2019 IL App (2d) 190316-U
No. 2-19-0316
Order filed December 20, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re COMMITMENT OF TOMMY O. HARDIN	)	Appeal from the Circuit Court of Du Page County.
	)	No. 07-MR-1685
(The People of the State of Illinois, Petitioner-Appellee v. Tommy O. Hardin., Respondent-Appellant.)	)	Honorable Bonnie M. Wheaton Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hutchinson and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not err by finding no probable cause to proceed to a full evidentiary hearing on respondent's petition for conditional release where respondent presented no plausible evidence of progress in his treatment to warrant conditional release; the trial court properly considered respondent's entire treatment record since his initial commitment in reaching its no probable cause finding.

¶ 2 Respondent, Tommy O. Hardin, was adjudicated a sexually violent person (SVP) in January 2011 and was committed to the custody of the Illinois Department of Human Services (DHS) for institutional treatment in a secure facility. Respondent appeals the order of the trial court finding no probable cause to warrant an evidentiary hearing on his petition for conditional

release. Respondent argues that the trial court erred in its finding because he presented plausible evidence to establish sufficient probable cause to proceed to an evidentiary hearing. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The following facts are taken from the record on appeal, as well as the previous opinions of this court and our supreme court. See *In re Detention of Hardin*, 238 Ill. 2d 33 (2010); *People v. Hardin*, 217 Ill. 2d 289 (2005); *People v. Hardin*, 196 Ill. 2d 553 (2001); *In re Commitment of Hardin*, 2016 IL App (2d) 150540-U; *In re Commitment of Hardin*, 2013 IL App (2d) 120977; *In re Detention of Hardin*, 391 Ill. App. 3d 211 (2009); *People v. Hardin*, 353 Ill. App. 3d 522 (2004); *People v. Hardin*, 323 Ill. App. 3d 1158 (2001).

¶ 5 A. Predicate Offenses

¶ 6 Between 1991 and 2000, respondent was convicted of a total of ten counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 1998)) against four victims between the ages of 12 and 15.

¶ 7 1. *1991 Conviction*

¶ 8 In 1991, respondent pleaded guilty and was convicted of one count of aggravated criminal sexual abuse following an ongoing sexual relationship with a 15-year-old girl. Respondent posed as the girl's father to school officials in order to get her released from school early. Respondent was sentenced to four months' imprisonment and four years' probation.

¶ 9 In December 2017, at respondent's request, the court appointed Dr. Luis Rosell, Psy.D., to evaluate respondent. On May 3, 2018, Rosell conducted his evaluation, which included an interview of respondent. Rosell's report of the evaluation quoted respondent's explanation of his 1991 conviction:

> "I met a fourteen-year-old at a bowling alley, but I did not know at the time her age. I am there with some friends, and she is drinking alcohol at the bar. I am not thinking of any difference, and she is of age. I started dating her. We had sex more than once. She worked for her dad, and I thought that is what she did. Her parents knew of me, but I never talked to them. A friend told me she was not 21 and I asked her, and she said she was eighteen. When I found out her real age, I broke it off ***. *** I never called a school as I never knew she went to school."

¶ 10 2. *1992 Conviction*

¶ 11 In 1992, while still on probation for the 1991 offense, respondent again committed aggravated criminal sexual abuse, this time against two girls, ages 12 and 14. The girls had skipped school and were riding around in respondent's car when he took them to a cornfield. When the girls refused his sexual advances, he took them to a liquor store and plied them with alcohol before driving them to another cornfield. The 12-year-old fled after he fondled her breasts and vagina. He then threatened the 14-year-old with violence, telling her that he had a black belt in karate before he vaginally, anally, and orally penetrated the girl and forced her to swallow his ejaculate. Respondent pleaded guilty and was convicted of four counts of aggravated criminal sexual abuse and sentenced to six years' imprisonment.

¶ 12 Rosell's report included respondent's explanation of these offenses:

> "I was introduced to [the 14-year-old] by a friend. She was fourteen or fifteen. A friend had been dating her, and they both said she was nineteen. I did not think my friend would have lied to me. I was young and stupid. I did have oral, vaginal, and anal sex. She went along with it. I did not do anything to [the 12-year-old]. I did not put my hand on

her breast. *** I did not know their age. Never threatened them and never took them to liquor store [*sic*] and they had the liquor."

¶ 13 3. *2000 Conviction*

¶ 14 In November 1996, while on parole for the 1992 offenses, respondent again committed aggravated criminal sexual abuse. Respondent met several juvenile runaways at a Naperville arcade, including 15-year-old H.J. Respondent told the girls that he was a millionaire and that he could supply them with food, shelter, and jobs. The girls entered his car and he asked their ages. H.J. told him that she was 15. Respondent told H.J. that she would have to be his "sex slave" in return for his gifts, and that she would have to have oral, vaginal, and anal sex with him for a period of time. He stated that his father was in the mob and that if she refused to comply with his wishes, he would have the girls killed. Later that day, at the residence of an acquaintance, respondent fondled H.J.'s breasts and digitally penetrated her vagina and anus. Respondent continued to penetrate H.J. throughout the day. When H.J. told him he was hurting her, he forced her legs apart and told her repeatedly that she "wanted it." Respondent was indicted on five counts of aggravated criminal sexual abuse and convicted on each count following a bench trial in April 2000. Respondent was sentenced to 22 years' imprisonment.

¶ 15 In Rosell's report, respondent described the 2000 conviction and offenses as follows:

"I had an attorney who would come in drunk and with the county attorney and I began complaining to the judge about him. *** The victim was a fifteen-year-old female who I met at an adult gaming facility to play card games or live action role play. You need a membership card to get in. *** I was at the gaming facility playing cards and someone I knew asked me for a ride. I took Nate home, a friend and there was [the three girls]. For most of the night, I drove them around. We picked up another friend and then I went out

> on a balcony to smoke a cigarette. *** [H.J.] came out, and we talked for a little bit, and then we went into a room and watched TV, and she put her head on my shoulder. She then climbed on my lap, and I took that [as] she was interested and paying me attention ***. I fondled her breast and buttocks and digitally penetrated. I did not digitally penetrate her anus. Later on that night I digitally penetrated her vagina in the car. *** I never said I was a millionaire."

¶ 16 B. Sexually Violent Person Adjudication/Petition for Conditional Release

¶ 17 On November 19, 2007, while respondent was still in prison but before he was scheduled to begin mandatory supervised release, the State petitioned the court to have respondent declared an SVP and committed to a secure facility pursuant to section 15 of the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/15 (West 2006)). The petition alleged that respondent suffered from paraphilic and other mental disorders that made it substantially probable that he would engage in further acts of sexual violence. On January 25, 2011, following protracted litigation, a jury found respondent to be an SVP, and the court ordered him committed to the custody of DHS.

¶ 18 On December 10, 2018, respondent filed a petition for conditional release, asserting that he had made sufficient progress in his treatment to be conditionally released while continuing to undergo treatment on an outpatient basis. Respondent "strenuously" asserted that his time could be better spent employed and contributing to family and society. Respondent further asserted that with "sufficient monitoring," he would not pose a threat to the general public.

¶ 19 On March 22, 2019, the trial court held a probable cause hearing. Neither respondent nor the State called any witnesses. The court considered Rosell's report as well as that of Dr. Nicole Hernandez, Ph.D., who conducted an annual reexamination of respondent in April 2018 pursuant

to section 55 of the Act. 725 ILCS 207/55 (West 2016) (after the initial commitment, DHS must submit a report at least every 12 months concerning the respondent's mental condition for the purpose of determining (1) whether the respondent has sufficiently progressed in treatment to be conditionally released and (2) whether the respondent's condition has so changed since the most recent reexamination that he or she is no longer an SVP).

¶ 20 1. *Evaluation Report: Dr. Rosell*

¶ 21 Rosell reported that he was contacted by respondent's attorney to evaluate respondent to determine if he had made substantial progress in treatment to be conditionally released. Rosell stated that his evaluation included reviewing treatment records from 2012 to 2017 and the August 2016 evaluation report by Dr. David Suire, Psy.D., as well as conducting a clinical interview with respondent. Rosell did not review Hernandez's 2017 or 2018 reexamination reports or respondent's 2018 treatment records.

¶ 22 Rosell noted that respondent rated himself a 2 on a scale of 0-10 (0 = not likely, 10 = very likely) that rated the likelihood that respondent would commit a future sex offense. Rosell reported that respondent underwent a plethysmograph examination in 2012 to determine his sexual arousal, and that respondent "did not demonstrate any arousal." Rosell additionally noted that respondent was evaluated for testosterone deficiency in 2014, and that respondent's level was below normal for an adult male.

¶ 23 Regarding treatment, Rosell reported that respondent had progressed to phase two of the core sex-offender treatment program, and that he had completed nine "side groups," which included anger management, healthy relationships, and mindfulness.

¶ 24 Rosell assessed respondent's likelihood to reoffend using the Static-99R, an actuarial instrument that combines both risk and protective factors to determine the subject's risk to reoffend

relative to other sexual offenders. According to Rosell, respondent scored a four on the Static-99R, which placed him in the "above average range." Rosell diagnosed respondent with "alcohol use disorder and other specified personality disorder, with antisocial features." He did not diagnose respondent with a paraphilic disorder, as had Hernandez, Suire and other previous examiners. Rosell commented that the diagnosis of "other paraphilic disorder" was "controversial in the field."

¶ 25 Based on respondent's participation in ancillary treatment groups, his progression into phase 2 of the sex-offender treatment program, and his low testosterone level, Rosell concluded that respondent's risk for offending in the future was "relatively low" and that he should be placed on conditional release.

¶ 26 2. *Evaluation Report: Dr. Hernandez*

¶ 27 Hernandez described her April 2018 evaluation as an annual reexamination required by the Act. She stated its purpose as two-fold: (1) to determine whether respondent's condition had changed since the most recent periodic examination such that he was no longer an SVP, and (2) to determine whether respondent had made sufficient progress in treatment to be conditionally released. Hernandez interviewed respondent as part of her evaluation. At the outset of the interview, she read respondent several forms that advised him of his right to consent to the interview and to petition the court for discharge. Respondent consented to the interview but did not waive his right to petition the court for discharge. In addition to the interview, Hernandez reviewed respondent's criminal history and court documents, Illinois Department of Corrections records, a 2007 evaluation by Dr. R. Quackenbush, Psy.D., a 2011 evaluation by Dr. J. Arroyo, Psy.D., the 2012 Plethysmograph evaluation by Dr. R. Olt, Psy.D., a 2012 entry to treatment evaluation by Dr. T. Oliver, Ph.D., a 2016 reexamination by Suire, the 2017 evaluation conducted

by herself, the 2018 Static-99R and Static-2002R assessments by herself, and a peer consultation with Dr. A. Louck-Davis, Psy.D.

¶ 28 Hernandez noted that respondent indicated his current risk of reoffending was a 3 on a scale of 1 to 10 (1 = no risk, 10 = highest risk). Hernandez reported that respondent underwent a plethysmograph examination in 2012 to determine his sexual arousal and that the "results were deemed valid and results indicated that he did not reach significant sexual arousal on any of the 22 segments presented." She additionally remarked that respondent was prescribed several medications at the time of the test that list sexual side effects such as erectile dysfunction.

¶ 29 Hernandez provided an overview of DHS's core sex-offender treatment program. The treatment has five phases, each one designed to build on lessons from the previous phases: (1) assessment, (2) accepting responsibility, (3) self-application, (4) incorporation, and (5) transition. During phase 2, accepting responsibility, a patient must self-report and accept blame for all past sexual offenses, including offenses for which he was never charged. Verification of transparent reporting is gained through the use of a polygraph examination, which is the final step in phase 2 before a patient is transitioned into phase 3. Hernandez noted that respondent was in phase 2, and that since beginning the program in 2011, respondent had completed "several treatment groups and currently attends Disclosure group weekly." Hernandez reported that respondent's personal treatment plan had been reviewed and revised in September 2017 and again in March 2018. Between September and March, respondent's progress in the phase 2 disclosure group was described as "stagnant." Hernandez also noted that respondent's "recall of events from his Predicate Offense Description have been called into question as he is able to remember certain details vividly while lacking recollection of interactions and discussions had with the victim."

¶ 30 Hernandez summarized the progress notes of respondent's participation in treatment for each month from April 2017 through February 2018. Overall, respondent showed improvement in his ability to accept constructive feedback. He did, however, become defensive on several occasions when challenged regarding his struggle to recall the details of his sexually offending behavior. In December 2017, he described feeling that he was being "treated unfairly and has had thoughts about quitting the group and leaving treatment." Respondent remained in the treatment group, however, as of April 17, 2018, the date of Hernandez's evaluation.

¶ 31 Hernandez assessed respondent's risk for reoffending using the Static-99R and the Static-2002R, noting that they are both "widely accepted by the scientific community, by courts, and by applied evaluators." Respondent received a score of five on the Static-99R, which placed him in the second highest of five categories, also referred to as "above average risk category." He received a score of six on the Static-2002R, which placed him in the second highest of five categories, also referred to as the "above average risk category." Hernandez additionally considered other empirical risk factors. She cited a 2010 study that concluded that there is a statistically significant correlation between the presence of multiple risk factors and recidivism. Hernandez identified nine risk factors that were present in respondent, including deviant sexual interest, personality disorder, poor problem solving, and lack of concern for others. Hernandez concluded that respondent's scores on the Static-99R and Static-2002R, along with the presence of additional empirical risk factors, support that he is "substantially probable to engage in future acts of sexual violence."

¶ 32 Hernandez diagnosed respondent with (1) "Other Specified Paraphilic Disorder, Sexually Attracted to Nonconsenting (Adolescent) Persons, In a Controlled Environment," and (2) "Other Specified Personality Disorder, with Antisocial and Paranoid Features." She opined to a

reasonable degree of psychological certainty that (1) respondent's condition had not changed since his last examination and that he should continue to be found an SVP, and (2) respondent had not made sufficient progress in his treatment to be conditionally released.

¶ 33 On March 22, 2019, the court reviewed the evaluation reports submitted by Rosell and Hernandez, and it heard arguments of the parties. The court found that there was "no significant change from the last evaluation period which would warrant going to a full hearing." Accordingly, it granted the State's motion for a finding of no probable cause. Respondent timely appealed.

¶ 34 II. ANALYSIS

¶ 35 Respondent argues that the trial court erred in finding that there was no probable cause to proceed to an evidentiary hearing because (1) he "presented plausible evidence of each of the elements of probable cause" and (2) the court erroneously focused on treatment progress during the last periodic examination rather than respondent's entire history while committed. The State disagrees, arguing that (1) respondent failed to present sufficient plausible evidence to warrant a full hearing and that (2) there is no merit to respondent's claim that the court failed to consider the appropriate evidence.

¶ 36 A. Overview of Sexually Violent Persons Commitment Act

¶ 37 The Act authorizes the involuntary civil commitment of a person adjudged to be an SVP for "control, care and treatment until such time as the person is no longer a sexually violent person." 725 ILCS 207/40(a) (West 2018). The Act defines an SVP as a person who has been convicted of a sexually violent offense and suffers from a mental disorder that makes it substantially probable that he or she will engage in acts of sexual violence. 725 ILCS 207/5(f) (West 2018).

¶ 38 After a person is committed under the Act, DHS must evaluate the person's mental condition within six months of the initial commitment and re-evaluate the condition thereafter at least every twelve months for the purpose of determining whether: "(1) the person has made sufficient progress in treatment to be conditionally released and (2) the person's condition has so changed since the most recent periodic reexamination *** that he or she is no longer a sexually violent person." 725 ILCS 207/55(a) (West 2018).

¶ 39 At the time of an examination under section 55(a) of the Act, the committed person is provided with written notice containing a waiver of rights that informs the person of his or her right to petition the court for discharge. 725 ILCS 207/65(b)(1) (West 2018). If the person does not affirmatively waive his or her right to petition for discharge, then the trial court shall hold a probable cause hearing to determine whether facts exist to believe that since the most recent periodic examination the person's condition has so changed such that he or she is no longer an SVP. 725 ILCS 207/65(b)(1) (West 2018). If the committed person does not file a petition for discharge, yet still fails to waive the right to petition for discharge, then the probable cause hearing consists only of a review of the evaluation reports and arguments by the parties. 725 ILCS 207/65(b)(1) (West 2018).

¶ 40 A committed person may also petition the court to modify its order by authorizing conditional release. 725 ILCS 207/60(a) (West 2018). The committed person and the State both have the right to have the person examined to determine whether conditional release is appropriate. 725 ILCS 207/60(c) (West 2018). The court shall schedule a probable cause hearing "as soon as practical" after the examiners' reports are filed. 725 ILCS 207/60(c) (West 2018). If the court finds probable cause to believe that "the person has 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, the court shall set a hearing on the issue." 725 ILCS 207/60(c) (West 2018).

¶ 41 Whether a committed person files a petition for discharge or a petition for conditional release, he or she bears the burden at the probable cause hearing to present sufficient evidence to warrant a full hearing. *In re Detention of Stanbridge*, 2012 IL 112337, ¶ 67. At any of the various probable cause hearings under the Act, the court's role in assessing the evidence is the same; it is to determine whether the movant has established "a *plausible account* on each of the required elements to assure the court that there is a substantial basis for the petition." (Emphasis in original and internal quotation marks omitted.) *Stanbridge*, 2012 IL 112337, ¶ 62 (quoting *Hardin*, 238 Ill. 2d at 48).[1] A *plausible account* in this context is evidence that shows a change in circumstances to support the requested relief. *In re Commitment of Smego*, 2017 IL App (2d) 160335, ¶ 25. If the court finds probable cause to set the matter for a full hearing, be it on a petition for discharge or on a petition for conditional release, the burden then shifts to the State to prove by "clear and convincing" evidence that the committed person is still an SVP or that he or she is not suitable for conditional release. *Stanbridge*, 2012 IL 112337, ¶¶ 52-54.

¶ 42 B. Probable Cause Hearing

[1] Respondent argues that his burden is the "very low burden" for demonstrating probable cause articulated in *In re Commitment of Wilcoxen*, 2016 IL App (3d) 140359, ¶ 30. While we recognize the Third District's characterization of the burden as "very low," we note that the controlling authority on this matter is that of our supreme court in *Stanbridge*, 2012 IL 112337, ¶¶ 57-64.

¶ 43 Respondent contends that he met the probable cause threshold to move the proceedings to an evidentiary hearing. He argues that he presented plausible evidence that he (1) had made sufficient progress in treatment and (2) was no longer substantially probable to engage in future acts of sexual violence. Whether respondent met the probable cause threshold is a question of law that we review *de novo*. *In re Commitment of Smego*, 2017 IL App (2d) 160335, ¶ 23.

¶ 44 Respondent first argues that he has made sufficient progress in his treatment. He acknowledges that he is only in phase two of the five-phase sex-offender treatment program, but notes that there is no statutory guidance as to any particular phase being a benchmark for suitability for conditional release. He claims that the relevant factors are his understanding of the "concepts" and the "tools" he now possesses that show he can be safely managed in the community. He points to the "quantity and variety" of the treatment groups in which he has participated. He asserts that the court was aware that he submitted his "predicate offense description" since the time of the evaluations and that this is "one of the last barriers to progressing to Phase 3." Respondent additionally claims that his treatment progress can be gleaned from his statements to examining doctors and other providers. He points to Rosell's report, where he reportedly demonstrated that he was aware of the criminality of his conduct, that he blamed only himself for the crimes, and that he recognized the damage he inflicted upon his victims.

¶ 45 Next, respondent turns to what he terms the second element in demonstrating probable cause for conditional release, which is whether he was still substantially probable to engage in future acts of sexual violence. He highlights Rosell's comment in his report that respondent's risk of reoffending remained "relatively low." Respondent argues that his low testosterone level "eliminated his sexual arousal," and that this was verified by the 2012 plethysmograph examination.

¶ 46 We do not find respondent's arguments convincing. He has remained in phase two of the core treatment program since at least October 2012. In large part, phase two requires the committed sexual offender to admit to all of his or her offenses and to take responsibility for those crimes. We recognize that respondent has completed a number of ancillary treatment groups, but many of those are unrelated to the disorder for which he was committed, and none are part of the core treatment program. Moreover, respondent has been challenged on a number of occasions as to whether he is truthfully recalling the full details of his offenses.

¶ 47 Respondent claims to have taken responsibility for his actions, but his statements during the most recent examination, conducted by an examiner of his choosing, tell a different story. Regarding his 1991 conviction of sexual abuse of a 15-year-old girl, he attempted to mitigate his responsibility by telling Rosell that a "friend told me she was 21" and "she said she was eighteen." Though he was convicted of fondling the breasts of a 12-year-old girl in 1992, he still denies the crime, telling Rosell that "I did not do anything to [the 12-year-old girl]. I did not put my hand on her breast." He deflected responsibility during the Rosell interview for having had vaginal, anal, and oral intercourse with the 14-year-old victim in 1992, stating that a friend and the victim both told him that she was 19, and also adding that he never took them to a liquor store and that they provided their own alcohol. As to the 2000 convictions, he told Rosell that his attorney would "come in drunk with the county attorney," suggesting that his convictions were unfairly obtained. He still claims that it was the 15-year-old victim who caused him to offend, stating that it was she who first "put her head on my shoulder" and "climbed on my lap." Thus, while respondent may have told Rosell that he blames only himself for his behavior, that statement is completely inconsistent with those that he made in the same interview where he deflected blame, refused to accept responsibility, and outright denied that he had committed the acts for which he was

convicted. He argues that the court was informed that he had recently submitted his "predicate offense description," implying that he has nearly completed phase two. However, the court was only informed of respondent's predicate offense description submission during arguments at the probable cause hearing, and arguments of counsel are not evidence. *People v. Wheeler*, 226 Ill. 2d 92, 130 (2007). Based on this record, we cannot say that respondent presented plausible evidence of his sufficient progress in treatment when he has yet to acknowledge his responsibility for his offenses after more than eight years of treatment.

¶ 48 Likewise, respondent failed to present plausible evidence that he is no longer substantially probable to engage in future acts of sexual violence. He asserts that the change in his levels of testosterone have eliminated his sexual arousal and, thus, made it "less than substantially probable" that he will commit further acts of sexual violence. Suire's multiple evaluation reports in the record indicate that sexual arousal is but one of numerous factors that are involved in the commission of deviant sexual behavior. Therefore, even if it were true that respondent had no sexual drive whatsoever, that factor alone is not a dispositive indicator of future behavior. Additionally, respondent fails to acknowledge that his low levels of testosterone can be remedied by testosterone replacement therapy, which he had received periodically in the past.

¶ 49 Moreover, despite Rosell's comment that respondent's risk to reoffend was "relatively low," both Rosell and Hernandez scored respondent in the "above average range" on the Static-99R for his risk to reoffend relative to other sex offenders. Accordingly, respondent failed to present a plausible account that he had progressed in his treatment to the point where he was no longer substantially probable to engage in acts of sexual violence if on conditional release.

¶ 50 C. Trial Court's Consideration of the Evidence

¶ 51 Respondent next argues that the court erroneously focused primarily on respondent's progress since the last periodic reexamination rather than his entire treatment record in reaching its finding of no probable cause on the petition for conditional release. Respondent relies on the court's language in its ruling from the bench: "I don't believe the record shows a significant change from the last evaluation period which would warrant going to a full hearing." Respondent is essentially complaining that the court denied him due process by failing to consider the entire treatment record on the issue of conditional release as is required by the Act.

¶ 52 We begin by noting that in a *de novo* review, we consider the court's ultimate decision, not the reasons given therefor, and we may affirm on any basis in the record. *City of Champaign v. Torres*, 214 Ill. 2d 234, 241 (2005). As such, we would affirm this court's finding of no probable cause even if its reasoning were flawed, though it was not.

¶ 53 In December 2017, respondent requested an evaluation by an examiner of his own choosing, which the court granted. In April 2018, before Rosell conducted his examination, Hernandez conducted an annual reevaluation of respondent on behalf of DHS. At that time, respondent did not affirmatively waive his right to petition for discharge, which meant that the court was required to hold a probable cause hearing on whether respondent remained an SVP, regardless of whether he ever filed a petition for discharge. 725 ILCS 207/65(b)(1) (West 2018).

¶ 54 In June 2018, the State filed a memorandum in support of finding no probable cause that respondent was no longer an SVP. The court waited for Rosell's report to be filed before setting a probable cause hearing. In December 2018, following several continuances, Rosell's report was filed as an exhibit to respondent's petition for conditional release. The court set the probable cause hearing for March 2019. Even though respondent never filed a petition for discharge, the court

was still required to hold a probable cause hearing on that issue where it considered the reports of the examiners and arguments of the parties. 725 ILCS 207/65(b)(1) (West 2018).

¶ 55 Thus, two questions remained before the court at the March 2019 probable cause hearing: (1) whether respondent remained an SVP and (2) whether respondent was suitable for conditional release. Respondent argued only that he had progressed in his treatment to be conditionally released, not that he was no longer an SVP. With both of those issues before the court, it was required to look at respondent's progress since the most recent evaluation on the issue of whether he remained an SVP. 725 ILCS 207/65(b)(1) (West 2018). The court was also required to consider the entire treatment record since the initial commitment on the issue of whether he should be conditionally released. 725 ILCS 207/60(c) (West 2018).

¶ 56 At the probable cause hearing, the court had before it the evaluation reports by Hernandez and Rosell, which together incorporated respondent's entire treatment record since his initial commitment. The court gave respondent and the State ample opportunities to present their arguments. The court stated that it had taken "everything into consideration," and there is nothing in the record causing us to doubt that the court did so. Accordingly, the court properly considered whether there was probable cause to believe that respondent was still an SVP as well as whether he should be conditionally released. Its ruling from the bench was consistent with its ultimate finding of no probable cause.

¶ 57 III. CONCLUSION

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

¶ 59 Affirmed.