

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2015 IL App (4th) 150102-U

NO. 4-15-0102

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

December 29, 2015

Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
ROY SHIVERS,)	No. 98CF1238
Defendant-Appellant.)	
)	Honorable
)	John R. Kennedy,
)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Turner and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court's denial of defendant's recovery application as a sexually dangerous person was not against the manifest weight of the evidence.

¶ 2 In 1999, defendant, Roy Shivers, was deemed a sexually dangerous person (SDP), leading to involuntary civil commitment (725 ILCS 205/0.01 to 12 (West 1998)). In June 2013, defendant filed an application for recovery under the Sexually Dangerous Persons Act (Act) (725 ILCS 205/9 (West 2012)). After a hearing in January 2105, the trial court denied the application. Defendant appeals, arguing the trial court improperly denied his application for recovery. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In June 2013, defendant filed an application for recovery pursuant to the Act (Act), (725 ILCS 205/9 (West 2012)). In January 2015, a hearing was held. Under the Act, the court is required to appoint two qualified evaluators to examine defendant when he applies for

recovery (725 ILCS 205/4 (West 2012)). The court appointed Jessica Stover, a social worker, and Dr. Kristopher Clounch, a clinical psychologist. The purpose of their evaluations was to assess defendant's progress in recovering from his sexually dangerous predisposition.

¶ 5 Jessica Stover testified she is a social worker specializing in therapy for SDPs at the Big Muddy River Correctional Center (Big Muddy). She managed group treatment programs for SDP's, including defendant. SDPs can choose to participate in group therapy and can arrange to meet with Stover at any time. Defendant withdrew from group therapy in 2008. His withdrawal stemmed from a group discussion of several novels he owned, which depicted sexual scenes. One, in particular, depicted a woman being raped. When confronted about it, defendant refused to admit the book was inappropriate. From there, he received multiple program violations for failing to attend or fulfill program requirements, leading to his ultimate withdrawal from group therapy.

¶ 6 Since his withdrawal, defendant did not attempt to rejoin group therapy. At one point, he said he would rejoin therapy only after Dr. Carich (a former psychiatrist at the facility) retired. Once Carich retired, however, defendant still did not return to group therapy. His progress in group therapy, according to Stover, never approached a demonstrated recovery from his sexual behavior. He has not shown any further improvement since his departure from therapy. Stover also stated "self-help" therapy was inappropriate for defendant's treatment.

¶ 7 Dr. Clounch evaluated defendant based on his criminal history, his records from Big Muddy, and an interview with him. Clounch also applied two diagnostic tools, the Static-99R and Stable 2007, to evaluate defendant's likelihood of recidivism.

¶ 8 Defendant's criminal history is discussed in detail in *People v. Shivers*, 2013 IL App (4th) 120616-U (unpublished order under Supreme Court Rule 23). Briefly, respondent's crimes span 28 years prior to his commitment in 1999 and involve seven victims. In 1971, he

was convicted of attempt (rape). *Id.* ¶ 14. "In 1973, [he] was convicted of rape." *Id.* In 1980, he was convicted of rape again. *Id.* In 1997, he choked and held a prostitute prisoner. Two weeks later, he attempted to rape another woman. In 1998, he attempted to rape a mentally ill woman. *Id.* In 1999, based on all of defendant's prior sex crimes, the trial court civilly committed him under the Act (725 ILCS 205/0.01 to 12 (West 1998)). Clounch considered these events in his evaluation of defendant.

¶ 9 Clounch also considered defendant's disciplinary and therapy records at Big Muddy. Defendant received 21 inmate discipline reports since his commitment. The most recent was for fighting, in 2014. According to Clounch, defendant incurred fewer violations beginning in 2009 because he had no responsibilities after leaving group therapy. For other required meetings, however, defendant still refused to participate and received infractions as a result. Based on his interview, disciplinary record, and criminal history, Clounch concluded defendant suffers from sexual sadism disorder and antisocial personality disorder. Like Stover, Clounch concluded defendant would not recover from his disorder exclusively through "self-help," and professional treatment was required.

¶ 10 Dr. Clounch also applied the Static-99R and Stable 2007, which are actuarial assessment tools, to determine defendant's likelihood to commit sex offenses if released. The Static-99R considers static factors from a defendant's past that do not normally change. Based on Clounch's administration of the Static-99R, he found defendant 3.77 times as likely to commit a sex offense compared to the average sex offender. The Stable 2007 is designed to account for dynamic risk factors influencing a likelihood of reoffending. It is used in conjunction with the Static-99R. When combined with the Static-99R results, Clounch found defendant's likely risk of recidivism was between 32% within three years and 41% within five years.

¶ 11 Defendant testified at the hearing as well. He described his time in group therapy as a forum for incurring violations without providing a benefit. As part of his recovery, defendant claimed he learned to control himself and successfully avoided trouble. He believed he had recovered from his sexual predispositions based on his time prior to leaving group therapy in 2008 and his individual efforts, since then, to recover. Defendant said he was willing to accept any conditions the court wished to impose on his release.

¶ 12 In January 2015, the trial court concluded defendant had not recovered and was still a sexually dangerous person. It specifically found (1) defendant had a mental disorder that had existed longer than a year, and (2) he was unable to control his sexual behavior. This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 On appeal, defendant challenges the trial court's denial of his application for recovery. The trial court's decision will only be overturned if it is against the manifest weight of the evidence. See *People v. Sizemore*, 311 Ill. App. 3d 917, 926, 726 N.E.2d 204, 211 (2000), *abrogated on other grounds*, *People v. Trainor*, 196 Ill. 2d 318, 752 N.E.2d 1055 (2001). Once an application for recovery is filed, the State must prove the defendant remains sexually dangerous by clear and convincing evidence (725 ILCS 205/9(b) (West 2012)). This requires the State to prove (1) defendant had a mental disorder for at least one year, (2) the disorder is associated with "criminal propensities to the commission of sex offenses," and (3) defendant "has actually demonstrated that propensity." *People v. Masterson*, 207 Ill. 2d 305, 318-19, 798 N.E.2d 735, 743 (2003) (citing 725 ILCS 205/1.01 (West 1998)).

¶ 15 Dr. Clouch's findings of sexual sadism and antisocial personality disorder satisfy the first two prongs cited in *Masterson*. A "mental disorder" is defined as a "congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to

engage in acts of sexual violence" (725 ILCS 205/4.03 (West 2012)). The identical definition appears under the Sexually Violent Persons Commitment Act (725 ILCS 207/5(b) (West 2012)). Both sexual sadism and antisocial personality disorder were deemed applicable mental disorders under that act in *In re Detention of Erbe*, 344 Ill. App. 3d 350, 357, 373, 800 N.E.2d 137, 143, 156 (2003). This analysis is equally applicable here because the identical statutory definition of "mental disorder" applies to the Sexually Violent Persons Commitment Act and the Act.

¶ 16 Like the defendant in *Erbe*, Clouch diagnosed defendant with sexual sadism disorder and antisocial personality disorder. Both Clouch and Stover concluded defendant had not recovered from his predisposition to commit sex crimes. Since defendant's commitment, he incurred numerous infractions and refused to participate in group therapy. Defendant's only basis for his claimed recovery was his own testimony stating, despite his failure to participate in group therapy, he has recovered. Stover and Clouch both disagreed and stated defendant would only improve with professional help.

¶ 17 The trial court properly considered this evidence and concluded defendant had a mental disorder. It found this disorder existed for at least a year prior to defendant's commitment in 1999. Its decision was based on the evidence presented and it was in the best position to judge the credibility of the parties. Its decision is not against the manifest weight of the evidence.

¶ 18 The trial court also found defendant demonstrated his propensity to commit sex offenses through specific acts. The trial court first considered defendant's prior acts before being civilly committed. Prior convictions for sexual assault can be considered in determining whether a defendant has demonstrated propensities to commit sex offenses. *People v. Lawton*, 212 Ill. 2d 285, 303, 818 N.E.2d 326, 337 (2004). Even one prior sexual assault is enough to establish defendant acted on his propensity to commit sex offenses. *Id.* Multiple prior incidents show defendant's propensity to commit sex crimes. The incidents involved sex offenses as serious as

rape and often efforts to choke the victim during the act. The series of defendant's prior convictions readily establishes an actual propensity to commit sex crimes. Based on the evidence before us and the trial court's assessment, this result is not against the manifest weight of the evidence.

¶ 19

III. CONCLUSION

¶ 20 We find sufficient evidence to support the trial court's conclusion on each of the elements considered to prove defendant remains sexually dangerous. The evidence considered by the trial court and the decision reached were not against the manifest weight of the evidence.

¶ 21 Affirmed.