a month later, he violated the terms of his conditional release agreement. Nevertheless, the court allowed him to remain on conditional release. About 18 months later, he was again found to have violated the terms of his release. Although the court again allowed him to remain on conditional release “pending further review,” it ordered him to develop a “fully completed and functional” relapse prevention plan by February 1, 2013.

¶ 9 In June 2013, the State again petitioned to revoke the respondent’s conditional release on the grounds that he could no longer safely be managed in the community and that he had violated the following requirements of his release: that he “fully participate in assessment, treatment, *** and behavioral monitoring, *** and periodic polygraph examinations”; that he maintain written daily logs of activities *** as directed by the DHS [Department of Human Services] case management team”; and that he “[r]efrain from having anyone in [his] apartment” without the prior approval of the case management team. After a hearing, the trial court granted the State’s motion to detain the respondent in the TDF pending the resolution of the petition to revoke, and he reentered the TDF in August 2013.

¶ 10 In September 2013, the respondent stipulated that the State would be able to prove by clear and convincing evidence that he had violated the terms of his release listed in the petition. The stipulation included the following facts, which were contained in two reports: the May 29, 2013, report of his conditional release agent Stephen Glazier, and the June 17, 2013, monthly report of his therapist, Rhonda Meacham. As related in Glazier’s report, the respondent was scheduled to take a polygraph examination on May 8, 2013. The day before the examination, the respondent met with Meacham to go over the questions that would be asked. For the first time, he disclosed that, some time earlier, a female neighbor was in his apartment. He stated that she had knocked on his door and asked him to open a can. He left his door open while he was in the

kitchen doing so, and she briefly stepped into his entryway. When he returned with the opened can, she left. The respondent eventually identified October 30, 2012, as the date of the incident. The respondent reported discussing this neighbor with his case management team in late 2012 and early 2013 but had not discussed her in several months. He told the team that the neighbor was “at least in her thirties.” He was attracted to her and had masturbated to fantasies about her before the date when he let her into his apartment. None of these fantasies or acts was documented in his fantasy logs or masturbation logs, as he was instructed to do. The respondent had been instructed not to open his apartment doors to anyone except Glazier, law enforcement, or property management.

¶ 11 Glazier rescheduled the polygraph examination so that he could investigate the incident. He contacted the neighbor by telephone (she had recently moved away from the building). The neighbor, who was 23 years old, stated that she knew the respondent, who always initiated short conversations with her when he saw her. She did not see him do or say anything she considered inappropriate. She confirmed that she had gone to his apartment and asked him to open a can for her, sometime around October 2012. That was the only time she had been in his apartment.

¶ 12 Meacham stated that, on May 7, while preparing for the polygraph examination the next day, the respondent told her that a few months ago he had permitted a female neighbor to enter his apartment after she knocked on his door and asked for help opening a can. He admitted to masturbating to fantasies about her at various times and failing to log this information. He also admitted to masturbating more than once per day and indicated that he could not offer an estimate of how often he had done this because it occurred so often that he could not keep track. He admitted to masturbating in his living room and walking from room to room naked with his windows open. He denied being “in the window” while masturbating, but said he was uncomfortable with the question. He stated that he masturbated to memories of sexual contact he

had with two girls whom he knew when he was in high school, who may have been 17 or 18. He admitted having an “orientation response” to children he saw on television, including a particular girl, but turning the channel when he became aware of his response.

¶ 13 Meacham told the respondent that, based on the sexual preoccupations he had reported, his case management team had recommended that he begin taking Eligard (a medication designed to reduce testosterone). The respondent initially said he would not take Eligard. After he was told that disobeying the recommendation of his case management team would be considered a violation of his conditional release terms and would be reported to the court, the respondent agreed to take the medication in order to maintain his “freedom,” but reiterated that he believed himself capable of managing himself, despite the evidence of his conduct that concerned the team.

¶ 14 Meacham reported that, in other sessions, the respondent identified boredom as one of the things that could trigger sexual preoccupation. The respondent was given the assignment to identify home-based activities that could occupy his time, and the supplies necessary to engage in these activities. He failed to complete the assignment outside of therapy and spent some time in session doing so. He denied masturbating more than once per day, saying that he refrained despite the urge because he did not want to have to talk to Meacham about it. He said he wanted to take a polygraph examination as soon as possible so that he could “move forward.” He did not have a relapse prevention plan, and had not worked on plans relating to two issues that arose during the previous month.

¶ 15 Meacham commented that it was clear that the respondent had little awareness of the seriousness of the conduct he had recently disclosed. Although the respondent accepted responsibility for his history of sexual offenses, he minimized other aspects of his sexual behavior that were potentially problematic and could increase his risk of reoffending. He also

appeared to be struggling with sustained and chronic sexual preoccupation that probably was not recently triggered. On the positive side, he had shown an improved capacity to manage his overt defiance.

¶ 16 The respondent remained in the TDF until the dispositional hearing to consider an appropriate placement, which was held on December 9, 2013. The evidence presented included the report of the State's witness, Dr. Joseph Proctor, a clinical psychologist specializing in risk assessment of sexual offenders who examined the respondent on September 5, 2013; a report by Dr. Kathleen Schroeder, a member of the respondent's treatment team at the TDF; and the respondent's own testimony.

¶ 17 Dr. Proctor believed that the respondent remained an SVP and should remain in a secure facility. He identified several areas of concern. First, the respondent failed to be transparent with his case management team, instead seeking to conceal information about his conduct. For instance, in 2012, he attempted to manipulate a polygraph examination by gulping on every control question; he did not disclose that his neighbor had visited his apartment until he was faced with revealing it during a polygraph examination; he delayed disclosing that he masturbated to fantasies about the neighbor; and he had not told the team that his work involved cleaning a female washroom. Second, he had failed to complete important steps in his treatment. The lack of a relapse prevention plan was especially troubling; the respondent should not be conditionally released until he had completed such a plan. Third, as a general matter, the respondent lacked internal motivation to improve through treatment. He had made several comments that he was doing what he needed to have the restrictions on him removed, and had refused to take Eligard until he was told his refusal could be a violation of this release terms. Finally, the respondent did not appear to appreciate the dangerousness of his sexual preoccupation. Dr. Proctor believed that the respondent had been "actively in his sex offense

cycle” during the time he was on conditional release; however, as recently as July 2013, the respondent was not sure whether he would agree with the statement that he was sexually preoccupied.

¶ 18 The report from Dr. Schroeder stated that the respondent had made improvements during his time at the TDF. He consistently attended treatment (about 7.5 hours per week of group sessions and additional individual therapy sessions). During group sessions, he had discussed the violations he committed while on conditional release and had been receptive to feedback about his behavior. During discussions about his high risk factor of manipulation, he was told that he had shown denial in the past. He stated that he had not considered this before, and appeared to genuinely reflect on this information in the group. He had improved his ability to redirect himself and ask for assistance with treatment-related tasks when needed. He had changed his priorities for if he was conditionally released: instead of focusing on his relationship with his significant other, he planned to focus on establishing support systems within the community, such as involvement with church or obtaining a community support member. He planned to incorporate his new insights into a relapse prevention plan that would be his next focus.

¶ 19 Finally, the respondent himself testified. He believed that he was indeed motivated to improve, even before he was remanded to the TDF—that was why he had admitted the incident with his neighbor. Asked if his motivation had truly changed or he had just feared getting caught by the polygraph, he said that his motivation “was never where it was supposed to be,” and he couldn’t guarantee that he would not have those same struggles. When asked if a relapse prevention plan would help with his struggles, he said “possibly,” and that such a plan only works if one is motivated to use it. Being in group therapy had been good for him, and he had finally understood when people said he was in denial. He had learned that he needed other

people's help to succeed on conditional release and could not do it on his own. He knew that he couldn't progress if he didn't tell the truth. On cross-examination, he admitted that, within one week of returning to the TDF, he initiated contact with a woman named Peggy, although his treatment team had told him that his relationship with her was unhealthy and he should not have any contact with her. Regarding a relapse prevention plan, he first learned that he should have such a plan in 1997. He had not completed such a plan while in the TDF but he was working on it—the first half was to be transparent.

¶ 20 Following the dispositional hearing, the trial court ruled that the respondent should remain in the TDF. It explained that, even more than the violations the respondent had committed, it was concerned with his dishonesty and lack of transparency about his conduct. Nothing the respondent had said made the court believe that he had become more transparent. Rather, the respondent would say anything he thought people wanted to hear, and his willingness to reveal himself was limited to what he believed was necessary. The trial court found that the respondent had revealed the incident with his neighbor only because he feared he would be caught, not because he was genuinely motivated to be transparent. In addition, the respondent did not have a relapse prevention plan, although the treatment team had told him that he needed one. He had had ample opportunity to develop such a plan while he was confined to his apartment on conditional release, and also while he was in the TDF, but he had not taken advantage of these opportunities. This was indicative of his overall lack of motivation.

¶ 21 The respondent filed a motion to reconsider, arguing that his violations did not show that he was a danger to the community. The trial court denied the motion, and the respondent appealed.

¶ 22

ANALYSIS

¶ 23 On appeal, the respondent does not challenge the trial court's finding that he violated the terms of his conditional release; that finding is fully supported by the respondent's stipulation. Rather, he argues that the trial court should not have revoked his conditional release and returned him to the TDF. When a basis for revocation of conditional release has been established, whether to commit a person to a secure facility or to continue the conditional release is a matter within the discretion of the trial court. See 725 ILCS 207/40(b)(4) (West 2012) ("If the court determines *** that any rule or condition of release has been violated, *** it may revoke the order for conditional release and order that the released person be placed in an appropriate institution ****"). We review the trial court's decision on this issue only for an abuse of that discretion. *In re Detention of Ehrlich*, 2012 IL App (1st) 102300, ¶ 75. An abuse of discretion will be found if the trial court's decision was unreasonable, arbitrary, or no reasonable person would take the same view. *Id.*

¶ 24 Section 40(b) of the Act governs proceedings to revoke conditional release. Although the respondent cites section 60(d) of the Act (725 ILCS 207/60(d) (West 2012)), section 60 applies to petitions for conditional release, not petitions to revoke such release, which are specifically governed by section 40(b). However, as the factors to be considered by the trial court in either situation are the same, we focus on those factors, not the respondent's citation to the wrong section of the Act. The relevant factors under either section are: "the nature and circumstances of the behavior that was the basis of the allegation in the [initial petition alleging that the person was an SVP], the person's mental history and present mental condition, and what arrangements are available to ensure that the person has access to and will participate in necessary treatment." 725 ILCS 207/40(b)(2) (West 2012); see also 725 ILCS 207/60(d) (West 2012).

¶ 25 Here, the record is clear that the trial court considered all of these factors, and its determination was well-supported by the evidence presented. At the dispositional hearing, the

State presented the report of Dr. Proctor, in which he opined that the respondent was most appropriately placed in a secure facility and provided detailed descriptions of the respondent's words and actions supporting that conclusion. In addition, the trial court questioned the respondent directly about his past concealment of his conduct and fantasies, and his motivation to become more transparent. The trial court found that the respondent was primarily motivated by a desire to remove the restrictions on himself, not by a genuine desire to change his behavior, and that he had not taken steps to ensure that he would not re-offend (such as creating a relapse prevention plan). These findings relate to the statutory factors, including the respondent's present mental condition (which continued to include substantial denial and lack of transparency about his sexual preoccupation) and the ability to ensure that the respondent would participate in the treatment identified as necessary by his case management team. Accordingly, the trial court's determination that the respondent's conditional release should be revoked and he should be committed to a secure facility was neither arbitrary nor unreasonable, and was not an abuse of discretion. *Id.*

¶ 26 The respondent points to other, more positive, evidence, such as Dr. Schroeder's report on his participation in therapy during the time that he has been in the TDF (and on Eligard). He argues that the report shows that he is making genuine progress in internalizing the importance of his own transparency and motivation to change his conduct. He also points to his own testimony that he has changed. This evidence, he argues, shows that the trial court erred in assessing his willingness to "participate in necessary treatment," one of the statutory factors.

¶ 27 The respondent's arguments amount to a request to re-weigh the evidence, and this we will not do. As to the respondent's own testimony, the trial court specifically found the respondent was not credible on the issue of his motivation for his apparent progress while in the TDF. The trial court, which had the opportunity to observe the respondent's demeanor directly,

was in the best position to make such a credibility determination, and we will not disturb it. *In re Commitment of Anderson*, 2014 IL App (3d) 121049, ¶ 36. Nor will we revisit the manner in which the trial court resolved the conflict between the reports of Dr. Proctor and Dr. Schroeder. The trial court concluded that the respondent's acknowledgement of his former dishonesty and his increased participation in treatment once he had returned to the TDF were motivated primarily by a desire to return to the community rather than a true appreciation of the dangerousness of his behavior. It is the function of the trial court to make credibility determinations and resolve conflicts in the evidence, not ours. *Id.* Rather, so long as the record reveals a reasonable basis for the trial court's assessment of the evidence, we will not disturb the trial court's ruling. *Id.* ¶ 37. Here, as the record supports the trial court's determination, we find no abuse of discretion.

¶ 28

CONCLUSION

¶ 29 For the foregoing reasons, the judgment of the circuit court of Winnebago County is affirmed.

¶ 30 Affirmed.