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2015 IL App (3d) 140898-U

Order filed November 12, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

<i>In re</i> COMMITMENT OF THOMAS)	Appeal from the Circuit Court
GAUTHIER)	of the 13th Judicial Circuit,
)	Grundy County, Illinois.
(THE PEOPLE OF THE STATE OF)	
ILLINOIS,)	
)	Appeal No. 3-14-0898
Petitioner-Appellee,)	Circuit No. 11-MR-78
)	
v.)	
)	The Honorable
THOMAS GAUTHIER,)	Robert C. Marsaglia,
)	Judge, presiding.
Respondent-Appellant).)	

PRESIDING JUSTICE McDADE delivered the judgment of the court.
Justices Carter and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* In a sexually violent persons commitment case, the circuit court granted the State's petition to commit the defendant. The appellate court affirmed, holding that: (1) trial counsel did not render ineffective assistance; (2) the court applied the correct legal standard to the case; and (3) the court did not err when it ordered the defendant into secure commitment.

¶ 2 The respondent, Thomas Gauthier, was the subject of a petition for commitment as a sexually violent person. After a trial, the circuit court found that the respondent was a sexually violent person and ordered him into secure commitment. On appeal, the respondent argues that: (1) defense counsel rendered ineffective assistance of counsel; (2) the circuit court applied an incorrect legal standard to the question of whether he qualified as a sexually violent person; and (3) the circuit court abused its discretion when it ordered him into secure commitment. We affirm.

¶ 3 FACTS

¶ 4 On October 21, 2011, the State filed a petition for commitment of the respondent as a sexually violent person. The petition alleged that the respondent had been convicted of aggravated criminal sexual abuse twice and had been diagnosed with: (1) paraphilia not otherwise specified, nonconsent, primarily attracted to females, and (2) antisocial personality disorder. The petition also alleged that the respondent's mental disorders made him substantially probable to engage in future acts of sexual violence.

¶ 5 Documents attached to the petition indicated that the incidents for which the respondent was convicted of aggravated criminal sexual abuse occurred in April 1997 and in early 2000. In the former incident, the adult respondent had sexual contact with a 12-year-old female. In the latter incident, the adult respondent (born May 31, 1978) had sexual contact with a 15-year-old female. The respondent received four years of probation for the former incident, which was later revoked due to the respondent's criminal offenses of: (1) theft in May 1998-99; (2) theft in January 1999; (3) unlawful possession of cannabis in January 1999; and (4) failure to register as a sex offender in March 1999. Thus, the defendant was sentenced to four years of imprisonment for the 1997 aggravated criminal sexual abuse. On the same day, he was sentenced to eight years

if imprisonment for the 2000 aggravated criminal sexual abuse. The two prison terms were ordered to be served concurrently.

¶ 6 Also attached to the petition was a sexually violent person evaluation conducted by Dr. Martha Bellew-Smith. We will recount the details of this evaluation later in this section, as it was updated twice before a bench trial was held in this case.

¶ 7 On October 24, 2011, the circuit court held a probable cause hearing on the petition, at the close of which the court found that probable cause existed to believe that the respondent was a sexually violent person.

¶ 8 After numerous continuances, the respondent decided to participate in an interview with Dr. Bellew-Smith, so that interview took place and Dr. Bellew-Smith updated her evaluation twice—once for the interview, and again for an update to the Diagnostic and Statistical Manual. The evaluation was initially completed on September 12, 2011, and noted that the respondent was serving a 10-year sentence for possession of a weapon by a felon, which the respondent committed while on parole for the aggravated criminal sexual abuse convictions. In compiling the evaluation, Dr. Bellew-Smith considered numerous sources of information, including an attempt to interview the respondent on August 21, 2011; the respondent's Department of Corrections files; documents related to his status as a sex offender; arrest records; victim impact statements; presentence investigation reports; documents related to his criminal convictions; psychological evaluations; some documents related to commitment as a sexually violent person, including an evaluation performed by a psychiatrist in July 2014; and the interview of the respondent she conducted over a three-hour period in December 2012.

¶ 9 The evaluation also listed and detailed the respondent's criminal history. As a juvenile, the respondent sexually offended against his two sisters and brother, who were ages 13, 11, and 9

at the time, respectively. He used force or the threat of force to make his 13-year-old sister touch his penis, and he had inserted his fingers into her vagina. He also inserted his penis into her vagina on at least one occasion. He had also inserted his fingers into his 11-year-old sister's vagina and had forced his 9-year-old brother to perform oral sex on him. The respondent was 12 years old when the incidents came to light, and the sexual offending had lasted for approximately two years. Documents from the juvenile case that arose from these incidents stated that the respondent would hit his 13-year-old sister and hit her head against a concrete wall if she did not comply with his sexual demands; that he would abuse his 11-year-old sister in the same fashion; and that he had threatened to hit his 9-year-old brother with a baseball bat unless his brother let him put his penis in his brother's mouth.

¶ 10 Based on the December 2012 interview, Dr. Bellew-Smith reported that the respondent claimed he did not recall sexually abusing his siblings. He suggested that the allegations were made up by his stepmother after he attempted to stab her and was sent to juvenile detention.¹

¶ 11 The evaluation also reported that the respondent had been released from juvenile detention in April 1996, and he turned 18 years old one month later. In March 1997, the respondent was arrested for indecent solicitation of a child after a detective intercepted a note soliciting sex that respondent attempted to send to a 12-year-old girl. The charges were dismissed and the respondent was warned not to have contact with the girl. However, one month later, police learned that the respondent was having contact with the girl again, including physical contact. It was learned that the respondent had fondled the girl's breasts and vagina

¹ The original evaluation noted that the respondent claimed he had stabbed his second stepmother and had gone to juvenile detention for the crime, but Dr. Bellew-Smith stated that no records were found to corroborate that claim.

over her clothes. The respondent pled guilty to aggravated criminal sexual abuse in relation to the contact, and he was sentenced to four years of probation.

¶ 12 At the December 2012 interview, the respondent stated that he had never tried sending the girl a note and claimed that the police made up the story about the solicitation note. He also said he had kissed the girl, but that he left when the girl's friend entered the residence.

¶ 13 In 2000, an attempt to find the respondent (who was a registered sex offender) revealed that the respondent had been staying with a family in a trailer and that the respondent had sex with a 15-year-old girl who lived there. The girl told the police that she had known the respondent since 1999 and that they had sex at least five times while he was living there. During the first occasion, the respondent had been drinking. The girl also stated that every time they had sex, it was consensual. The respondent also told the girl not to tell anyone about them having sex. The respondent initially denied staying in that residence and having sex with the girl, but he later admitted to having sex with her on one occasion; he claimed he was extremely intoxicated and that she took advantage of him. Eventually, the respondent was convicted of aggravated criminal sexual abuse in relation to his contact with the girl, and he was sentenced to eight years of imprisonment. His probation was revoked and he was resentenced for that 1997 offense to four years of imprisonment. The prison terms were made concurrent.

¶ 14 At the December 2012 interview, the respondent claimed that he had met the 15-year-old girl and had sex with her once on that day. He said they never had sex more than that one occasion.

¶ 15 After the respondent had been paroled on his sex offenses, he was found in the possession of a stun gun, and he was convicted with possession of a weapon by a felon. At the December 2012 interview, the respondent claimed that the stun gun belonged to his sister, not him.²

¶ 16 While incarcerated, the respondent had committed 33 rule violations, which resulted in 25 institutional disciplinary incidents, of which 10 were considered major. The first update to the evaluation added that the respondent had been placed on special status or in segregation on multiple occasions since March 26, 2012, due to his conduct while incarcerated.

¶ 17 The evaluation reported that no information was found to indicate that the respondent had participated in any sex offender treatment while incarcerated. However, a 2004 report by a sexually violent persons evaluator stated that the respondent claimed to have participated in sex offender treatment via individual therapy between October and December 1997. In addition, at the December 2012 interview, the respondent claimed that he had been in a treatment program for behaviorally disordered youth after he was accused of sexually abusing his siblings. He also had completed orientation at the treatment and detention facility and had signed a consent-to-treatment form. He had taken a mindfulness class, but he did not like it and did not find it useful.

¶ 18 Dr. Bellew-Smith's evaluation also reported that while in 2010 the respondent had denied ever having alcohol or drug abuse issues, a 2000 pre-sentence investigation report had documented the respondent informing the investigator that he had been raised in a home in which alcohol and drugs were available to him, that he had started drinking alcohol at age 13, that he would drink a twelve pack of beer and consume six shots of whiskey regularly, that he had cut his drinking to once per week in 1998, that he began using marijuana and LSD in 1999,

² At trial, Dr. Bellew-Smith testified that the respondent had told the police that the stun gun belonged to a male named Greg.

that he had been using marijuana daily around May 2000, and that he had used LSD a total of about five times.

¶ 19 At the December 2012 interview, the respondent stated that he quit drinking on February 6, 2000, because he had gone to a party and had sex with a 15-year-old girl. He also stated that he had never used illegal drugs.

¶ 20 The evaluation noted that the respondent had never been married. A 1997 presentence investigation report indicated that the respondent had been living with a woman in Janesville, Wisconsin in 1996 and that the two had a son during the relationship. However, 2004 reports had stated that the child was female. Then, at the December 2012 interview, the respondent stated that he had no biological children and that he had lived with a woman for two years who had a son from a previous relationship.

¶ 21 Using actuarial tools, Dr. Bellew-Smith concluded that the respondent was “a substantial and continuing risk for sexual offense recidivism.” (Emphasis in original.) On the Static-99R actuarial tool, she scored the respondent an eight out of a range of -3 to 12, which placed him in a high risk category of reoffending sexually (“a sexual recidivism rate of 45.0% of five (5) years post-release, and 55.3% over ten (10) years post-release”). She rescored the respondent after the December 2012 interview; he received a score of nine, which correlated to a sexual recidivism rate of 52.4% over five years post-release and 61.9% over ten years post-release.

¶ 22 On the MnSOST-R actuarial tool, she scored the respondent an 11 out of a range of -16 to 31, which placed him in a high risk category of reoffending sexually (“for the MnSOST-R cross validation, on average; 73% of the offenders in the High Risk range sexually re-offend”).

¶ 23 After the December 2012 interview, Dr. Bellew-Smith also evaluated the respondent according to the Hare Psychopathy Checklist-Revised, which resulted in a score that indicated

the respondent “manifests a high number of psychopathic traits relative to incarcerated adult male offenders and reaches the cut-off for a classification of psychopath.”

¶ 24 In addition to these tools, Dr. Bellew-Smith stated that the following dynamic risk factors were present in the respondent: sexual deviancy or deviant sexual interests, no treatment, a “Cluster B” personality disorder diagnosis, and lack of cooperation with supervision.

¶ 25 Dr. Bellew-Smith diagnosed the respondent with paraphilia, not otherwise specified, primarily attracted to females. She also diagnosed him with antisocial personality disorder. The Diagnostic and Statistical Manual of Mental Disorders was updated after these diagnoses, so Dr. Bellew-Smith’s second update to the evaluation was performed to comply with that update. Antisocial personality disorder was not updated; therefore, her diagnosis of the respondent as having that disorder did not need to be updated. However, other updates required the paraphilia diagnosis to be updated; Dr. Bellew-Smith therefore updated her diagnosis of the respondent to “Other Specified Paraphilic Disorder, Nonconsenting Females, in a controlled environment.” She noted, *inter alia*, that a paraphilic disorder “is a paraphilia that is currently causing distress or impairment to the individual, or a paraphilia whose satisfaction has entailed personal harm, or risk of harm, to others.”

¶ 26 Based upon her findings, Dr. Bellew-Smith opined that the respondent was a sexually violent person, and she recommended that he be civilly committed. That opinion remained constant through both updates to the evaluation.

¶ 27 With Dr. Bellew-Smith’s updated evaluation, the State filed an amended petition for commitment on July 23, 2014, and the circuit court held a bench trial on the petition in August and September 2014. Dr. Bellew-Smith, a licensed clinical psychologist, testified in accord with her evaluation. She also testified that prior to the trial, she reviewed records regarding the

respondent's treatment from the treatment and detention center. Among other things, Dr. Bellew-Smith testified that the respondent's disciplinary record while incarcerated was relevant to her decision because individuals who have behavioral problems at the treatment and detention center have a greater tendency to recidivate sexually. She also testified that there was no documentation that the respondent had ever participated in sex offender treatment. With regard to her diagnoses of the respondent, Dr. Bellew-Smith testified that the respondent was attracted to individuals who were unable to give consent. He acted on those related urges and they interfered with his life socially and occupationally. In addition, he had shown a pervasive pattern of disrespect for laws and he was impulsive, reckless, and deceitful. Both paraphilia and antisocial personality disorder were mental disorders that the respondent would have his entire life and the latter diagnosis impacted the former diagnosis negatively because it disinhibited him.

¶ 28 Defense counsel cross-examined Dr. Bellew-Smith at length about several topics, including whether a minor who was the respondent's age at the time he sexually abused his siblings could form an intent to commit those acts; the respondent's childhood history of being physically abused; about the fact that Dr. Bellew-Smith never saw the letter intercepted by police that solicited sex from the 12-year-old girl; the respondent's abuse of alcohol, especially in relation to sex with the 15-year-old girl; and about the fact that no force was involved with the 12-year-old and 15-year-old girls.

¶ 29 Dr. Kimberly Weitzl testified that she was a licensed clinical psychologist who performed sexually violent persons evaluations for the State. She conducted a clinical evaluation of the respondent in December 2011 for which she reviewed the defendant's master file and other records. She also conducted a brief interview of the respondent. She also updated her evaluation in February 2013 and again in October 2013.

¶ 30 Dr. Weitzl opined that the respondent suffered from other paraphilic disorder, nonconsenting females, and from antisocial personality disorder. In arriving at that conclusion in her evaluation, she scored the respondent an eight on the Static-99R actuarial tool, which indicated that the respondent was 7.32 times more likely to reoffend sexually than the average sex offender. Like Dr. Bellew-Smith, Dr. Weitzl opined that the respondent was substantially likely to commit another act of sexual violence if he were released.

¶ 31 Dr. Eric Ostrov testified that he was a clinical psychologist with a practice in forensic psychology. Dr. Ostrov reviewed the evaluations of Dr. Bellew-Smith and Dr. Weitzl and compiled his own evaluation of the respondent, which included an interview in July and August 2013. Dr. Ostrov's report was dated October 15, 2013.

¶ 32 Dr. Ostrov opined that the respondent's sexual offenses against his siblings could be the initial stages of a paraphilia. Due to the respondent's anger, hostility, and stated opposition to homosexuality, Dr. Ostrov believed that the respondent's sexual abuse of his younger brother was more about aggression than sexuality. Further, Dr. Ostrov stated that it was an open question as to whether the respondent's sexual abuse of his siblings was for a sexual purpose or for aggressive purposes, including because it was about seven years before the respondent sexually offended again. Dr. Ostrov also opined that the respondent's two aggravated criminal sexual abuse victims were targets of opportunity for the respondent, who was an impulsive individual.

¶ 33 In his evaluation of the respondent, Dr. Ostrov used several tests, including the Psychological Assessment Inventory, an alcohol abuse test called the SASSI, and the Multiphasic Sexual Inventory. The Psychological Assessment Inventory indicated that the respondent had a marked tendency to engage in self-destructive acts, which included acts of

sexual recklessness. Based on his analysis, Dr. Ostrov opined that the respondent suffered from a severe personality disorder that had antisocial and borderline features. Dr. Ostrov also believed the respondent was an alcoholic. With regard to paraphilia, Dr. Ostrov stated that while the respondent did not meet the criteria, he could not rule out paraphilia, either. He believed there was very little evidence to support a finding that the respondent preferred paraphilia-type sexual activities. In addition, Dr. Ostrov stated that the respondent had not acted out at all sexually for 14 years. In Dr. Ostrov's opinion, the respondent did not suffer from a mental disorder that predisposed him to acting out sexually.

¶ 34 On cross-examination, Dr. Ostrov stated that he scored the respondent a seven on the Static-99R actuarial tool, which placed the respondent in the high sexual recidivism risk category. Dr. Ostrov's evaluation, which was admitted into evidence, also noted that this score "indicates he presents a high risk for violent sexual crime recidivism." In evaluating the respondent, Dr. Ostrov stated that he did not review the respondent's master file or the records from the respondent's juvenile case. Also, Dr. Ostrov stated that the respondent may fit the criteria for a sexually violent person, but "it's not within my purview to technically say whether he actually meets the criteria. I believe that's the judge."

¶ 35 The respondent testified that he did not sexually abuse his siblings. He also testified with regard to some of his prior criminal offenses: (1) when he was 18, he was incarcerated for stealing a bicycle, although he stated that some males he hung out with stole the bicycle and he was riding it one day when he was stopped by the police; (2) when he was 18, he was incarcerated for trespassing on state land after he was found running on a high school track to get some exercise; (3) with regard to the offense against the 12-year-old girl, he had been drinking that day and did not remember going over to that girl's residence; (4) in June 1997, he was

convicted again for trespassing on state land after he drove onto a high school's property to pick up a friend; (5) in 1998, he was arrested for resisting a peace officer after running from the officer; (6) in 1999, he was charged with possession of cannabis after he was found sitting in a vehicle seat under which cannabis was found; and (7) with regard to the offense involving the 15-year-old girl, he was at her residence for a party and she asked him to have sex, so he did. He stated that he had never met the girl before and did not know her name, and he never had sex with her after that one occasion. He also testified that on the night he was arrested for possessing a weapon as a felon, he had been working and his sister and her friends had been drinking in the living room. He had been sleeping when the police officer showed up at the residence; he answered the door and the police officer found beer cans strewn about, some "powder" on the table, and a stun gun on the futon. The respondent stated that he had never seen the stun gun before and that it was not his.

¶ 36 The respondent also testified that he has had so many disciplinary issues while incarcerated because:

"I have to deal with the -- lot of men in there, about 98 percent of them, are homosexual. And I have asked them to leave me alone, not to hit on me, not to -- you know, I don't go that way. And I told them that, and they persist, and they are very persistent with it. And I get angry, and I had a couple of fights because of that."

¶ 37 On cross-examination, the respondent stated that he did not remember and did not know if he committed the sexual offense against the 12-year-old. He also stated that he did not recall

having a conversation with a police officer in September 2000 in which he told the officer that he had been staying over at the 15-year-old's residence repeatedly.

¶ 38 On November 10, 2014, the circuit court entered a written order finding the respondent to be a sexually violent person. After a recitation of the evidence presented during the trial, the court first noted that the three elements the State had to prove beyond a reasonable doubt were: “Conviction for qualifying offense”; “Mental disorder”; and “Dangerous propensities of the defendant.” The court then noted that there was no question that the respondent had been convicted of qualifying sexually violent offenses, and that all three experts testified that “there is a substantial probability that [the respondent] will reoffend.” Next, the court addressed the remaining dispute over whether the respondent had a mental disorder. In that regard, the court noted that both Dr. Bellew-Smith and Dr. Wietl “testified convincingly” that the respondent suffered from paraphilia. The court also noted that Dr. Ostrov opined that there was insufficient evidence of paraphilia, but that it was still a rule-out diagnosis. The court then found, *inter alia*, that the State had proven that the respondent had an “appropriate mental disorder” and that the respondent’s testimony was not credible regarding whether he had sexually abused his siblings.

¶ 39 On November 14, 2014, the circuit court heard arguments on whether the respondent should be placed into secure commitment or conditionally released. In reaching its decision, the court noted that three factors were to be considered: (1) the nature and circumstances of the conduct that formed the basis for the petition, (2) the respondent’s mental history and current mental condition, and (3) what arrangements are available to ensure that the respondent will have access to the treatment he needs. The court commented on all three of these factors and stood on its findings from the trial that the respondent suffered from paraphilia and antisocial personality disorder. With regard to the third factor, the court noted that the respondent was inclined to

make treatment difficult, that inclination was no reason to let the respondent out into the community. The court stated that the services the respondent needed were in place in the secure setting and accordingly ordered the respondent placed into secure commitment.

¶ 40 The respondent appealed.

¶ 41 ANALYSIS

¶ 42 The respondent's first argument on appeal is that defense counsel rendered ineffective assistance of counsel. Specifically, the respondent claims that counsel was ineffective for failing to: (1) object to the State's expert witness' opinions; (2) cross-examine Dr. Bellew-Smith on certain errors in her actuarial tool scoring; and (3) cross-examine Dr. Weitzl on certain errors in her actuarial tool scoring.

¶ 43 Individuals who are the subject of a petition for sexually violent person commitment are entitled to the effective assistance of counsel. *In re Commitment of Dodge*, 2013 IL App (1st) 113603, ¶ 20. To establish ineffective assistance of counsel, the claimant must prove that counsel's performance was deficient and that such performance prejudiced the claimant. *Id.* Prejudice occurs when but for counsel's deficient performance, the result of the proceeding would have been different. *Id.*

¶ 44 First, the respondent claims that counsel was ineffective because he did not object to the State's expert witnesses' opinions. The respondent claims that counsel should have demanded that the experts use the "best evidence available" to establish his criminal history. The respondent states that the experts' opinions contained some factual errors that were not corrected because the experts apparently did not review the transcripts from his pleas of guilty or his jury trials.

¶ 45 Initially, we note that the respondent provides no support for his claim that experts should be required to use what he has subjectively determined to be the “best evidence available.” Nor does the respondent provide any support for the claim that ineffective assistance results from the failure to object in such a fashion to an expert’s opinion. Moreover, to the extent that the respondent identifies in this subsection of his appellate brief any specific factual errors in the expert witnesses’ evaluations, we note both that the respondent himself testified that he had two convictions for trespassing on state land, rather than the one conviction the respondent asserts on appeal that he had. Without any support or further development of this claim, we reject the respondent’s argument that the failure to object to the State’s expert witnesses’ opinions in such a manner constituted deficient performance that prejudiced him. See, e.g., *Ramos v. Kewanee Hospital*, 2013 IL App (3d) 120001, ¶ 37 (holding that “[t]he appellate court is not a repository into which an appellant may foist the burden of argument and research”).

¶ 46 Second, the respondent claims that counsel was ineffective for failing to cross-examine Dr. Bellew-Smith with regard to errors in her evaluation. With regard to Dr. Bellew-Smith’s assessment of the respondent first as an eight, then as a nine, on the Static-99R, the respondent claims that Dr. Bellew-Smith made three errors. The first error was on question one because she incorrectly assessed a point for the respondent’s age; the respondent asserts that he was 35 at the time of the trial, which was an age ineligible for a point. The second error was on question four because she incorrectly assessed a point for a conviction for a non-sexual violent offense; the respondent cites to Static-99R instructions found on the Internet that show he had not been convicted of this type of offense. The third error was on question nine because she incorrectly assessed a point for a victim being a stranger; the respondent asserts that the evidence was unclear on whether the 15-year-old victim was stranger.

¶ 47 We note that the scoring range listed on the Static-99R form states that a score of six or greater places the assessed individual in the high sexual recidivism risk category. Thus, even assuming that these three questions were scored incorrectly by Dr. Bellew-Smith, the respondent cannot establish that he was prejudiced by defense counsel's failure to cross-examine Dr. Bellew-Smith on this score. There is nothing in the record to suggest that had defense counsel done so, Dr. Bellew-Smith's opinion would have been any different and that the outcome of the trial would likely have been different.

¶ 48 Third, the respondent claims that counsel was ineffective for failing to cross-examine Dr. Weitzl with regard to errors in her evaluation. With regard to Dr. Weitzl's assessment of the respondent as an eight on the Static-99R actuarial tool, the respondent claims that Dr. Weitzl made two errors. The first error was on question two because she incorrectly assessed the respondent as not having lived with a lover for at least two years. The second error was on question nine because she incorrectly assessed the respondent as offending against a stranger with regard to the 15-year-old victim. As to the first error, the respondent points to his interview with Dr. Bellew-Smith in which he stated that he had lived with a woman for two years. As to the second error, the respondent points to the version of events in which he had allegedly been staying at that residence prior to the incident. Also, the respondent claims that this second error resulted in his being assessed a MnSOST-R score of 16, rather than 13. Without explanation, the respondent concludes that the outcome of the trial would likely have been different had defense counsel cross-examined Dr. Weitzl on these errors. We disagree.

¶ 49 Even assuming the respondent is correct about Dr. Weitzl's scoring of questions two and nine on the Static-99R, we again note that any score on that tool that is a six or above places the

assessed individual in the high sexual recidivism risk category. Thus, Dr. Weitzl's opinion would not have changed, and the respondent cannot show prejudice on this point.

¶ 50 Further, even assuming the respondent is correct about the alleged error in his MnSOST-R score, we note that the respondent states he does not know if that change would affect his assessment on the tool, thereby rendering his argument on this point entirely speculative. See *People v. Williams*, 139 Ill. 2d 1, 12 (1990) (holding that speculative allegations and conclusory statements are both insufficient to support ineffective assistance of counsel claims). We need not dismiss it as speculative, though, given that Dr. Bellew-Smith scored the respondent as an 11 on the MnSOST-R, which she testified was in the high risk category. Certainly, a score of 13 would likewise place the respondent in the high risk category.

¶ 51 For all of the aforementioned reasons, we hold that the defendant's trial counsel did not render ineffective assistance.

¶ 52 The respondent's second argument on appeal is that the circuit court applied the incorrect legal standard in assessing whether he was a sexually violent person. The respondent contends that the court's order indicated that it used a general recidivism standard, as opposed to the sexually violent persons standard that the individual must be substantially probable to engage in future acts of sexual violence. The respondent focuses his argument on the language in the court's written order that stated the three experts were in agreement that the respondent was substantially probable to reoffend, and he claims that Dr. Ostrov did not in fact agree with that conclusion. Rather, the respondent contends, Dr. Ostrov did not render an opinion on whether the respondent was a sexually violent person.

¶ 53 Our review of the record reveals no indication that the circuit court applied the incorrect legal standard. Dr. Ostrov's evaluation and testimony called into question whether the

respondent had a mental disorder that made him substantially probable to commit a future act of sexual violence. When the court stated in its written order that all three experts agreed that the respondent was substantially probable to reoffend, the court was referring, with regard to Dr. Ostrov, to Dr. Ostrov's evaluation and testimony noting that the respondent presented a high risk of sexual recidivism. The court's written order did not misconstrue the evidence or indicate that the court was applying a general recidivism standard, as opposed to a sexual recidivism standard. The record reflects the court understood the applicable legal standard, and accordingly, we reject the respondent's argument on this issue.

¶ 54 The respondent's third argument on appeal is that the circuit court erred when it committed him to a secure facility. The respondent claims that the court did not consider all applicable factors in reaching its decision.

¶ 55 As the State correctly points out, the respondent's argument on this issue relies on a prior version of the commitment statute. The version of the statute applicable to the respondent's case required that the circuit court consider three factors in arriving at its decision on secure commitment versus conditional release: "the nature and circumstances of the behavior that was the basis of the allegation in the petition ***, 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 2010). The two factors on which the respondent's argument primarily rests were deleted from the statute by the 96th General Assembly. Pub. Act 96-1128 (eff. Jan. 1, 2001) (deleting from 725 ILCS 207/40(b)(2) the two factors of "where the person will live, [and] how the person will support himself or herself[.]").

¶ 56 Further, we also note that while the respondent claims the court did not consider the respondent's current mental condition, we find no support in the record for that claim. The evidence presented at trial was that paraphilia and antisocial personality disorder were lifelong disorders. The trial concluded approximately two months before the commitment hearing, and the court's written order finding that the respondent suffered from these two disorders was issued four days before the commitment hearing. The court stood on these findings at the commitment hearing, and the record reflects that the court considered the three statutory commitment factors in reaching its decision. Under these circumstances, we hold that the court did not abuse its discretion when it ordered the respondent into secure commitment.

¶ 57 In addition, the respondent briefly claims that he received ineffective assistance of counsel at the commitment hearing because counsel did not present any evidence, including evidence of what treatment should be required and evidence of less restrictive treatment options. However, the respondent provides no support for this claim and does not attempt to explain how counsel rendered deficient performance and how that deficient performance prejudiced the respondent. Accordingly, under Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013)), the respondent has waived this argument. See, *e.g.*, *Ramos v. Kewanee Hospital*, 2013 IL App (3d) 120001, ¶ 37.

¶ 58 CONCLUSION

¶ 59 For the foregoing reasons, the judgment of the circuit court of Grundy County is affirmed.

¶ 60 Affirmed.