2016 IL App (2d) 150178-U
No. 2-15-0178
Order filed February 29, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Lake County.
Plaintiff-Appellee,	)	
v.	)	No. 05-CF-3046 No. 05-CF-3629
PAUL OLSSON,	)	Honorable Christopher R. Stride,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Schostok and Justice McLaren concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's order remanding defendant to the Department of Human Services following a hearing pursuant to section 104-25(g)(2)(i) of the Code of Criminal Procedure of 1963 (725 ILCS 5/104-25(g)(2)(i) (West 2014)) was affirmed where the trial court granted defendant the only relief his counsel requested.

¶ 2 Defendant, Paul Olsson, appeals from an order entered by the circuit court of Lake County on January 22, 2015, remanding him to the Department of Human Services (Department) after a hearing pursuant to section 104-25(g)(2)(i) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/104-25(g)(2)(i) (West 2014)). For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 In 2005, defendant was charged with sex offenses involving children and was later found unfit to stand trial. Following a discharge hearing (see 725 ILCS 5/104-25(a) (West 2014)), the court found defendant "not not guilty" of several of the charged offenses, including predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2008)) and aggravated criminal sexual abuse (720 ILCS 5/12-16 (West 2008)), and ordered an extended period of treatment (see 725 ILCS 5/104-25(d) (West 2014)). At the expiration of that extended treatment period, the court remanded defendant to the Department for further treatment pursuant to section 104-25(g)(2) of the Code. Section 104-25(g)(2) "provides for the potentially long-term commitment of a criminal defendant who has been found unfit to stand trial and for whom treatment to attain fitness has been unsuccessful." *People v. Olsson*, 2012 IL App (2d) 110856, ¶ 1.

¶ 5 During the section 104-25(g)(2) period of treatment, the facility director must file a typed treatment plan report with the court every 90 days. 725 ILCS 5/104-25(g)(2) (West 2014). The parties may request a review of the treatment plan, or the court may order such a review on its own motion. 725 ILCS 5/104-25(g)(2) (West 2014). The court must, however, hold a hearing every 180 days to make a finding as to whether defendant is "(A) subject to involuntary admission; or (B) in need of mental health services in the form of inpatient care; or (C) in need of mental health services but not subject to involuntary admission nor inpatient care." 725 ILCS 5/104-25(g)(2)(i) (West 2014).

¶ 6 On January 22, 2015, the trial court conducted a review hearing in defendant's case pursuant to section 104-25(g)(2)(i) of the Code. Defendant was not present. According to the affidavit of defendant's treating psychiatrist, Dr. Richard Malis, defendant refused to attend the

hearing. Over defense counsel's objection, the hearing proceeded in defendant's absence. The court also denied defense counsel's request to relocate the proceedings to the Elgin Mental Health Center, where defendant resides.

¶ 7 Dr. Malis was the only witness who testified. Over defense counsel's objection, the court found that Dr. Malis was "an expert in the areas of psychiatry and forensic psychiatry." Dr. Malis testified that he had been defendant's treating psychiatrist, "more or less consistently," since the late summer or early fall of 2010. He saw defendant most days of the week, and he typically sat down and talked with defendant approximately once per month. As part of his treatment of defendant, Dr. Malis had "prepared numerous evaluations over the years." Dr. Malis opined that defendant was mentally ill and had been diagnosed with pedophilic disorder. Dr. Malis believed that defendant "continue[d] to be a danger due to his pedophilic disorder" and was "in need of hospitalized mental health treatment." Dr. Malis explained that individuals such as defendant whose victims are male, have an increased risk of reoffending, as do individuals who "have a young initial age at first offending." Defendant declined treatment for pedophilia, which had been made available to him at the Elgin Mental Health Center. Based on defendant's diagnosis of pedophilic disorder and his risk factors for reoffending, Dr. Malis believed that defendant "would be reasonably expected to inflict serious physical harm on others in the future if he were to be released" without treatment.

¶ 8 The court questioned Dr. Malis about the treatment that had been made available to defendant. Dr. Malis explained that he offered to have defendant assessed by a consultant who was certified by the Sex Offender Management Board.[1] Based on the results of that assessment,

[1] Among the duties of the Sex Offender Management Board is to "develop and prescribe standardized procedures for the evaluation and management of" sex offenders, including those

Dr. Malis said that "we would then provide treatment that would be geared towards the specifics of [defendant's] disorder." However, defendant had "always declined any sort of assessment." According to Dr. Malis, defendant was concerned that if he cooperated, it might be used against him in court.

¶ 9 On cross-examination, Dr. Malis acknowledged that neither he nor anyone on his team was certified by the Sex Offender Management Board as a sex offender evaluator or treatment provider. Nevertheless, he testified that he had "done an evaluation to the best of [his] abilities," which included a comprehensive psychiatric evaluation. Although Dr. Malis could diagnose a pedophilic disorder and evaluate defendant as far as need for treatment, he could not "do an in-depth evaluation and make specific recommendations of [*sic*] a comprehensive treatment." That was why he extended the offer to bring in a certified evaluator. Dr. Malis had not brought in an evaluator or "gone through the effort to identify who that would be," because defendant declined the offer.

¶ 10 In his closing argument, defense counsel urged that "[s]omebody has to do something" because defendant had never been evaluated or treated. The court responded that "there is a part of me that doesn't entirely disagree with" defense counsel, adding that "[s]omebody has to do something, and I guess that starts with Mr. Olsson." The court noted that defendant had been offered treatment on so many occasions that "you stop counting after a while."

¶ 11 The court found that defendant "continue[d] to be a serious threat to public safety" and remanded him to the Department for further treatment. The court also ordered Dr. Malis to bring in a sex offender evaluator, "whether or not Mr. Olsson wants it or not [*sic*], and have him sit

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who are committed to the Department of Human Services. 20 ILCS 4026/15(f)(1), (f)(2) (West 2014).

down and explain to him why he's there, what he wants to do and to see if Mr. Olsson will cooperate." According to the court, if defendant did not cooperate, then there was nobody to blame but defendant.

¶ 12 The court's written order provided, in relevant portion:

> "DHS shall make arrangements for an evaluator, certified by the Sex Offender Management Board of the State of Illinois, to evaluate Mr. Olsson for sex offender treatment. If the Defendant refuses to cooperate with such an evaluation, DHS shall notify this court, in writing, within 14 days after said refusal. If the Defendant cooperates with said evaluation, DHS shall provide sex offender treatment to him consistent with the recommendations of the evaluation. DHS shall notify this court within 14 days of the Defendants [*sic*] cooperation with said evaluation."

Furthermore, as required by the statute, the court ordered the facility director to file another treatment plan report in 90 days. The court added that if defendant "continues to refuse to cooperate with either fitness restoration or any of the 5 aspects of his Treatment Plan, the Department of Human Services shall indicate, with specificity, as such in their written report." The court continued the matter "for this Court's review of the treatment plan developed by the Department of Human Services pursuant to this Order."

¶ 13 Defendant filed a timely *pro se* notice of appeal, and appellate counsel was appointed on his behalf.

¶ 14 II. ANALYSIS

¶ 15 The State contends that the case is moot because the 180-day treatment period authorized by the January 22, 2015, order has expired, but it proposes that several exceptions to the mootness doctrine apply. Citing *People v. Olsson*, 2015 IL App (2d) 140955, ¶ 14, the State

argues: "The capable of repetition yet evading review exception, or alternatively, the public interest exception, should be applied in this appeal, as this Court has in the past." The State misreads our recent opinion. We explained in defendant's last appeal that, because we could grant defendant effectual relief (*i.e.*, a new hearing), the case was not moot. *Olsson*, 2015 IL App (2d) 140955, ¶ 14. We did *not* invoke any exception to the mootness doctrine in reviewing defendant's arguments in that appeal. We reiterate that the passage of time, standing alone, does not render defendant's appeals moot so long as he remains committed pursuant to section 104-25(g)(2) of the Code. See *People v. Peterson*, 404 Ill. App. 3d 145, 149-50 (2010) (in an appeal following a discharge hearing, the matter was not moot, because the record did not foreclose the possibility that the defendant had subsequently been committed pursuant to section 104-25(g)(2) of the Code, and "[t]he matter could not be moot while he remained committed"). Consequently, we once again emphasize that the State's recurring mootness argument is without merit.

¶ 16 Defendant raises two arguments. He first argues that the trial court violated his due process rights when it accepted the treatment plan report filed by the Elgin Mental Health Center, because the court failed to require that a "qualified professional" conduct the evaluation of defendant and be responsible for his treatment. He also argues that the court violated his due process rights by finding that the treatment plan report that was submitted to the court for the January 22, 2015, hearing was compliant with state law. In both of these arguments, defendant questions Dr. Malis's qualifications to treat and evaluate him; defendant also contends that Elgin Mental Health Center's failure to have him seen by a licensed sex offender evaluator and treatment provider was an error of constitutional dimensions.

¶ 17 We find no merit in defendant's arguments. In essence, he is attempting to challenge a judgment that was favorable to him. At the January 22, 2015, hearing, defendant did not present

any evidence. Nor did he request to be released from the Department's custody. Defendant's counsel merely complained that defendant had not been evaluated or treated by licensed sex offender personnel. When it comes to having defendant evaluated or treated, we can provide no more relief than what the trial court has already done: order an evaluation to be performed and direct the Department to file a new treatment plan report. Defendant received exactly the relief his counsel requested, and an appeal from a favorable judgment is improper. See *Argonaut-Midwest Insurance Co. v. E.W. Corrigan Construction Co*., 338 Ill. App. 3d 423, 424 (2003) (a party who is successful in the trial court may not appeal from that judgment, even if the party disagrees with the specific reasons, conclusions, or findings on which the judgment is based)*; In re Marriage of Turk*, 2014 IL 116730, ¶ 33 (when a party prevails on a point in a lower court and the reviewing court can do no more for him than what the lower court has already done, there is no need or legal basis to pursue that point in a subsequent appeal).

¶ 18 Furthermore, Dr. Malis testified that defendant said he was unwilling to meet with providers who were licensed to evaluate him as a sex offender and treat him. A treatment plan report filed after the court's January 22, 2015, hearing (which is in the record on appeal) in fact indicates that defendant declined to speak with the evaluators who were ordered to meet with him. Defendant should not be heard to complain of the insufficiency of his evaluations or treatment when he refuses to cooperate. See *In re David B.*, 367 Ill. App. 3d 1058, 1068 (2006) ("It would be an absurd result to allow a dangerous pedophile, who has become sophisticated in litigation through long experience with commitment proceedings, to free himself by simply refusing to discuss his pedophilia with anyone defined in the statute as competent to testify at a commitment proceeding.").

¶ 19 Additionally, defendant ignores our decisions in his prior appeals. We have addressed the sufficiency of defendant's treatment plan in several published opinions. In *Olsson*, 2012 IL App (2d) 110856, ¶ 16, we explained that "[i]f a defendant's refusal to cooperate frustrates efforts to develop a treatment program, it is incumbent upon the author of a treatment plan report to say so explicitly, rather than to leave the court to guess whether proper efforts have been made to care for the defendant." We subsequently held that one of defendant's treatment plan reports was legally sufficient where it "addressed all of the statutory factors" and "clearly stated that the Department was not able to provide a plan because defendant was unwilling to cooperate." *People v. Olsson*, 2014 IL App (2d) 131217, ¶ 15. The treatment plan report filed by the Department on January 13, 2015, similarly contained a detailed explanation of defendant's circumstances and clearly stated that "[a] comprehensive treatment plan for predatory sexual behaviors can not be provided at this time as Mr. Olsson is not willing to cooperate with evaluation." Moreover, with respect to the issue of Dr. Malis being qualified to render expert opinions, we have said that "defendant cites no authority—and we are aware of none—holding that, in the absence of a formal assessment, the trial court must discount an expert opinion on a sex offender's risk of recidivism." *Olsson*, 2014 IL App (2d) 131217, ¶ 17. Although defendant presents new twists on his familiar argument that the Department should do more to evaluate and treat him, he ignores our prior holdings, even though they are directly relevant to the issues at hand.

¶ 20 As a final matter, although not raised by the parties, we again remind the trial court to ensure that its oral findings and written orders mirror the language of the statute. Specifically, at section 104-25(g)(2)(i) hearings, the court must make a finding as to whether defendant is: "(A) subject to involuntary admission; or (B) in need of mental health services in the form of inpatient

care; or (C) in need of mental health services but not subject to involuntary admission nor inpatient care." 725 ILCS 5/104-25(g)(2)(i) (West 2014). The parties and the trial court can consult our disposition in *People v. Olsson*, 2014 IL App (2d) 140635-U, for additional guidance.

¶ 21 III. CONCLUSION

¶ 22 For the reasons stated, we affirm the judgment of the trial court.

¶ 23 Affirmed.