

NOTICE
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2016 IL App (5th) 150465-U

NO. 5-15-0465

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

<i>In re</i> COMMITMENT OF JOSEPH)	Appeal from the
PERRUQUET, JR.)	Circuit Court of
)	Union County.
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	
)	
v.)	No. 12-MR-41
)	
Joseph Perruquet, Jr.,)	Honorable
)	Mark M. Boie,
Respondent-Appellant).)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Welch and Chapman concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in ordering that respondent be committed to the Illinois Department of Human Services for control, care, and treatment in a secure facility as opposed to conditional release, and the court focused on appropriate statutory factors in making its determination.

¶ 2 Respondent, Joseph Perruquet, Jr., appeals from an order committing him to a secure facility pursuant to the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/1 *et seq.* (West 2010)). On appeal, respondent alleges the trial court abused its discretion in committing him to a secure facility as opposed to placing him on conditional

release because it failed to adequately focus on the proper factors under the Act when making its determination. We affirm.

¶ 3 BACKGROUND

¶ 4 We initially observe that our discussion is limited to those facts necessary to reach our decision. No reply brief was filed by respondent.

¶ 5 Respondent was found guilty of aggravated criminal sexual abuse, child abduction, and aggravated kidnapping on May 28, 2004, stemming from an incident in which respondent lured a female child less than 16 years of age into a motor vehicle where he committed an act of sexual penetration on the child and knowingly confined the child against her will. 720 ILCS 5/12-16(d), 10-5(b)(10), 10-2(a)(3) (West 2002). Respondent was subsequently sentenced to seven years, three years, and eight years, respectively, to run concurrently in the Illinois Department of Corrections.

¶ 6 Respondent was scheduled to begin mandatory supervisory release from his sentence on April 16, 2012. On April 9, 2012, while respondent was confined at Big Muddy Correctional Center, the State filed a petition for SVP commitment alleging respondent is a sexually violent person (SVP) as defined by the Act and requesting that respondent be committed to the Illinois Department of Human Services (DHS) for control, care, and treatment pursuant to the Act. 725 ILCS 207/5(f), 40(a) (West 2010). The petition indicated respondent was evaluated by a clinical psychologist, Dr. Martha Bellew-Smith, who determined respondent suffers from the following mental disorders: (1) Axis I–Paraphilia, Not Otherwise Specified, Non-Consent, Attracted to Both, and (2) Axis II–Antisocial Personality Disorder.

¶ 7 Respondent was appointed counsel, and a probable cause hearing was scheduled for April 16, 2012. Respondent waived the probable cause hearing, and was transferred to DHS for treatment and services. After an additional evaluation was conducted by Dr. Kimberly Weitzl in May 2012, respondent was further diagnosed with Exhibitionism.

¶ 8 On January 13, 2015, the trial court entered, and respondent signed, a SVP admission findings and order. In that order, respondent admitted the allegations contained in the SVP petition, waived his right to a jury trial regarding the issue of whether he was a SVP, and admitted there is a factual basis for his admission to the allegations contained in the SVP petition. The court accepted respondent's admission and ordered that respondent be committed to the custody of DHS for control, care, and treatment until such time that he is no longer a SVP. The court further ordered that DHS conduct a predisposition investigation and prepare a report on or before April 24, 2015, and the cause was continued for a disposition hearing.

¶ 9 Thereafter, the State's expert, Dr. Weitzl, and respondent's expert, Dr. Kirk Witherspoon, submitted their reports to the court. The disposition hearing was conducted on October 5, 2015. At the hearing, the court heard testimony from Dr. Weitzl, Dr. Witherspoon, and respondent.

¶ 10 Dr. Weitzl, an expert in psychology who specializes in sex offender evaluations, risk assessment, and sex offender treatment, testified regarding her predisposition investigation examination of respondent dated February 27, 2015, which she completed to determine the least restrictive placement where respondent could be adequately, effectively, and safely managed and treated. Dr. Weitzl indicated that in order to complete

that report, she examined records from DHS and other evaluations of respondent. She further testified that she completed a separate evaluation of defendant in 2012, which she updated in 2014, and also conducted an interview with respondent in 2014.

¶ 11 Dr. Weitzl testified that from her evaluations of respondent prior to her predisposition investigation, she diagnosed respondent with "Other Specified Paraphilic Disorder; Non-Consent; Exhibitionism Disorder; Rule Out Sadism; Alcohol Abuse Disorder; Antisocial Personality Disorder." After completing her predisposition investigation, Dr. Weitzl testified she diagnosed respondent with Pedophilic Disorder in addition to her previous diagnostic conclusions.

¶ 12 Dr. Weitzl then testified regarding her diagnostic conclusions of respondent. When asked about Other Specified Paraphilic Disorder, Non-Consent, Dr. Weitzl responded:

"It's a disorder that involves the individual being aroused by engaging in sexual activity with someone who is not consenting, whether they're unconscious, sleeping, or struggling to get away. *** We have a history of [respondent] being arrested and convicted for that behavior. We have [respondent] acknowledging that he fantasizes to those kinds of things, sleeping persons and raping persons."

Dr. Weitzl testified that Other Specified Paraphilic Disorder, Non-Consent is considered a mental disorder under the Act.

¶ 13 Dr. Weitzl testified that Exhibitionist Disorder is "when a person exposes themselves to unsuspecting persons," and indicated respondent had self-reported and been convicted of that type of behavior. She testified that because respondent's Exhibitionist Disorder increases his predisposition and risk to reoffend, it qualified as a

mental disorder under the Act. Regarding Rule Out Sadism, Dr. Weitzl stated respondent had mentioned that instilling fear in his victims increased his arousal. However, Dr. Weitzl acknowledged she still had questions about the diagnosis and would not qualify it as a mental disorder under the Act until a full diagnosis was conducted.

¶ 14 Dr. Weitzl stated Alcohol Abuse Disorder occurs where "someone who's using alcohol to the degree that it's affecting their ability to function on pretty much a day-to-day basis." While Dr. Weitzl acknowledged Alcohol Abuse Disorder is not considered a mental disorder under the Act, she testified it is noteworthy to respondent's case because it affects respondent's ability to make decisions regarding his sexually violent behavior.

¶ 15 Dr. Weitzl further testified that Antisocial Personality Disorder is "violating and disregard for the rights of others; kind of getting your needs met by any means." Dr. Weitzl indicated respondent has a long history of this type of behavior, and stated it is a mental disorder under the Act. Regarding Pedophilic Disorder, Dr. Weitzl testified it is the "sexual attraction, arousals, urges, fantasies involving prepubescent children." Dr. Weitzl testified respondent informed Dr. Witherspoon that he continues to have thoughts of children in a sexual way, and testified Pedophilic Disorder is considered a mental disorder under the Act.

¶ 16 After testifying regarding her diagnostic conclusions, Dr. Weitzl stated that in her professional opinion, these types of mental disorders predisposed respondent to engage in future acts of sexual violence. Dr. Weitzl further testified that respondent scored high on risk assessments she conducted to determine respondent's likelihood of reoffending. When asked about her assessment of respondent's risk to commit another sexually violent

crime, Dr. Weitzl responded: "[Respondent is] substantially probable to commit another act of sexual violence."

¶ 17 Dr. Weitzl ultimately opined that treatment in a secure facility was the least restrictive manner for control, care, and treatment of respondent. Dr. Weitzl testified she did not believe conditional release would benefit respondent because respondent "doesn't have the tools to deal with the external stimuli that he's going to deal with." Dr. Weitzl further indicated respondent had only advanced to the second stage of his five phase treatment program, and testified respondent would "have serious problems out there" if he were granted conditional release.

¶ 18 Dr. Kirk Witherspoon, a licensed clinical psychologist and sex offender evaluator, also testified at the hearing. It was stipulated that Dr. Witherspoon is an expert in the area of risk assessment and sex offender evaluations. Dr. Witherspoon testified that he had met with respondent one time, and his impression of respondent after evaluating him and reviewing all his documents was as follows: (1) respondent suffers from an Antisocial Personality Disorder which appears to be waning in intensity with age; (2) respondent had substance abuse tendencies in the past, which he addressed through undergoing treatment; and (3) respondent had a "nondiagnostic label, sexual abuse of an adult, which simply describes a problem area that was suitable for addressing in treatment." Dr. Witherspoon further testified he mistakenly suggested that respondent suffered from Pedophilic Disorder in the past based on incorrect information he received from respondent.

¶ 19 Aside from the Alcohol Abuse Disorder and Antisocial Personality Disorder, Dr. Witherspoon opined that respondent does not suffer from any of the mental disorders diagnosed by Dr. Weigl. Dr. Witherspoon also attacked the reliability and accuracy of the actuarial instruments employed by Dr. Weigl in her risk assessments of respondent. Dr. Witherspoon opined that respondent has a low risk to reoffend. Dr. Witherspoon further noted that respondent had been receiving treatment for the past seven years, and opined that respondent would receive better treatment in the community on conditional release as opposed to a secure facility.

¶ 20 Respondent testified on his own behalf at the hearing. Respondent stated he had disclosed 125 victims of various sexually related incidents to a disclosure group as part of his treatment up to that point in time. These incidents included men, women, and children, and were both hands-on and hands-off offenses. Respondent stated that he believed he would always be a risk to reoffend if he does not utilize the tools he learned in treatment. Respondent acknowledged he sent a letter to Dr. Witherspoon which indicated he still has thoughts about adolescent females, and further acknowledged his penile plethysmograph indicates he still shows arousal to adolescent females. Respondent further testified that he was ready to be placed on conditional release because he had acquired many tools throughout his approximately nine years of treatment, had worked on his issues, and had developed healthy hobbies.

¶ 21 After considering all the testimony and evidence, the trial court granted the State's petition for SVP commitment. The court stated that respondent is a SVP and ordered that he be committed to the DHS Treatment and Detention Facility for secure treatment

pursuant to the Act. 725 ILCS 207/40(a) (West 2010). Specifically, the court agreed with Dr. Weitzl that "[r]espondent is a [SVP] and that he falls within the highest risk category with a substantial probability to re-offend if released from the custody of the DHS."

¶ 22 This appeal followed.

¶ 23 ANALYSIS

¶ 24 The single argument raised by respondent on appeal alleges the trial court abused its discretion in committing him to a secure facility because the court failed to adequately focus on the proper factors under the Act when determining whether respondent should be committed or conditionally released. The State contends the trial court appropriately exercised its discretion in concluding respondent should be committed to a secure facility. For the following reasons, we conclude the trial court's decision to commit respondent was not an abuse of discretion.

¶ 25 Section 40(a) of the Act provides that when a respondent is found to be sexually violent, the court "shall order the person to be committed to the custody of [DHS] for control, care and treatment until such time as the person is no longer a [SVP]." 725 ILCS 207/40(a) (West 2010). Section 40(b)(2) of the Act provides that the order of commitment shall specify either institutional care in a secure facility or conditional release. 725 ILCS 207/40(b)(2) (West 2010). The court must consider certain factors in determining whether commitment shall be for institutional care in a secure facility or for conditional release: (1) the nature and circumstances of the behavior giving rise to the allegation in the petition, (2) the person's mental history and present medical condition,

and (3) what arrangements are available to ensure the person has access to and will participate in necessary treatment. 725 ILCS 207/40(b)(2) (West 2010).

¶ 26 We review the trial court's decision to commit a person to a secure facility or to conditional release under an abuse of discretion standard. *In re Detention of Lieberman*, 379 Ill. App. 3d 585, 609, 884 N.E.2d 160, 182 (2007). The trial court's ruling will only be considered an abuse of discretion if that decision is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court. *Lieberman*, 379 Ill. App. 3d at 609, 884 N.E.2d at 182.

¶ 27 After careful review of the record, we cannot conclude the trial court abused its discretion when it ordered respondent to be placed in a secure facility as opposed to conditional release. At the dispositional hearing, the State presented the detailed testimony of Dr. Weitzl, an expert in sex offender treatment who evaluated respondent and diagnosed him with various mental disorders. Dr. Weitzl opined that respondent's mental disorders predisposed him to engage in future acts of sexual violence. Regarding risk assessments she conducted on respondent, Dr. Weitzl testified respondent was placed "in a category of being high to be charged or reconvicted of another sex offense." Regarding his likelihood to reoffend, Dr. Weitzl testified that one actuarial instrument indicated respondent "was seven times more likely than the average offender to commit another act of—a sex offense."

¶ 28 Dr. Weitzl further testified she did not believe respondent had progressed far enough in treatment to be placed on conditional release for several reasons, including his inability to move out of the second phase of his five phase treatment program. Dr. Weitzl

also considered other reasons for why she believed respondent should not be placed on conditional release, such as respondent's disclosure of more victims and his disclosure of different behaviors, including fetish theft, gang rape, and sexual abuse of animals. Dr. Weitzl testified respondent "would have serious problems out there," referring to how respondent would respond to the environment if he were placed on conditional release.

¶ 29 In light of the foregoing, we cannot say the trial court's decision to commit respondent to a secure facility is unreasonable or arbitrary. Testimony and evidence regarding the appropriate statutory factors were presented to the trial court before it made its decision to commit respondent to a secure facility. The trial court's order entered after the dispositional hearing indicates the trial court considered that testimony and evidence and weighed the factors accordingly. Although we acknowledge respondent's expert witness, Dr. Witherspoon, disagreed with Dr. Weitzl's opinion that treatment in a secure facility was the best course of treatment for respondent, it is not the function of this court to reweigh the evidence, make credibility determinations, or resolve conflicting evidence. *In re Detention of Ehrlich*, 2012 IL App (1st) 102300, ¶ 76, 980 N.E.2d 111. For these reasons, we conclude the trial court did not abuse its discretion when it committed respondent to a secure facility as opposed to conditional release.

¶ 30 Respondent focuses much of his argument on weighing the testimony of the State's expert witness, Dr. Weitzl, against his expert witness, Dr. Witherspoon. For instance, respondent alleges the trial court improperly considered respondent's mental health diagnosis only from the perspective of Dr. Weitzl, and further alleges "[t]he trial judge gave little credence to the respondent's expert." However, it is not the function of a

reviewing court to reweigh the evidence or retry respondent. *Lieberman*, 379 Ill. App. 3d at 602, 884 N.E.2d at 177. Rather, it is the trier of fact's responsibility to assess the witnesses' credibility, weigh the testimony, and draw reasonable inferences from the evidence. *Lieberman*, 379 Ill. App. 3d at 609, 884 N.E.2d at 183. Accordingly, we reject respondent's argument.

¶ 31 Respondent also argues the trial court's citation to *In re Commitment of Rendon*, 2014 IL App (1st) 123090, 22 N.E.3d 1195, was an improper application of the clear and convincing evidence standard to determine whether an individual has made sufficient progress to be released. Respondent asserts the beyond a reasonable doubt standard is required to make such a determination.

¶ 32 After careful review of the trial court's order, we conclude respondent's argument is misplaced. Specifically, we find no indication that the court's citation to *Rendon* was intended to invoke the clear and convincing evidence standard to determine whether respondent should be committed to a secure facility or conditionally released. The only observation from *Rendon* cited by the trial court's order is that "to be conditionally released, an SVP must reach a certain point in treatment so that he can be safely managed in the community while still in the custody and control of DHS and while subject to the conditions set by the court and rules of DHS." *Rendon*, 2014 IL App (1st) 123090, ¶ 25, 22 N.E.3d 1195. Accordingly, we reject respondent's argument.

¶ 33 Respondent further asserts the trial court improperly considered more than what was set forth in the SVP petition when it considered the nature and circumstances of the behavior that was the basis of the allegation in the SVP petition. As respondent points

out, "[i]n an SVP Act case, the focus should not be on the respondent's past actions, but on whether the individual's mental condition currently poses a risk of sexual recidivism." *In re Commitment of Gavin*, 2014 IL App (1st) 122918, ¶ 79, 14 N.E.3d 1163. We find respondent's argument is misguided.

¶ 34 As previously indicated, section 40(b)(2) of the Act provides: "In determining whether commitment shall be for institutional care in a secure facility or for conditional release, the court shall consider the nature and circumstances of the behavior that was the basis of the allegation in the petition ***." 725 ILCS 207/40(b)(2) (West 2010). Here, the trial court's order discusses the incident that was the basis for the SVP petition, namely that respondent was charged with and convicted of aggravated criminal sexual abuse, child abduction, and aggravated kidnapping stemming from an incident in which he digitally penetrated the vagina of a minor.

¶ 35 The SVP petition in this case clearly states that respondent was found guilty of aggravated criminal sexual abuse, child abduction, and aggravated kidnapping/inflict harm. The petition further indicates that a certified copy of respondent's conviction is attached, which details the incident giving rise to respondent's said convictions, namely that respondent digitally penetrated the vagina of a minor. Thus, the trial court did not improperly consider more than was set forth in the petition when it detailed the incident giving rise to the petition, as this incident was included in the certified copy of respondent's conviction attached to the petition. Further, we note that "evidence of respondent's sexual offense which forms the basis for his commitment must be shown by the State to meet its burden under the Act." *In re Bailey*, 317 Ill. App. 3d 1072, 1088,

740 N.E.2d 1146, 1158 (2000). Here, the State attached a certified copy of respondent's conviction to its SVP petition for the court to consider. For these reasons, we conclude the trial court did not consider improper evidence in considering the nature and circumstances of the behavior that was the basis of the allegation in the SVP petition.

¶ 36 Respondent also indicates the court considered respondent's prior history of sexually deviant and abusive behavior in making its determination that respondent be committed to a secure facility, which respondent alleges was improper because it is not a statutory factor listed under section 40(b)(2) of the Act. 725 ILCS 207/40(b)(2) (West 2010). We disagree. Respondent ignores the fact that details of his previous sexual offenses are relevant to prove he suffers from a mental disorder and is likely to engage in future acts of sexual violence. *In re Detention of Allen*, 331 Ill. App. 3d 996, 1005, 772 N.E.2d 354, 361 (2002). Accordingly, we reject respondent's argument.

¶ 37 Finally, respondent alleges Dr. Weitzl's reference to respondent's polygraph results was highly prejudicial. Respondent further asserts that an adequate foundation was not laid for Dr. Weitzl's testimony concerning the actuarial instruments utilized in her risk assessments of respondent. We conclude these arguments have been waived. "In order to preserve an issue for appeal, both a trial objection and a written post-trial motion raising the issue are required." *People v. McCaster*, 239 Ill. App. 3d 753, 759, 607 N.E.2d 365, 369 (1993). For this reason, we reject respondent's argument.

¶ 38 CONCLUSION

¶ 39 For the aforementioned reasons, the judgment of the circuit court of Union County is affirmed.

¶ 40 Affirmed.