

**NOTICE**

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2016 IL App (4th) 150618-U

NO. 4-15-0618

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

May 3, 2016  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
STRONG EAGLE,	)	No. 98CF298
Defendant-Appellant.	)	
	)	Honorable
	)	Peter C. Cavanagh,
	)	Judge Presiding.

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

**ORDER**

¶ 1 *Held:* The trial court's decision to deny defendant's petition for recovery was not against the manifest weight of the evidence.

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

¶ 3 I. BACKGROUND

¶ 4 In February 2013, defendant filed an application for recovery pursuant to the Act (725 ILCS 205/9(a) (West 2012)). In September 2015, a hearing was held. A "socio-psychiatric

report concerning the applicant" was prepared after the petition was filed. 725 ILCS 205/9(a) (West 2014). The evaluation was prepared by Dr. Melissa Weldon-Padera, a psychologist. The purpose of the evaluation was to assess defendant's progress in recovering from his sexually dangerous predisposition.

¶ 5 Dr. Weldon-Padera testified she was a psychologist specializing in evaluating sex offenders. She is a "qualified evaluator" in Illinois under section 4.01 of the Act (725 ILCS 205/4.01 (West 2014)). Dr. Weldon-Padera proceeded to testify as to her evaluation and interview.

¶ 6 Dr. Weldon-Padera testified defendant, throughout the evaluation, remained "pretty angry, hostile, defensive, sometimes disrespectful, confrontational[,] and at one point condescending." Dr. Weldon-Padera thought defendant's attitude was indicative of his belief he was wrongfully convicted. Defendant continuously "tried to convince [Dr. Weldon-Padera] of his innocence and tried to refute the findings of all the [previous] investigations."

¶ 7 Dr. Weldon-Padera proceeded to review her conversation with defendant regarding his sexual offending history. This is an important factor, according to Dr. Weldon-Padera, "in sexual recidivism and \*\*\* [defendant] has a long history of a pattern of offending and behavior." Dr. Weldon-Padera testified defendant was committed for his index offense in 1997, being "[a]ggravated [c]riminal [s]exual [a]buse against a nine-year-old female when [defendant] was \*\*\* 49." This was not defendant's sole instance of offending. Dr. Weldon-Padera continued to describe a 1986 incident, indicated by Department of Children and Family Services, "for sexual penetration and sexual molestation of [defendant's] daughter." Defendant's daughter was "adjudicated \*\*\* as an abused minor in \*\*\* she had been sexually abused by her father, and her father had allowed her to be sexually abused." Defendant had additionally been

charged with two counts of unlawful window peeping in 1979; accused of contributing to the delinquency of a minor in 1977; and charged with and convicted of indecent liberties with a child in 1966. Dr. Weldon-Padera testified some of these records were too old to be recovered and details were not available.

¶ 8 Dr. Weldon-Padera continued by outlining statements made by individuals who "alleg[ed] other pedophilic behavior." Four of defendant's sisters-in-law had accused him of and reported he had sexually assaulted or abused them and made threatening or provocative remarks to them. Another long-time friend testified he witnessed defendant's sexual attraction to young females and "admitted to [the witness] specifically \*\*\* he had sex with several young girls \*\*\*, had girlfriends who were age 16 and younger[,] and \*\*\* had impregnated his daughter when she was an adolescent." Defendant, upon questioning about these incidents, denied each of them, despite having pleaded guilty to his index offense. "[Defendant] had no awareness of [the incidents] or could not recall them." Dr. Weldon-Padera testified defendant's denial only shows he has refused to change his behavior since committed and "he's not [participating in] treatment."

¶ 9 Defendant had additional arrests for aggravated assault; aggravated battery; aggravated battery with great bodily harm, specifically domestic battery and battery; criminal trespass to land; criminal damage to property; reckless conduct and disorderly conduct; and driving while his license was revoked or suspended. The significance of defendant's nonsexual criminal history showed, according to Dr. Weldon-Padera, defendant's "antisocial tendencies [as] linked to sexual recidivism." Defendant's disciplinary history while committed to the Illinois Department of Corrections also tended to show defendant's inability to comply with rules and behave appropriately, "even in a highly-structured environment."

¶ 10 Dr. Weldon-Padera then testified as to defendant's continued refusal to participate in treatment programs offered at Big Muddy River Correctional Center. Dr. Weldon-Padera explained, "research shows \*\*\* treatment is the biggest protective factor out there, because it has been shown \*\*\* it [is] the only thing \*\*\* [to] reduce risk." Dr. Weldon-Padera had released two SDPs in all of her years evaluating SDPs, each of whom participated in treatment.

¶ 11 Dr. Weldon-Padera also testified to defendant's medical history. Defendant had a history of nine heart attacks, which resulted in bypasses and stents, a history of seizures related to epilepsy (but no incidents within nine years), and is prescribed medication for asthma, diabetes, hypertension, hyperlipidemia, chronic obstructive pulmonary disease, and gastroesophageal reflux disease. Defendant also requires a wheelchair for balance issues, limiting his mobility. Defendant was 66 years old at the time of the evaluation and 67 years old at the time of the bench trial. Dr. Weldon-Padera opined these ailments did not constitute protective factors and would not "reduce [defendant's] risk to reoffend or prevent him from reoffending in the future." Even though defendant had to use a wheelchair for balance, Dr. Weldon-Padera opined he was intelligent, manipulative, spoke of his power and influence, and thus, he would be able to "groom his victims[,] to make threats[,] or to direct certain individuals to do things \*\*\* he asks them to do. So no, it [did not] reduce his risk."

¶ 12 Dr. Weldon-Padera also testified defendant had exhibited cognitive distortions regarding the following: (1) hostile beliefs toward women; (2) emotional congruence with children; (3) negative emotionality and general hostility; and (4) externalized coping. These cognitive distortions were incorporated into the dynamic risk factors, which tended to show an increase in defendant's risk to reoffend.

¶ 13 Dr. Weldon-Padera diagnosed defendant with pedophilic disorder, nonexclusive type, sexually attracted to females; narcissistic personality disorder; and other specific personality disorder, antisocial personality traits. To be diagnosed with pedophilic disorder, defendant showed he (1) had intense, sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a prepubescent child or children for at least 6 months; (2) had acted on these sexual urges; and (3) was at least 16 years of age and at least 5 years older than the victim at the time of his aggravated criminal sexual abuse. Diagnostic and Statistical Manual of Mental Disorders 697 (5th ed., 2013) (DSM-V). Defendant met each of these prongs. Defendant had a long-term history of sexual activities with children since 1966. Defendant acted on these sexual behaviors with children as he was committed after committing aggravated sexual abuse of a 9-year-old female when he was 49. Defendant was at least 16 years of age and 5 years older than the victim at the time of defendant's aggravated criminal sexual abuse. Defendant was actually 39 to 40 years older than his victim. Defendant's pedophilic disorder would cause him to potentially reoffend. The other disorders would not, by themselves, be qualifying mental disorders.

¶ 14 As a part of Dr. Weldon-Padera's evaluation, she completed a risk assessment of defendant's likelihood to reoffend. She calculated defendant's risk to reoffend using the Static-99R. While the Static-99R is important, it "establish[es] a baseline level of risk," and it is up to the evaluator to "proceed to integrate essential and relevant dynamic risk factors, protective factors, and case specific factors identified in research into an overall risk analysis. This commonly relied upon and best practice method is an adjusted actuarial approach." Dr. Weldon-Padera used the Static-99R as a baseline and then considered other clinically significant factors not taken into account in the Static-99R.

¶ 15 Defendant scored a 3 on the Static-99R, with 2 being the average. This score, according to Dr. Weldon-Padera, estimated the level of defendant's risk to reoffend, as compared to other sex offenders "known to reoffend in the sample of sex offenders \*\*\* used to form the Static-99R." A score of 3 positioned defendant in the low-moderate category to reoffend. Dr. Weldon-Padera testified research showed SDPs with this score reoffended at a 14% rate over 5 years and a 22.9% rate over 10 years.

¶ 16 Dr. Weldon-Padera also considered dynamic risk factors included in the "Mann, Hanson[,] [and] Thornton article." These Hanson factors included a "sexual preoccupation for children, lack of an emotionally intimate relationship with an adult, resistance to rules and supervision[,] and grievance thinking and hostility." These risk factors were shown in research to increase the risk to reoffend. Research, according to Dr. Weldon-Padera, tended to show these factors could be reduced through intervention and are an important tool, in addition to the Static-99R, to assess a defendant's likelihood to reoffend. Defendant has chosen not to participate in treatment, which would reduce these applicable risk factors. Dr. Weldon-Padera also categorized case-specific factors, shown in research to increase the likelihood of reoffending—*i.e.*, callousness and dysfunctional coping or externalized coping. Callousness deals with a lack of empathy or sympathy. Dysfunctional or externalized coping deals with defendant's "tendency to react impulsively or recklessly when faced with stress or problems," namely defendant's numerous arrests for assault, battery, and domestic battery, along with numerous tickets for assaults and fighting while committed. Each of these factors, according to Dr. Weldon-Padera, tended to increase defendant's likelihood to reoffend.

¶ 17 Dr. Weldon-Padera testified no protective factors, which were shown to decrease the risk of recidivism, were present. Defendant had not been offense-free within the community for a significant period of time, had no debilitating health concerns, and had not completed a sex-offender-specific treatment program. Although defendant had many physical ailments, these were not "serious enough or life threatening \*\*\* [to] reduce [defendant's] risk or prevent him from reoffending." Dr. Weldon-Padera also considered these factors when calculating defendant's Static-99R score. Defendant had actually scored a 6, which was later reduced to a 3 following a three-point reduction based on his age.

¶ 18 Based on all of this information, Dr. Weldon-Padera concluded (1) defendant suffered from a mental disorder, (2) this mental disorder would increase defendant's propensity to commit sex offenses, and (3) there was a substantial likelihood defendant would commit additional sex offenses if not confined or committed. Dr. Weldon-Padera opined defendant remained a SDP.

¶ 19 The trial court found defendant had a mental disorder (pedophilic disorder) under the Act and a propensity to commit sex offenses. It found a substantial probability remained defendant would engage in the additional sex offenses. The State, according to the court, fulfilled its burden of showing defendant remained a SDP in need of confinement.

¶ 20 In June 2015, defendant filed a posttrial motion and motion to reconsider the judgment, arguing the trial court erred by (1) denying his motion for an independent examination, and (2) finding the State had fulfilled its burden of showing he remained a SDP. The trial court denied defendant's motion. This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 Defendant argues, in his notice of appeal, the trial court erred by (1) denying his request for an independent examination, and (2) finding he remained a SDP in need of confinement. Defendant only pursued the second argument, having not argued the first issue in his brief. The first issue will therefore not be considered. See *People v. Ramirez*, 2013 IL App (4th) 121153, ¶ 74, 996 N.E.2d 1227 (defendant's brief is "bereft of argument" as to why the court erred by denying the motion for independent examination; therefore, this contention is forfeited).

¶ 23 Defendant, in his sole argument in his brief, contends the trial court erred when it found he remained a SDP by clear and convincing evidence. Defendant argues the State must prove there was a substantial likelihood he would reoffend. A Static-99R score of 3 "establishes there is less than a one in four chance \*\*\* [d]efendant will reoffend." A score of 3, according to defendant, does not objectively establish there is a substantial likelihood he would reoffend. Defendant further attacks the credibility of Dr. Weldon-Padera and her sole reliance on the Static-99R. Defendant argues there were additional actuarial assessment tools available. The State argues defendant remained a SDP based on his history of sexual offenses, his refusal to participate in any treatment, his general hostility, and the numerous risk factors. We agree with the State.

¶ 24 Section 9(a) of the Act (725 ILCS 205/9(a) (West 2014)) provides: "An application in writing setting forth facts showing that [such SDP] or criminal sexual psychopathic person has recovered may be filed before the committing court." In a hearing on the application, "[t]he [SDP] or the State may elect to have the hearing before a jury," and "[t]he State has the burden of proving by clear and convincing evidence that the applicant is still a [SDP]." 725 ILCS 205/9(b) (West 2014).



¶ 25 The State has the burden of proving, by clear and convincing evidence, the civilly committed person still meets the statutory definition of a SDP. *Id.* The statutory definition of a SDP consists of four elements: (1) the defendant suffers from a mental disorder; (2) the 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) the defendant has demonstrated propensities toward acts of sexual assault or acts of sexual molestation of children under the age of 18 (725 ILCS 205/1.01 (West 2014)).

¶ 26 The trial court's finding a defendant remained a SDP will not be disturbed on review unless that decision is against the manifest weight of the evidence. *People v. Donath*, 2013 IL App (3d) 130251, ¶ 38, 986 N.E.2d 1222. "A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent." *Id.* "It [is] for the trial court to determine the weight to be given to [an expert witness's] testimony and \*\*\* other evidence." *Id.* ¶ 41; see *People v. Hancock*, 2014 IL App (4th) 131069, ¶ 145, 18 N.E.3d 941 ("We must scrupulously refrain from deciding whether the witnesses were credible.").

¶ 27 Dr. Weldon-Padera evaluated defendant and reached the conclusion he remained a SDP in need of confinement. Defendant's diagnosis of pedophilic disorder; narcissistic personality disorder; and other specified personality disorder, antisocial personality traits, along with defendant's behavioral issues, numerous cognitive disorders, and his dynamic risk factors supported the trial court's finding defendant had a mental disorder. Defendant had a long history of sexual offenses against children, reaching as far back as 1966, as outlined by Dr. Weldon-Padera in her evaluation and testimony. Defendant has not taken action toward recovery and has instead remained in denial. Treatment is at the core of recovery for defendant and, according to Dr. Weldon-Padera, the greatest protective factor.

See *People v. Trainor*, 196 Ill. 2d 318, 323-24, 752 N.E.2d 1055, 1058-59 (2001) ("The Act's purpose is \*\*\* to subject [SDPs] to treatment such that the individual may recover from the propensity to commit sexual offenses and be rehabilitated."). Dr. Weldon-Padera opined defendant had not addressed any core issues (problems he adamantly denied having), remained sexually dangerous, and had a substantial likelihood of reoffending. Nothing in the record refutes Dr. Weldon-Padera's opinions, which formed the basis of the trial court's judgment. The trial court's decision was not manifestly erroneous.

¶ 28

### III. CONCLUSION

¶ 29 The trial court's decision defendant remained a sexually dangerous individual who had a substantial likelihood of reoffending was not manifestly erroneous. We affirm the court's decision.

¶ 30 Affirmed.