2015 IL App (3d) 140071-U

Order filed July 31, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 14th Judicial Circuit, Whiteside County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-14-0071
v.	)	Circuit No. 87-CF-384
	)	
MICHAEL C. CRAMER,	)	Honorable John L. Hauptman,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justice O'Brien concurred in the judgment.
Presiding Justice McDade specially concurred.

ORDER

¶ 1 *Held*: The State presented clear and convincing evidence that defendant remained a sexually dangerous person, and therefore his application for recovery was properly denied.

¶ 2 Defendant, Michael C. Cramer, committed as a sexually dangerous person, filed the most recent of several applications for recovery, arguing that he was no longer sexually dangerous. At a jury trial on the application, the State presented testimony from three examiners that defendant remained a sexually dangerous person, based upon evaluations and an interview. The jury found

that defendant remained a sexually dangerous person. Defendant appeals, arguing that the evidence was insufficient to support the jury's verdict. We affirm.

¶ 3 FACTS

¶ 4 Defendant was committed as a sexually dangerous person in 1987. In the intervening years, he filed several applications alleging recovery, all of which were denied.

¶ 5 On December 7, 2012, defendant filed the application for recovery at issue in this appeal. The application claimed that defendant's mental disorder had subsided and the therapy he received while committed was successful. The application requested an order of discharge or, in the alternative, an order of conditional release.

¶ 6 In the response to the application, the court ordered a socio-psychiatric report (March 2013 report) under section 9 of the Sexually Dangerous Persons Act (Act) (725 ILCS 205/9 (West 2012)). Social worker Dale Spitler, Dr. Christopher Clounch, and Dr. Jagannathan Srinivasaraghavan prepared the report. The three conducted an evaluation of defendant in February 2013 and generated the report on March 25, 2013. The March 2013 report concluded that defendant remained a sexually dangerous person.

¶ 7 The March 2013 report was compiled using various sources, including five previous reports that were compiled in response to defendant's prior applications for recovery. The most recent previous report was completed in February 2011 and concluded that defendant suffered from pedophilia. The March 2013 report also relied on the Sexually Dangerous Person Treatment Program Semi-Annual Report from January through June 2012 and a 3¼ hour interview with defendant that occurred on February 14, 2013. Spitler, Clounch and Srinivasaraghavan participated in the interview. The March 2013 report indicated that defendant did not participate in treatment from 2000 through January 2013.

¶ 8 The report detailed defendant's criminal history. Defendant pled guilty but mentally ill to aggravated incest in 1983. In 1987, defendant was convicted of aggravated criminal sexual abuse, the charge which led to his present commitment. In his interview, defendant admitted that he had molested approximately 30 children aged 10 to 15 years old. He admitted to molesting his younger brother when defendant was 16 years old and his brother was 8 or 9 years old. He described his victim-of-choice as blond, blue-eyed boys between the ages of 9 and 15, with whom he liked to have oral and anal sex. Defendant listed 44 victims in a victimology report he completed as part of treatment.

¶ 9 The March 2013 report included the results from the Static-99R evaluation tool, which evaluates the likelihood that a sex offender will commit another sex offense in the future. It measures 10 static inputs and assigns a score ranging from negative three to twelve. Defendant scored a four on the Static-99R, placing him in the moderate-high category to reoffend. According to the report, defendant's placement in the moderate-high category meant he was 1.94 times more likely to reoffend than the average sex offender.

¶ 10 Based on the information presented in the March 2013 report, the evaluators concluded that defendant remained a sexually dangerous person.

¶ 11 A jury trial on defendant's application for recovery began on November 21, 2013. The court found that Spitler was an expert in the treatment of sex offenders. Spitler testified to additional details of defendant's criminal history, based on police reports and defendant's self-reporting. In 1980, defendant was convicted of flashing three girls, who were between the ages of 10 and 12 years old. The 1983 conviction for aggravated incest resulted from defendant performing oral sex and digitally penetrating the vagina of his seven-year-old stepdaughter, which occurred over a period of seven to nine months. The 1987 conviction for aggravated

criminal sexual abuse resulted from sexual contact between defendant and his four-year-old great nephew. Police reports indicated that defendant placed his penis in his great nephew's mouth and placed his mouth on his great nephew's penis.

¶ 12 Spitler testified that defendant refused to participate in treatment from 2000 until January 2013. According to Spitler, the only way to reduce the risk of reoffending was by fully completing a relapse-prevention program. In Spitler's opinion, defendant had not reduced his risk of reoffending and remained a sexually dangerous person. Spitler based his opinion on the February 2013 interview with defendant and a review defendant's prior reports.

¶ 13 Clounch testified that he assessed defendant using the Static-99R evaluation tool. Clounch testified that Static99-R returned a score of four for defendant, placing him in the moderate-high risk category of reoffending. Clounch testified that defendant's score meant that he was twice as likely to reoffend as the average sex offender. Clounch testified that defendant still suffered from the mental disorder of pedophilia and that pedophilia is typically incurable.

¶ 14 Srinivasaraghavan testified that he participated in the forensic interview. Prior to the interview, Srinivasaraghavan reviewed the reports conducted in response to defendant's prior petitions for recovery, along with his medical history and defendant's prior diagnosis. Srinivasaraghavan examined defendant and concluded that he suffered from the mental disorder of pedophilia. In Srinivasaraghavan's opinion, defendant was substantially more likely than not to reoffend in the future, if released.

¶ 15 The jury found that defendant remained a sexually dangerous person. Defendant appeals, arguing that the State failed to provide clear and convincing evidence that he remained a sexually dangerous person.

¶ 16 ANALYSIS

¶ 17 In a recovery proceeding under the Act, the State must establish by clear and convincing evidence that the defendant remains a sexually dangerous person. 725 ILCS 205/9(b) (West 2012). Clear and convincing evidence is more than a preponderance of the evidence but less than the evidence necessary for proof beyond a reasonable doubt. *People v. Craig*, 403 Ill. App. 3d 762, 768 (2010). On review, we determine whether, taking the evidence in a light most favorable to the State, any rational trier of fact could have found that the essential elements were proved by clear and convincing evidence.

¶ 18 The Act defines a "sexually dangerous person" as a person:

> "suffering from a mental disorder, which mental disorder has existed for a period of not less than one year, immediately prior to the filing of the petition hereinafter provided for, coupled with criminal propensities to the commission of sex offenses, and who have demonstrated propensities toward acts of sexual assault or acts of sexual molestation of children[.]" 725 ILCS 205/1.01 (West 2012).

Thus, the State must prove four elements: (1) defendant suffers from a mental disorder; (2) defendant has suffered from the mental disorder for a year or longer; (3) the mental disorder is accompanied by criminal propensities to the commission of sex offenses; and (4) defendant has demonstrated propensities toward acts of sexual assault or acts of sexual molestation of children. *People v. Hancock*, 2014 IL App (4th) 131069, ¶ 140; 725 ILCS 205/1.01 (West 2012).

¶ 19 A "mental disorder" is "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). One suffers from criminal propensities to the commission of sex offenses if it is

"substantially probable" that the person will engage in the commission of sex offenses in the future if not confined. *Id.* at 330. "Substantially probable" means "much more likely than not." *In re Detention of Hayes*, 321 Ill. App. 3d 178, 188 (2001).

¶ 20 The State provided clear and convincing evidence that defendant suffered from pedophilia, had suffered for pedophilia for a year or longer, and that his pedophilia was accompanied by criminal propensity to commit sex offenses.[1]

¶ 21 Clounch and Srinivasaraghavan both testified that defendant suffered from pedophilia, based on their evaluation of defendant, which occurred in February 2013. Srinivasaraghavan testified that defendant had suffered from pedophilia for more than one year. Defendant's criminal history, along with the results of the Static-99R established that defendant's pedophilia was accompanied by a propensity to commit sexual offenses.

¶ 22 Defendant argues that the evidence presented against him was unreliable because it was stale. Specifically, defendant calls attention to the fact that his examination took place in February 2013, and the evidence was presented at trial in November 2013. In support of that argument, defendant cites *People v. Bailey*, 265 Ill. App. 3d 758 (1994). In *Bailey*, the court found the respondent to be a sexually dangerous person based upon reports that were more than 2½ years old. During that time period, the respondent was out on bond, and the record showed no evidence that the respondent engaged in any sexual misconduct while the petition was pending. We held that:

> "the passage of time while a petition remains pending, the respondent's behavior during that time, and the remoteness in time of the psychiatrist's report are all

[1] Defendant does not contest the fourth prong—that he had demonstrated a propensity toward acts of sexual assault or molestation of children.

> important factors to be considered by the trial court when it determines beyond a reasonable doubt whether a person is sexually dangerous under the Act." *Id.* at 763.

The *Bailey* court remanded the cause, finding trial counsel ineffective for opposing a reexamination to determine the respondent's present mental condition.

¶ 23 The present case is distinguishable from *Bailey*. First, the evaluation of defendant in the present case occurred within one year of the recovery hearing, rather than the more than 2½ years in *Bailey*. We do not find that the evaluation in the present case was too remote. Second, contrary to *Bailey*, defendant in the present case was incarcerated during the pendency of his petition. His lack of new offenses during the pendency of his application for recovery is thus less meaningful than in *Bailey*, where the respondent was not incarcerated. The lack of new offenses does not mean that the evidence was insufficient to prove that defendant's mental disorder was accompanied by a propensity to commit sexual offenses.

¶ 24 We conclude that the information relied upon in the present case was recent enough for the jury to find clear and convincing evidence that defendant presently suffered from a mental disorder for a year or longer that was accompanied by criminal propensities to commit sexual offenses against children.

¶ 25 CONCLUSION

¶ 26 The judgment of the circuit court of Whiteside County is affirmed.

¶ 27 Affirmed.

¶ 28 JUSTICE McDADE, specially concurring.

¶ 29 I concur in the decision affirming the trial court's denial of the defendant's application for recovery.

¶ 30 I write separately to comment on aspects of the sexually dangerous persons treatment program that are highlighted by the facts of this case.

¶ 31 As I understand this program, persons who acknowledge that they are sexually dangerous or are adjudicated as such have the Director of Corrections appointed as their guardians (725 ILCS 205/8 (West 2012)), are housed at Big Muddy River Correctional Center (Sex Offender Services Unit, ILLINOIS DEPARTMENT OF CORRECTIONS, http://www.illinois.gov/idoc/programs/ Pages/SexOffenderServicesUnit.aspx (last visited July 22, 2015)), and are provided mandatory treatment from the Department of Human Services (*Id.*). Pursuant to section 205/9 of the Act, persons so confined remain at Big Muddy River until either they have recovered and are released or they have made sufficient progress to be conditionally released, or, presumably, they die. 725 ILCS 205/9(d)(e) (West 2012).

¶ 32 Michael Cramer has been in this program since 1987—28 years. One could reasonably question the efficacy of a treatment program that has failed in nearly three decades to make sufficient inroads with a "patient" to allow him to qualify for at least a conditional or trial release.

¶ 33 What is even more troubling, however, in this case is that from sometime in 2000 to January 2013—roughly 12 years—Mr. Cramer did not participate in treatment. Apparently, even though he is incarcerated in a correctional center, he can dictate whether and when he will cooperate with the treaters in this "mandatory" program. In light of Mr. Cramer's case, one wonders how much control inmates have over the operation of the program within the institution.

¶ 34 Unfortunately this treatment is happening—or not happening—at taxpayer expense. The annual average cost to house a single inmate in an Illinois correctional center is $22,655. ILLINOIS DEPARTMENT OF CORRECTIONS, FINANCIAL IMPACT STATEMENT

(2014), available at http://www.illinois.gov/idoc/reportsandstatistics/Documents/2014_Financial_Impact_Statement.pdf. When that inmate is in the sexually dangerous persons treatment program at Big Muddy River, the annual cost is $17,826. 2014 ILLINOIS DEPARTMENT OF CORRECTIONS ANN. REP., at 69.

¶ 35 Assuming, solely for purposes of illustration, that the cost has remained relatively stable since 1987, Mr. Cramer's 28 years of treatment—and periodic lack thereof—will have cost Illinois taxpayers in the neighborhood of a half million dollars ($499,128), with seemingly no progress to show for it.

¶ 36 Surely a program could be devised that is more effective, more efficient and less costly in its implementation.