2015 IL App (4th) 140536-U

NO. 4-14-0536

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
May 6, 2015
Carla Bender
4th District Appellate
Court, IL

In re: the Detention of HAROLD LEE TINEY-BEY,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 98MR213
HAROLD LEE TINEY-BEY,	)	
Respondent-Appellant.	)	Honorable
	)	John R. Kennedy,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Knecht and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court did not err by denying respondent's motion for the appointment of an independent evaluator where his reasoning for the request did not provide a possible basis to refute the reexamination report given respondent's actions during the review period.

(2) The trial court did not abuse its discretion by finding no probable cause shown to warrant an evidentiary hearing where respondent still suffered from mental disorders, still had numerous risk factors for reoffending, and made no progress in his treatment plan since the last reexamination period.

¶ 2 Respondent, Harold Lee Tiney-Bey, a person committed under the Sexually Violent Persons Commitment Act (Commitment Act) (725 ILCS 207/1 to 99 (West 2012)), appeals the trial court's June 2014 orders denying his request for an independent evaluator and granting the State's motion for a finding of no probable cause to warrant an evidentiary hearing on whether respondent was no longer a sexually violent person. He argues the trial court erred

by (1) denying his motion for an independent evaluator, and (2) concluding no probable cause was shown to warrant an evidentiary hearing. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In May 1998, the State filed a petition seeking an order committing respondent to the custody of the Illinois Department of Human Services (Department) under the Commitment Act. In support of the petition, the State included a report prepared by Dr. Jacqueline N. Buck, a psychologist who had evaluated respondent in March 1998. In Dr. Buck's opinion, based upon respondent's disorders, including pedophilia (now known as pedophilic disorder) and antisocial personality disorder, and his criminal history, it was "substantially probable" respondent would commit future acts of sexual violence. At that point, respondent had been convicted of attempted aggravated criminal sexual abuse, attempted rape, aggravated kidnapping, and residential burglary. These charges stemmed from multiple incidents of criminal conduct involving young females. In June 2000, a jury found respondent to be a sexually violent person, and in August 2000, the trial court committed respondent to the secure care, custody, and control of the Department for treatment.

¶ 5 Since his initial commitment, respondent has been periodically evaluated to determine whether he continued to be a sexually violent person. First, in February 2001, Dr. Barry M. Leavitt prepared an evaluation report after respondent's six months of treatment. Dr. Leavitt described respondent as manifesting "strong antisocial and sexually violent tendencies with no demonstrated interest or motivation to change." He said, during the past six months, respondent has been "very hostile and suspicious, refusing to participate in the assessment and treatment program on the unit." Respondent's treatment has been unsuccessful. Dr. Leavitt's opinion was derived solely from his review of respondent's clinical chart, as respondent refused

to participate in a psychological examination or interview. In May 2001, upon the State's motion, the trial court entered an order finding no probable cause to warrant an evidentiary hearing to determine whether respondent was still a sexually violent person.

¶ 6 In February 2002, Dr. Leavitt filed an 18-month status report, indicating again respondent refused to participate. Dr. Leavitt recommended respondent remained committed, as he did in 2003, 2004, and 2005.

¶ 7 In May 2006, Dr. David M. Suire prepared a psychological evaluation for the purpose of determining whether respondent remained a sexually violent person pursuant to the Commitment Act. Respondent refused to participate. Dr. Suire filed an identical report in April 2007 and Dr. Kimberly Weitl did so in April 2008 and March 2014. Respondent continued to refuse to participate in the reevaluation process.

¶ 8 On June 3, 2014, respondent filed a *pro se* motion for appointment of an independent evaluator, claiming he was not a sexually violent person and did not need sex-offender services. Respondent asserted his refusals to participate obviously demonstrated the State's programs have "failed to reach" him for 15 years. After a hearing, the trial court denied respondent's motion and granted the State's motion for a finding of no probable cause.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 Respondent contends the trial court abused its discretion in (1) denying his request for an independent evaluation, and (2) granting the State's request for a finding of no probable cause. We affirm.

¶ 12 A. Independent Evaluation

¶ 13 Respondent contends the trial court erred by denying his request for the appointment of an independent expert pursuant to section 55(a) of the Commitment Act (725 ILCS 207/55(a) (West 2012)). Whether to appoint an independent evaluator under section 55(a) is a matter that rests within the trial court's sound discretion. *People v. Botruff*, 212 Ill. 2d 166, 176 (2004). We review the matter for an abuse of discretion. *Botruff*, 212 Ill. 2d at 176. " 'An abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.' " *In re Detention of Erbe*, 344 Ill. App. 3d 350, 374 (2003) (quoting *People v. Hall*, 195 Ill. 2d 1, 20 (2000)).

¶ 14 In *Botruff*, 212 Ill. 2d at 177, the respondent's counsel did not provide the trial court with a possible basis to rebut the report. Our supreme court found it was "rational not to appoint an independent evaluator when a respondent has shown no need for one, especially during perfunctory reexamination proceedings where the respondent has not affirmatively opted to petition for discharge." *Botruff*, 212 Ill. 2d at 177-78. It concluded that, "[w]ithout more, the court did not abuse its discretion by denying respondent's request for an independent evaluation." *Botruff*, 212 Ill. 2d at 178.

¶ 15 In *In re Detention of Cain*, 341 Ill. App. 3d 480, 483 (2003), the reviewing court found no fault with the trial court's decision not to appoint an independent evaluator. There, the trial court had specifically noted that appointing the respondent an expert would provide no assistance to the court, "given that there had been absolutely no change in [the respondent's] condition and he had been resistant to sex offender treatment." *Cain*, 341 Ill. App. 3d at 483.

¶ 16 Here, as in *Botruff*, the probable-cause proceeding was a perfunctory reexamination, as respondent did not file a petition for discharge. In fact, for 15 years,

respondent has refused to participate in the reevaluation process. The reason provided by respondent for requesting an independent evaluation did not provide a possible basis to refute the doctors' reports given respondent's refusal to meaningfully engage in sex-offender treatment during the review periods. As in *Cain*, the report indicated respondent had been resistant to sex-offender treatment, and if anything, as a result, respondent's condition had gotten worse. Respondent's only stated reason for not participating was his belief that treatment was not necessary. Without a good reason for not participating in the State's examination, respondent should not be rewarded with a different expert for his decision to refuse to comply with the State's examiner. Accordingly, we find the trial court did not abuse its discretion by denying respondent's motion for an independent evaluator.

¶ 17 B. Probable Cause

¶ 18 Respondent also asserts the trial court erred by finding no probable cause was shown to warrant an evidentiary hearing to determine whether respondent was still a sexually violent person. The State disagrees, arguing the trial court's decision was correct. We agree with the State.

¶ 19 At the time of each reexamination under the Commitment Act, the committed person receives notice of the right to petition the trial court for discharge. 725 ILCS 207/65(b)(1) (West 2012). If the committed person does not affirmatively waive that right, like respondent in this case, the trial court must "set a probable cause hearing to determine whether facts exist to believe that since the most recent periodic reexamination ***, the condition of the committed person has so changed that he or she is no longer a sexually violent person." 725 ILCS 207/65(b)(1) (West 2012). At such a probable-cause hearing, the court only reviews the reexamination reports and hears the parties' arguments. 725 ILCS 207/65(b)(1) (West 2012). If

the court finds probable cause does exist, then it must set an evidentiary hearing on the issue. 725 ILCS 207/65(b)(2) (West 2012). Whether or not probable cause exists to warrant a further evidentiary hearing is another matter resting in the trial court's sound discretion, and thus we will not disturb a trial court's probable-cause determination absent an abuse of that discretion. *Cain*, 341 Ill. App. 3d at 482.

¶ 20 With all probable-cause hearings under the Commitment Act, the trial court's role is "to determine whether the movant has established a plausible account on each of the required elements to assure the court that there is a substantial basis for the petition." (Emphasis in original; internal quotation marks omitted.) *In re Detention of Stanbridge*, 2012 IL 112337, ¶ 62 (quoting *In re Detention of Hardin*, 238 Ill. 2d 33, 48 (2010)). For a respondent to receive an evidentiary hearing under section 65(b)(2) of the Commitment Act, the court must find a plausible account exists that the respondent is "no longer a sexually violent person." 725 ILCS 207/65(b)(2) (West 2012). A respondent is only entitled to an evidentiary hearing if plausible evidence shows the respondent (1) no longer suffers from a mental disorder or (2) is no longer dangerous to others because his or her mental disorder no longer creates a substantial probability he or she will engage in acts of sexual violence. *Stanbridge*, 2012 IL 112337, ¶ 68 (quoting 725 ILCS 207/5(f), 15 (West 2008)). Under the Commitment Act, "substantially probable" means "much more likely than not." (Internal quotation marks omitted.) *In re Commitment of Curtner*, 2012 IL App (4th) 110820, ¶ 37; see also *In re Detention of Hayes*, 321 Ill. App. 3d 178, 188 (2001).

¶ 21 According to Dr. Weitl, respondent's "condition has not changed since his last examination and he should continue to be found a sexually violent person under the [Commitment Act]." She further opined respondent "has not made sufficient progress in

treatment and he should continue to be committed to the [Department] *** for further secure care and sexual offense specific treatment." Dr. Weitl found respondent continues to suffer from (1) pedophilic disorder and (2) antisocial personality disorder. He scored in the high and moderate-high risk categories on actuarial instruments and has eight "additional empirically based risk factors." His risk to reoffend, despite his age, remains high.

¶ 22 Given the substantial bases in Dr. Weitl's March 2014 report, we find the trial court did not abuse its discretion by finding probable cause was not shown to warrant an evidentiary hearing.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we affirm the trial court's judgment.

¶ 25 Affirmed.