

2014 IL App (2d) 111165-U  
No. 2-11-1165  
Order filed April 16, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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In re COMMITMENT OF WILLIAM ALLEN, )	Appeal from the Circuit Court
)	of Lake County.
)	
)	No. 99-MR-690
)	
(The People of the State of Illinois, )	Honorable
Respondent-Appellee, v. William Allen, )	Fred L. Foreman,
Petitioner-Appellant). )	Judge, Presiding.

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PRESIDING JUSTICE BURKE delivered the judgment of the court.  
Justices Birkett and Spence concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court’s holding that petitioner “has not made sufficient progress to be conditionally released,” was not against the manifest weight of the evidence; affirmed.

¶ 2 Following a hearing, petitioner, William Allen, appeals the order of the circuit court of Lake County denying his petition for conditional release pursuant to section 60(d) of the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/60(d) (West 2010)). We affirm.

¶ 3 I. BACKGROUND

¶ 4 In 1990, when petitioner was 34 years’ old, he sexually assaulted his daughter’s 7-year-

old friend. In 1993, while petitioner was on probation for that crime, he repeatedly sexually assaulted his own 11-year-old daughter at knifepoint, threatening to kill her if she told anyone. During one assault, he used a screwdriver to open a bathroom door that his daughter had locked to protect herself.

¶ 5 Following his incarceration for those crimes, the State filed a petition seeking petitioner's commitment under the Act, and a jury found petitioner was a sexually violent person (SVP). On November 8, 2000, petitioner was committed to the custody of the Illinois Department of Human Services (DHS) for treatment in a secure facility.

¶ 6 On November 29, 2004, petitioner was placed on conditional release. Three years later, on September 19, 2007, the trial court revoked petitioner's conditional release and ordered that he be returned to DHS custody. Shortly before his conditional release was revoked, petitioner reported that he had met a woman with children, and his primary therapist at the time, Evaristo Ruiz, admonished him that he could not be near the woman's children until she had been approved as a chaperone. Nonetheless, police caught petitioner with the children after Ruiz's admonishment.

¶ 7 Petitioner's current petition for conditional release was filed on July 21, 2009, pursuant to section 60 of the Act, based in part on his assertion that he "ha[d] made sufficient progress in treatment" and "consistently improved during treatment."

¶ 8 At the hearing on the petition, the State called Ruiz and Dr. Steven Gaskell. Ruiz had been petitioner's primary therapist between his November 2004 conditional release and April 2007 arrest for violating his conditional release. He is a licensed clinical social worker with Adelante PC, a private firm specializing in evaluation and treatment of sexual offenders. Dr. Gaskell is an expert in clinical psychology, specifically in sex-offender evaluation, treatment,

and risk analysis. Petitioner called his expert, Dr. Luis Rosell, to testify. He is an expert in the field of clinical psychology specializing in sex offender evaluation and sex offender risk assessment.

¶ 9 Ruiz testified that petitioner had never completed treatment with Adelante. Throughout treatment, Ruiz stated that petitioner's "anger was a predominant issue that surfaced again and again \*\*\* with his [conditional release] agent, with me, with his wife, with his son." Ruiz testified that petitioner's anger problem prevented him from focusing on the "sex offender component of his therapy." Ruiz recalled that, on at least one occasion, petitioner became so irate that Ruiz asked him to leave his office until he calmed down. Ruiz noted that petitioner's anger problems persisted even after he completed anger-management treatment.

¶ 10 Ruiz further testified that petitioner refused to cooperate with a sexual-history polygraph examination administered in 2005 or 2006. He recalled that petitioner made statements minimizing each of his charged offenses, although petitioner did admit that he sexually abused his daughter by threatening her with a weapon.

¶ 11 After petitioner was arrested for violating conditional release, Ruiz opined that petitioner was "not even close" to addressing "relapse prevention."

¶ 12 Gaskell testified that he had been employed by the Department of Human Services to perform SVP evaluations. He conducted yearly evaluations of petitioner from 2005 to 2010, although petitioner refused to cooperate with Gaskell's 2010 clinical interview. Petitioner had become angry and left the room. Having reviewed all relevant records up until the date of his testimony, Gaskell concluded that petitioner should not be conditionally released.

¶ 13 Gaskell recounted the following history underlying petitioner's commitment. When petitioner was 34 years old, petitioner pleaded guilty to aggravated criminal sexual abuse.

Petitioner had “sexually assaulted a seven-year-old female friend of his daughter \*\*\* fondl[ing] her buttocks, insert[ing] his finger into her vagina, and \*\*\* t[aking] his penis out of his pants.” Petitioner knew that the girl had previously been sexually abused, “found that arousing” and “thought that he could get away with it.” When he was placed on probation, petitioner received sex-offender treatment but never completed it. His treatment was terminated either because he provided misleading information to staff or because he quit.

¶ 14 In 1993, while on probation for sexually assaulting his daughter’s seven-year-old friend, petitioner sexually assaulted his eleven-year-old daughter. Petitioner “threatened his daughter with a knife \*\*\* fondled her breasts and vagina, and \*\*\* threatened to kill her if she told any one [sic].” He also “asked if he could put his penis in her mouth.” Petitioner pleaded guilty to the aggravated criminal sexual abuse of his daughter, and he was sentenced to seven years on that conviction, as well as seven years on his previous conviction, following revocation of probation. Petitioner never completed treatment while incarcerated and “was known to have a strong denial system and had minimal participation.”

¶ 15 Gaskell diagnosed petitioner with “pedophilia, sexually attracted to females nonexclusive type and personality disorder not otherwise specified with anti-social and schizoid traits.” Gaskell stated that petitioner “has shown deceitfulness as indicated by repeated lying, use of aliases or conning [and] manipulating others for personal profit or pleasure and \*\*\* a consistent irresponsibility as evidenced by failing to sustain consistent work behavior.” Gaskell opined that petitioner’s mental disorders are “chronic,” long term conditions that predispose him to commit acts of sexual violence. Gaskell further testified that “a lot of therapy” would be necessary to address either disorder.

¶ 16 Gaskell observed that petitioner repeatedly failed under supervision before he was

recommitted in 2007, when a police officer found two boys in petitioner's apartment, which Gaskell felt this, in itself, was "high risk behavior" that was a violation of his conditional release. While on conditional release in 2005, petitioner was convicted of battery for attacking his son. Petitioner also repeatedly had unapproved contact with others, including unsupervised contact with minors. Given these violations, Gaskell believed that petitioner exhibited a pattern of not following the rules on conditional release.

¶ 17 Gaskell used two actuarial risk-assessment instruments. The Minnesota Sex Offender Screening Tool-Revised (MnSOST-R) indicated that petitioner was at "high risk" to reoffend, and the Static-99 R indicated that petitioner was at "moderate low risk" to reoffend.

¶ 18 Gaskell noted that petitioner had never advanced beyond "the most elementary phases of treatment," and never made significant progress. Petitioner dropped out of sex-offender treatment in June 2007, and he had not participated in it since that time. Petitioner also committed a major rule violation while at the DHS Treatment Detention Facility, interfering with facility operations when he blocked a doorway and angrily uttered profanity. Because of his lack of progress, Gaskell found that petitioner's exposure to treatment did not "in any way" reduce his risk of reoffense. Gaskell stated petitioner "ha[d] accomplished nothing" since he was recommitted to the treatment detention facility on May 1, 2007. Based on interviews of petitioner, petitioner's records, actuarial analyses, and other risk factors, Gaskell determined that (1) petitioner "has not made sufficient progress to be safely and adequately managed on conditional release," and (2) to "a reasonable degree of psychological certainty," petitioner "remains substantially probable to commit future acts of sexual violence." Gaskell concluded that petitioner should remain at the Rushville treatment detention facility for treatment.

¶ 19 Petitioner's expert, Rosell, opined that petitioner was "appropriate[e] for conditional

release” and that his risk of sexually abusing another child “would basically be low.” Rosell noted that petitioner was at low risk due to the fact that he had not committed a sexual offense during the three years of conditional release, his older age, and his “fairly low” score on the Static-99 risk assessment.

¶ 20 Rosell recognized that petitioner “is somewhat obstinate and doesn’t like to follow the rules[,] which makes it difficult for an individual to do well in treatment.” He believed that petitioner participated in treatment between 2004 and his re-arrest in 2007 “about as [well] as he can,” although “[h]e is not going to be a stellar treatment participant,” given his “limitations,” among them was that petitioner is “low functioning,” “quick to anger,” “has some schizoid features,” and does not “feel comfortable expressing [himself] in front of a group.” Rosell also acknowledged that petitioner was diagnosed with pedophilia, which is “usually chronic.” He maintained though, that “if we just focused on diagnosis, we would never release anybody.” Rosell also compared petitioner’s pedophilia to a married man’s attraction to women other than his wife.

¶ 21 During cross-examination, Rosell acknowledged both that (1) a sex-offender must understand his offense cycle in order to formulate a relapse-prevention plan and (2) he did not know whether petitioner understood his offense cycle. He also agreed that petitioner had never completed sex offender treatment despite numerous opportunities to do so over the 21-years since he sexually assaulted his daughter’s 7-year-old friend.

¶ 22 Rosell further acknowledged the details of petitioner’s violation of conditional release in 2007, when a police officer found him alone in his apartment with two boys. In response to the officer’s initial questioning, petitioner stated that no one else was in his apartment. The officer observed a small jacket on the couch, and petitioner first asserted that it was his, before he

claimed that it belonged to an adult female. When the boys were discovered, petitioner insisted that he had forgotten that he was not allowed to be with children under the rules of his conditional release. Rosell knew that Ruiz had admonished petitioner the day before that he could not have contact with the children. Petitioner also lied to the children's grandmother about why he wore a GPS monitor, telling her that he was being monitored for a domestic violence case. However, Rosell defended petitioner's conduct, asserting that "the lies are always worse than the crime."

¶ 23 Rosell further acknowledged that petitioner lied to him when he said that he was allowed to have supervised contact with children under the terms of his conditional release. Petitioner also lied to Rosell when he said that he always had adult supervision when he was around children.

¶ 24 Rosell admitted that petitioner had made no significant progress in sex-offender treatment after the revocation of his conditional release and that he refused to take responsibility for violating the terms of his conditional release, blaming the boys' grandmother for letting him babysit them. Rosell also acknowledged that petitioner had refused to participate in sex-offender treatment and vowed to his therapist that treatment was "the last thing he would do."

¶ 25 Rosell also acknowledged that petitioner never completed anger-management treatment. He was uninterested, uninvolved, unable to retain information, and generally performed poorly. Petitioner similarly failed to complete stress-management treatment.

¶ 26 Rosell stated that "petitioner has had a lot of problems with supervision," and he has never successfully completed any term of supervision. In 1998, petitioner violated the terms of his parole by moving into the same home with the victim, his daughter. He was admonished not to commit that violation but did it again. In 2005, petitioner committed domestic battery against

his son while on conditional release. He also violated the terms of his conditional release again in 2006 by obtaining unapproved transportation.

¶ 27 On June 16, 2011, the trial court denied petitioner's request for conditional release. It found that petitioner "still suffers from pedophilia" and "has not made sufficient progress to be conditionally released." The court noted petitioner's "hostil[ity]" towards, and consequent failure to comply with, the rules of conditional release or sex-offender treatment. The court also cited its "high regard" for both Gaskell and Rosell, and weighed each expert's testimony in reaching its decision. The court subsequently denied petitioner's motion for reconsideration.

¶ 28

## II. ANALYSIS

¶ 29 On appeal, petitioner contends that the trial court's finding that he did not satisfy the criteria for conditional release is against the manifest weight of the evidence. For the following reasons, we disagree.

¶ 30 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 2012). 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).

¶ 31 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. *Sandry*, 367 Ill. App. 3d at 978. 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).

¶ 32 We hold that petitioner has not shown that the judgment is against the manifest weight of the evidence. Gaskell testified that petitioner "remains substantially probable to commit future acts of sexual violence"; petitioner has never made significant progress in treatment, failing to advance beyond its "most elementary phases"; and, petitioner "has accomplished nothing" since his 2007 re-arrest, as he has refused to participate in sex-offender treatment. Indeed, the record shows that petitioner had never completed sex offender treatment despite numerous opportunities to do so over the 21 years since he sexually assaulted his daughter's friend. Given petitioner's failure to make meaningful progress in sex-offender treatment, Gaskell concluded that petitioner's "exposure to treatment" did not reduce his risk of re-offense "in any way," and that he "remains substantially probable to commit future acts of sexual violence."

¶ 33 Moreover, petitioner's own expert, Rosell, conceded that petitioner had made no significant progress in sex-offender treatment after the 2007 revocation of his conditional release. In fact, Rosell conceded that petitioner vowed that treatment was "the last thing he would do." Rosell further admitted that he did not know whether petitioner understood his offense cycle, a step which is a prerequisite for formulating a relapse-prevention plan.

¶ 34 Other evidence supports the trial court's judgment. The disturbing nature and circumstances of petitioner's crimes plainly weighed against his conditional release. Petitioner first victimized a seven-year-old girl whom he knew had been sexually assaulted before. While

on probation for that crime, petitioner repeatedly sexually assaulted his own 11-year-old daughter at knifepoint. Petitioner used a screwdriver to open the bathroom door and continued the assault after his daughter locked the bathroom to protect herself. Gaskell diagnosed petitioner with “pedophilia, sexually attracted to females nonexclusive type” and “personality disorder not otherwise specified with anti-social and schizoid traits.” Gaskell stated that these mental disorders are chronic, long-term conditions that predispose petitioner to commit acts of sexual violence. Petitioner has not participated in sex-offender therapy to address his disorders since his recommitment. Even when petitioner attended therapy sessions while on conditional release between 2004 and 2007, his anger was a predominant issue preventing him from focusing on the disorders that predispose him to victimize children. Petitioner’s anger problem continued even after completing anger-management treatment.

¶ 35 Petitioner’s own expert also acknowledged that petitioner had a lot of problems with supervision. He also repeatedly violated the conditions of his 2004 to 2007 conditional release. He committed domestic battery against his son in 2005. He obtained unapproved transportation in 2006. And in 2007, he had two boys in his apartment in violation of his conditional release. Additionally, Gaskell concluded that petitioner had not made sufficient progress to be safely and adequately managed on conditional release.

¶ 36 Petitioner maintains that this case consists of a “battle of the experts” arguing over what to do with an aging and stubborn individual who committed his last sex offense 20 years ago. Petitioner points out that the trial court offered no explanation for its reasoning. Instead of focusing on the statutory standard, petitioner argues that the trial court focused on his refusal to engage in treatment, which is not the statutory test. We disagree.

¶ 37 First, as set forth above, the significance of an SVP's progress in treatment is the crux of an analysis under section 60(d). It provides:

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 not 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 2012).

Thus, the court's consideration of petitioner's lack of progress in treatment was entirely appropriate.

¶ 38 Second, the court did not focus solely on petitioner's failure to progress in treatment; it made explicit findings regarding at least two of the factors specified in section 60(d). As to petitioner's "mental history and present mental condition," the court found that petitioner "still suffers from pedophilia" and was "hostile" towards treatment to address it. As to whether arrangements could be made to ensure petitioner's participation in necessary treatment while on conditional release, the court found that petitioner's "hostil[ity]" toward the rules of conditional release and sex-offender treatment prevented him from complying with either. The court further found that petitioner "becomes hostile when he's forced to comply, he is non-compliant, and that leads him to then violate either the terms of conditional release" or to refuse to participate in treatment.

¶ 39 Petitioner contends that the court should not have found Gaskell more convincing than petitioner's expert, Rosell, given that the court found that their "qualifications and methodologies were equal." The trial court did not find Gaskell's and Rosell's methodologies equal. Rather, it noted that it had "high regard" for both experts and weighed each doctor's testimony in reaching its decision. However, the court's finding that petitioner is not suitable for conditional release does necessarily imply that it found Gaskell's testimony more convincing than Rosell's. See *In re Detention of Welsh*, 393 Ill. App. 3d 431, 456 (2009) (fact finder's SVP finding "implicitly credited the State's [expert] witnesses").

¶ 40 Furthermore, petitioner's assertion that Gaskell's methodology is faulty amounts to no more than an attack on the credibility of the witness and the weight to be given to his testimony. See *In re Detention of Lieberman*, 379 Ill. App. 3d 583, 602 (2007). It is in the province of the fact finder to judge the expert's credibility, and when a trial court hears conflicting expert opinions in a conditional-release hearing and deems one more reliable, that determination is given due deference on appeal. *Sandry*, 367 Ill. App. 3d at 979-80. As such, petitioner's contention that the trial court should have found his expert more reliable than the State's expert cannot be a basis for reversal.

¶ 41 Petitioner contends that the "best evidence of whether or not he will participate in treatment is the 2004 to 2007 time period"; not the following four years, during which petitioner admittedly refused treatment. The trial court weighed this as the trier of fact, and found the countervailing evidence more persuasive.

¶ 42 Petitioner notes that he did not sexually assault any children during the 2004 to 2007 time period and "participated in treatment." However, his conditional release was not successful. During this time period, as stated above, petitioner committed numerous rule violations, a

conviction for battery of his son, failed to make meaningful progress in treatment, and was ultimately recommitted.

¶ 43 Petitioner further points out that his “2011 level of sexual deviance” is unknown. However, the record shows that petitioner refused to comply with tests that would explain the severity of his sexual deviance. His refusal to complete the prescribed tests further bolsters the court’s finding that he has not made sufficient progress in treatment to eliminate the substantial probability that he will reoffend. Regardless, Gaskell opined that, based on his review of all relevant records up to the date of his testimony, petitioner “remains substantially probable to commit future acts of sexual violence.”

¶ 44 Petitioner also asserts that Gaskell’s “admi[ssion] that the leading academic literature finds no correlation between participation in treatment and recidivism \*\*\* mortally wounds the State.” Our review of the record shows that Gaskell did not make such an admission. Petitioner’s counsel asked Gaskell whether, according to a certain meta-analysis, “clinical presentation”—a term which counsel defined as comprising numerous “factors,” including “[I]ack of victim empathy, denial of sex crime, minimization, lack of motivation for treatment”—has a correlation with recidivism rates. Gaskell replied “Most items don’t.” This does not support petitioner’s denial of a correlation between “participation in treatment” and recidivism. As pointed out by the State, “participation in treatment” is different than “clinical presentation.” The former is self-explanatory and the latter means the collection of symptoms upon which a clinician bases a diagnosis. See *In re Detention of Walker*, 314 Ill. App. 3d 282, 289 (2000).

¶ 45 Furthermore, given its plain and ordinary meaning, section 60(d) emphasizes the link between participation in treatment and recidivism by requiring the court to consider “what

arrangements are available to ensure that the person has access to and will participate in necessary treatment.” In fact, petitioner’s petition for conditional release is premised on his claim that he “has made sufficient progress in treatment” and “consistently improved during treatment.”

¶ 46 In summary, given the nature and circumstances of the behavior that was the basis of the allegations in the petition, petitioner’s diagnosed mental disorders and his refusal to accept treatment, the trial court’s holding that petitioner “has not made sufficient progress to be conditionally released,” was not against the manifest weight of the evidence.

¶ 47 III. CONCLUSION

¶ 48 For the reasons stated, we affirm the judgment of the circuit court of Lake County in denying petitioner’s petition for conditional release.

¶ 49 Affirmed.