2018 IL App (2d) 170623-U
No. 2-17-0623
Order filed October 1, 2018

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

IN RE COMMITMENT OF CHRISTOPHER KORDELEWSKI	)	Appeal from the Circuit Court of Du Page County.
	)	
(The People of the State of Illinois	)	
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 05-MR-1068
	)	
Christopher Kordelewski	)	Honorable,
	)	Bonnie M. Wheaton,
Respondent-Appellant).	)	Judge Presiding

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's finding that the State proved by clear and convincing evidence that respondent failed to make sufficient progress in treatment to the point that he was no longer substantially probable to engage in acts of violence was not against the manifest weight of the evidence; affirmed.

¶ 2 Respondent, Christopher Kordelewski, appeals the trial court's denial of his petition for conditional release pursuant to section 60(d) of the Sexually Violent Persons Commitment Act (the Act). 725 ILCS 207/60(d) (West 2016). Respondent contends that the trial court departed from the plain language of the Act in finding that he had not made sufficient progress in

treatment so as to no longer be substantially probable to engage in acts of sexual violence. Additionally, respondent contends that the State failed to prove by clear and convincing evidence that respondent failed to make aforesaid sufficient progress in treatment. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In 2008, respondent was adjudicated to be a Sexually Violent Person (SVP) and committed to the care and custody of the Department of Human Services (DHS). Following a dispositional hearing in 2009, respondent was committed to a secure treatment facility. Since entering the secure treatment facility, respondent has been evaluated by DHS annually to determine his progress in treatment pursuant to section 55 of the Act. 725 ILCS 207/55 (West 2016).

¶ 5 On September 20, 2016, Dr. Deborah Nicolai conducted a periodic reexamination to assess respondent's suitability for discharge or conditional release and submitted a written report. It was Dr. Nicolai's opinion that respondent had not made sufficient progress in treatment to be conditionally released. Further, she opined that respondent's condition had not changed since his last evaluation. She concluded that he had not progressed to where he would no longer be an SVP.

¶ 6 On November 5, 2015, respondent petitioned the trial court for the appointment of an independent evaluator. The trial court granted respondent's request and appointed Dr. Luis Rosell to conduct an independent evaluation of respondent. Following his evaluation of respondent, Dr. Rosell submitted a written report dated June 21, 2016, in which he stated his opinion that respondent had made sufficient progress in treatment to be placed on conditional release. Respondent filed his petition for conditional release on July 26, 2016. The matter proceeded to a bench trial on March 27, 2017.

¶ 7 The trial consisted of the testimony of Dr. Nicolai for the State, Dr. Rosell for respondent, and respondent himself. Dr. Nicolai was accepted as an expert in clinical psychology and sex offender evaluation and risk analysis. Dr. Rosell was accepted as a licensed psychologist focused on forensic psychology. Both the September 20, 2016, report written by Dr. Nicolai and the June 21, 2016, report written by Dr. Rosell were admitted into evidence. Dr. Nicolai then testified for the State.

¶ 8 Dr. Nicolai testified that she conducted a clinical interview with respondent and had reviewed his treatment records, Illinois Department of Corrections records, previous evaluations of respondent, progress notes, assessments, penile plethysmograph, polygraph examination, and master treatment plan. Dr. Nicolai stated that she had updated her opinion after reviewing respondent's progress in treatment after her clinical interview with respondent. Dr. Nicolai then testified regarding respondent's past sex offenses that she used in assessing his risk of reoffending as follows.

¶ 9 When respondent was between the ages of 12 and 15, he sexually assaulted four girls staying at his house on numerous occasions. His fantasizing about raping women began when he was 15, and he began acting on those fantasies shortly after. When he was 15 or 16, respondent attempted to rape a woman but abandoned his plan after his would-be victim asked him what he was doing. He lost interest in raping her after talking to the woman. When he was 16, respondent committed two undetected attempted rapes. One of the attempted rapes was thwarted when a man came out of his house to stop respondent after he had grabbed and punched his victim at the door of her home. Respondent abandoned raping his other victim while wielding a knife in her apartment after she pleaded with him not to hurt her baby.

¶ 10 Respondent also completed two undetected rapes at the age of 16. In one instance, respondent spotted a woman outside his window walking down the street. He ran outside, dragged the woman between a house and a church, and then raped her. In the second instance, respondent followed a woman home and climbed into her window. He wielded a knife that he obtained from the woman's kitchen and entered her room where he masturbated while she slept and then raped her. Respondent was first arrested for attempted rape in 1981 after he pushed a woman down with the intent to rape her. Respondent was apprehended after running from the scene and sentenced to 18 months after being adjudicated delinquent for attempted rape.

¶ 11 Shortly after being paroled in May 1983, respondent held a knife to the throat of woman he saw in a parking garage. He took money from her purse and attempted to rape the woman. In June 1983, respondent attacked a woman in her car while parked in an alley. A light was turned on somewhere nearby and respondent punched the woman in the face and drove away in the woman's car. He was convicted of attempted rape and robbery for the May 1983 incident and convicted of robbery for the June 1983 incident. Respondent was sentenced to concurrent five-year prison terms.

¶ 12 In December 1985, respondent was paroled and moved to Hopkins County, Kentucky. In April 1986, respondent was playing a video game at a convenience store and fantasizing about raping the cashier. He went up to the cashier, punched her, got on top of her, but was forced to flee when she hit and injured him with a broken bottle. Respondent was later arrested and charged with attempted rape. While awaiting his trial on that charge, respondent managed to escape from the county jail. He was apprehended in Washington several months later and subsequently convicted of the attempted rape charge, as well as an additional charge of escape. Respondent was sentenced to consecutive five and ten-year prison terms.

¶ 13 Respondent returned to Illinois following his release from prison in Kentucky in 2000. He married a woman with three daughters, ages four, eight, and eleven. In December 2000, the eight-year old girl reported that respondent had sexually abused her on three occasions. Respondent pleaded guilty to aggravated sexual abuse and was sentenced to a ten-year prison term. That conviction would serve as respondent's predicate offense for his commitment as an SVP. Following his conviction, respondent admitted to sexually abusing his eleven-year old stepdaughter as well. In all, respondent admitted to committing a total of 50 sexual offenses against at least 19 women.

¶ 14 Dr. Nicolai then testified to respondent's conduct during his imprisonment and his time in the secure treatment facility. She stated that respondent received an additional one-year sentence for theft while imprisoned in Kentucky and, additionally, was removed from a pyschoeducational program. Respondent's removal from the program was because of inappropriate flirtatious behavior aimed at female staff members and for being in areas near the female staff member where respondent was not supposed to be. During his incarceration in Illinois, respondent was disciplined for stalking behaviors with female staff members and masturbating in his cell when a female correctional officer was nearby.

¶ 15 During his time in the secure treatment facility, respondent was referred for rules violations five times in 2015, and three times in 2016. These rules violations included stalking a female staff member, loitering and staring at a female staff member, and possession of a prohibited DVD movie that was on the facilities restricted list for depiction of sexual serial murder. Respondent's rules violations required him to be accompanied by a male staff member when he moved in the secure treatment facility.

¶ 16 Dr. Nicolai diagnosed respondent with four mental disorders: (1) sexual sadism disorder; (2) antisocial personality disorder with narcissistic features; (3) alcohol use disorder in sustained remission in a controlled environment; and (4) cannabis use disorder in sustained remission in a controlled environment. Dr. Nicolai testified that respondent's mental disorders are congenital or acquired disorders that affect his emotional and volitional capacity and predispose him to commit acts of sexual violence.

¶ 17 Dr. Nicolai testified that she conducted a risk analysis based on respondent's scores on the Static-99R and Static-2002R actuarial instruments. Respondent scored a 7 on the Static-99R which placed him in the high risk category. Respondent's score on the Static-99R was higher than 96% of other sex offenders. Respondent scored a 9 on the Static-2002R which also placed him in the high risk category. His score on the Static-2002R was higher than 97.2% of other sex offenders. Dr. Nicolai also considered other dynamic and protective factors in conducting her risk analysis of respondent. These factors were not represented by either of the actuarial instruments but were helpful in assessing respondent's risk of future sexual violence. In Dr. Nicolai's opinion, respondent exhibited the presence of seven dynamic risk factors that increased respondent's risk of reoffending: (1) deviant sexual interest; (2) lifestyle impulsivity; (3) diagnosed personality disorders; (4) substance abuse; (5) intimacy deficits; (6) resistance to rules and supervision; and (7) sexual preoccupation. Dr. Nicolai concluded that protective factors such as the completion of a sex offender treatment program, a debilitating mental condition, or advanced age did not apply to reduce respondent's risk of reoffending. Dr. Nicolai opined within a reasonable degree of psychological certainty that respondent was substantially probable to sexually reoffend. Additionally, respondent's treatment team determined that he was not ready to advance past Phase 4 of the five-phase sex offender treatment plan.

¶ 18 Dr. Rosell was then called to testify. His testimony was based on his review of respondent's records at the secure treatment facility, his review of respondent's treatment plan from the fall of 2016, and his interview with respondent. Dr. Rosell said that the focus of his opinion was based on respondent's progress in treatment, not his history of sexually violent offenses.

¶ 19 Dr. Rosell acknowledged that respondent had only advanced to Phase 4 of the five-step treatment plan at the facility. He also acknowledged that respondent had been given several write-ups for behavior problems involving female staff members at the facility, but denied that respondent's behavior towards those staff members was sexually inappropriate. Dr. Rosell said that respondent had been fantasizing about those same female staff members, but the fantasies consisted of consensual acts. According to Dr. Rosell, fantasizing about female staff members is common in SVPs.

¶ 20 Regarding respondent's ability to effectively practice what he had learned through his treatment in his day-to-day life, Dr. Rosell said that respondent struggles with rule breaking in the secure treatment facility, but would not have those same struggles upon conditional release because the threat of being sent back to the facility outweighed acting on his sexual impulses.

¶ 21 Dr. Rosell agreed with Dr. Nicolai that respondent suffered from antisocial personality disorder as well as alcohol and cannabis abuse disorders, but disagreed that respondent is a sexual sadist. According to Dr. Rosell, respondent did act violently and damaging to some of his victims, but did not display classic sexual sadist behaviors such as ritualism, keeping trophies of victims, and asphyxiation. Dr. Rosell opined that respondent fantasized that the rapes he committed would turn consensual, a behavior not typically attributed to sexual sadists. He did

admit that respondent had shown arousal to sadist and muted sadism segments during a 2014 penile plethysmograph examination.

¶ 22 Like Dr. Nicolai, Dr. Rosell conducted risk assessments with respondent by employing the Static-99R and Static-2002R actuarial instruments. Respondent scored a 6 on the Static-99R which placed him the well above average risk category. On the Static-2002-R, respondent scored a 9 which likewise placed him in the well above average risk category. Unlike Dr. Nicolai, Dr. Rosell's assessment did not account for dynamic risk factors for respondent. It was Dr. Rosell's opinion, to a reasonable degree of medical certainty, that respondent had made sufficient progress in treatment to be conditionally released. He believed that respondent could comply with the rules if conditionally released.

¶ 23 Respondent then testified on his own behalf. He testified that he was 52 years old and had been at the secure treatment facility for 11 years. He acknowledged that he was in Phase 4 of the five-part treatment plan. He stated that he is no longer a hurtful person and that he no longer revels in the idea of hurting people. Respondent said that he was familiar with the rules of conditional release and the number of rules involved. He cited this as an issue that he struggles with as he does not like being told what to do. Respondent testified, however, he is willing to follow all rules placed on him if conditionally released and maintain his treatment plan.

¶ 24 Respondent admitted to being removed from an arousal management reconditioning group because doctors believed he was not accurately reporting his levels of arousal. But, respondent said, he still practices arousal management reconditioning on his own. He also testified that he had been infatuated with a recreational therapist at the secure treatment facility. He admitted to having non-deviant sexual fantasies about her and joined every group she

conducted at the facility, even if he had no interest in those groups. Respondent did not deny that the stalking citation he received for this behavior was warranted.

¶ 25 Respondent testified that his deviant sexual fantasies have significantly decreased over time. He said that he understands that his deviant fantasies are a personal choice and he no longer chooses to have them. He feels that he is doing a better job now at addressing and coping with those thoughts.

¶ 26 Respondent then rested and closing arguments followed. The State argued that it had "proven by clear and convincing evidence that the respondent has not made sufficient progress in treatment to the point that he is no longer substantially probable to engage in acts of sexual violence if on conditional release." In respondent's closing argument, counsel argued that the evidence did not show that "it's substantially probable [respondent will] reoffend as the statute requires." The trial court then denied respondent's petition for conditional release. The trial court found that "the State has shown by clear and convincing evidence that [respondent] is, at this point in time, not suitable for conditional release."

¶ 27 The trial court went on to state that "the question today is whether [respondent] has made sufficient progress so that he can be successful if he is placed on conditional release in the community." The trial court said that it relied on Dr. Nicolai's testimony that respondent "has intellectualized what he has learned in treatment but has failed to internalize that knowledge and make it a part of his daily life." The trial court then went on to laud respondent for his progress in treatment by saying that it "was very impressed with the candor and openness with which he testified *** [but] there is still work that needs to be done for [respondent] to internalize this body of knowledge that he has gained so that he will be successful on conditional release."

¶ 28 The trial court then expressed concern for respondent's "consistent lack of ability to follow the rules." The trial court said that "if [the court] were to allow [respondent] into the community on conditional release with his history of inability to follow the rules, [the court] would indeed be setting him up for failure and that he would be back *** in a detention facility in a fairly short period of time." Following the trial court's denial of his petition for conditional release, respondent moved to reconsider the denial. Respondent argued again that the State "failed to prove by clear and convincing evidence that [respondent] had failed to make sufficient progress in treatment to the point where he was no longer substantially probable to engage in acts of sexual violence if on conditional release." The trial court denied respondent's motion to reconsider.

¶ 29 This timely appeal followed.

¶ 30 II. ANALYSIS

¶ 31 Respondent raises two contentions in this appeal: (1) that the trial court departed from the plain language of the Act in finding that he had not made sufficient progress in treatment so as to no longer be substantially probable to engage in acts of sexual violence; and (2) that the State failed to prove by clear and convincing evidence that respondent failed to make aforesaid sufficient progress in treatment. We will address each contention in turn.

¶ 32 Respondent argues that the trial court misapplied the Act in denying his petition for conditional release because the denial relied primarily upon his history of facility rules violations, and the trial court incorrectly focused on the risk of respondent being set up for failure if on conditional release. Respondent maintains that section 60(d) of the Act requires the trial court to find that he has not made sufficient progress in treatment such that he is no longer substantially probable to engage in acts of sexual violence if on conditional release, not whether

he will comply with the rules when on conditional release.

¶ 33 Section 60(d) of the Act states as follows:

> "(d) The court, without a jury, shall hear the petition as soon as practical after the reports of all examiners are filed with the court. The court shall grant the petition unless the State proves by clear and convincing evidence that the person has not made sufficient progress in treatment to the point where he or she is no longer substantially probable to engage in acts of sexual violence if on conditional release. In making a decision under this subsection, the court must consider the nature and circumstances of the behavior that was the basis of the allegation in the petition under paragraph (b)(1) of Section 15 of this Act, the person's mental history and present mental condition, and what arrangements are available to ensure that the person has access to and will participate in necessary treatment." 725 ILCS 207/60(d) (West 2016).

¶ 34 In a bench trial, the court is presumed to know the law, and this presumption may only be rebutted when the record affirmatively shows otherwise. *People v. Mandic*, 235 Ill. App. 3d 544, 546 (2001). The trier of fact in a bench trial is not required to mention everything or, for that matter, anything that contributed to its verdict. *Id.* If the record contains facts that support the trial court's finding, the reviewing court may consider those facts to affirm the finding, even if the trial court did not state specifically that it relied on them. *Id.*

¶ 35 The record in this case is replete with references to the standard articulated in section 60(d) by both parties during closing arguments. During closing arguments, the State argued that the trial court "need[s] to determine if [respondent has] made sufficient progress in treatment to reduce his risk such that he can be managed in the community without reoffending, and at this point he has not made sufficient progress in treatment." The State further noted in closing that

"the State has proven by clear and convincing evidence that the respondent has not made sufficient progress in treatment to the point that he is no longer substantially probable to engage in acts of sexual violence if on conditional release." Respondent's counsel also argued in closing that there was nothing "in the evidence that says it's substantially probable [respondent will] reoffend as the statute requires." In respondent's motion to reconsider the denial of his petition for conditional release he provided the trial court with the standard set forth in section 60(d) again by stating that his petition should be granted "unless the State proves by clear and convincing evidence that the person has not made sufficient progress in treatment to the point where he or she is no longer substantially probable to engage in acts of sexual violence if on conditional release."

¶ 36 Respondent takes issue with the fact that the trial court paraphrased the standard of section 60(d) by stating that the inquiry was "whether respondent had made sufficient progress so that he can be successful if he is placed on conditional release." Additionally respondent argues that the trial court must not have known and properly applied the Act's standard because it did not articulate certain statutory factors and expressed concern with respondent's ability to follow the rules. However, none of respondent's arguments can overcome the presumption that the trial court knew and properly applied section 60(d) in its denial of respondent's petition for conditional release. The record here contains facts that support the trial court's finding, and this court will affirm that finding, even though the trial court did not state specifically that it relied on them. See *Mandic*, 235 Ill. App. 3d at 546.

¶ 37 Respondent next contends that the trial court's denial of his petition for conditional release was against the manifest weight of the evidence because the State failed to prove by clear and convincing evidence that he should remain confined. We disagree.

¶ 38 The State was required to prove by clear and convincing evidence that petitioner had not made sufficient progress to be conditionally released. 725 ILCS 207/60(d) (West 2016). A court must deny an SVP's petition for conditional release if the State proves, by clear and convincing evidence, that the SVP has failed to make sufficient "progress in treatment" such that he "is no longer substantially probable to engage in acts of sexual violence if on conditional release." *Id.* In making that determination, the court should consider the nature and circumstances of the acts of sexual violence underlying the SVP's commitment, his "mental history and present mental condition," and whether arrangements can be made to ensure his participation in necessary treatment on conditional release. *Id.* The question is whether petitioner has made sufficient progress to warrant release from a secure setting. *In re Commitment of Sandry,* 367 Ill. App. 3d 949, 978 (2006).

¶ 39 The trial court's finding that the State met this burden may not be disturbed unless it is against the manifest weight of the evidence. *Id.* A judgment is not against the manifest weight of the evidence unless "the opposite conclusion is clearly evident or the [factual] finding is arbitrary, unreasonable, or not based in evidence." *Samour, Inc. v. Board of Election Commissioners of the City of Chicago,* 224 Ill. 2d 530, 544 (2007).

¶ 40 Respondent has not shown that the judgment is against the manifest weight of the evidence. The trial court heard the State's expert testify to a reasonable degree of psychological certainty that respondent had not made sufficient progress in treatment; she could not say that he is no longer substantially probable to engage in acts of sexual violence if on conditional release. Indeed, defendant had not completed the requisite five-phase treatment program at the time the trial court conducted a hearing on the petition. Dr. Nicolai testified that respondent's scores on the Static-99R and Static-2002R placed him in the high risk of reoffending category.

Additionally, Dr. Nicolai identified seven dynamic risk factors that increased respondent's risk of reoffending. Although defendant's expert, Dr. Rosell, gave an opinion slightly contradictory to that of Dr. Nicolai regarding respondent's risk of sexually violent reoffense, we are not in a position to reweigh the evidence and substitute our judgment for the trial court's merely because the experts presented testimony in conflict with one another. See *Sandry*, at 979-80. The trial court's finding that the State showed by clear and convincing evidence that respondent should remain confined was not against the manifest weight of the evidence.

¶ 41 III. CONCLUSION

¶ 42 For the reasons stated, we affirm the judgment of the circuit court of Du Page County.

¶ 43 Affirmed.