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2016 IL App (3d) 150767-U

Order filed October 12, 2016

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2016

In re COMMITMENT OF	)	Appeal from the Circuit Court
SCOTT HASKINS,	)	of the 14th Judicial Circuit,
	)	Rock Island County, Illinois.
(The People of the State of Illinois,	)	
Petitioner-Appellee,	)	Appeal No. 3-15-0767
	)	Circuit No. 12-MR-465
v.	)	
	)	Honorable
Scott Haskins,	)	Frank R. Fuhr,
Respondent-Appellant).	)	Judge, Presiding.

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JUSTICE LYTTON delivered the judgment of the court.  
Presiding Justice O'Brien and Justice Wright concurred in the judgment.

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**ORDER**

- ¶ 1       *Held:* Trial court appropriately exercised its discretion by committing respondent to a secure facility under section 40(b) of the Sexually Violent Persons Commitment Act (725 ILCS 207/40(b) (West 2014)).
- ¶ 2       Respondent Scott Haskins appeals from the trial court's judgment committing him to the Illinois Department of Human Services (DHS) treatment detention facility under the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/1 *et seq.* (West 2014)). We affirm.

¶ 3 Respondent was convicted of aggravated criminal sexual assault in 1988 and sentenced to 10 years in prison. Seven years later, he was convicted of aggravated criminal sexual abuse and sentenced to a prison term of 30 years.

¶ 4 In May of 2012, the State filed a petition to commit respondent under the Sexually Violent Persons Commitment Act on the basis of two mental disorders: (1) Paraphilia, Not Otherwise Specified, Sexually Attracted to Non-Consenting Females, Non-Exclusive Type, and (2) Antisocial Personality Disorder. The petition alleged that respondent had been diagnosed with both mental disorders by Dr. Barry Leavitt and that the disorder predisposed him to commit acts of sexual violence. The petition also alleged that “[r]espondent is a danger to others because his mental disorders create a substantial probability that he will engage in acts of sexual violence.” The State later amended its petition, revising the mental disorders to reflect the new nomenclature found in the latest edition of the Diagnostic and Statistical Manual of Mental Disorders and naming them as: (1) Other Specified Paraphilic Disorder, Non-Consenting Female, Non-Exclusive Type, and (2) Antisocial Personality Disorder.

¶ 5 The parties filed a “Stipulation and Agreement without Commitment,” in which respondent stipulated that (1) he had been convicted of aggravated criminal sexual assault and aggravated criminal sexual abuse, (2) Dr. Leavitt and Dr. Edward Smith were experts in clinical psychology and had both diagnosed him with paraphilic disorder and antisocial personality disorder, (3) the experts had opined that these mental disorders were congenital or acquired conditions that seriously affected respondent’s emotional or volitional capacity and predisposed him to engage in future acts of sexual violence, and (4) the experts have stated that respondent’s mental disorders make it substantially probably that he will engage in future acts of sexual

violence. Both doctors' evaluations were attached to the stipulation. The trial court found respondent to be a sexually violent person and entered an agreed order without commitment.

¶ 6 At the dispositional hearing to determine commitment, the State called Dr. Edward Smith, a licensed clinical psychologist, as an expert in clinical psychology and risk assessment. Dr. Smith evaluated respondent prior to the hearing to determine the most appropriate or least restrictive environment for him to receive treatment in light of respondent's needs. As part of the evaluation, he reviewed respondent's mental and criminal history and assessed the potential for future acts of sexual violence.

¶ 7 He testified that in 1998 respondent was convicted of aggravated criminal sexual assault of a 12-year-old girl for "fondling her vagina and forcing his penis into her anus." He further testified that in 1995 respondent was convicted of aggravated criminal sexual abuse for "sexually assaulting the 15-year-old girlfriend of his nephew by forcing her to engage in vaginal and anal sex." Dr. Smith also noted two additional reports of sexual violence in respondent's record that did not result in convictions. Both involved reports by his girlfriend that he threatened to use force on her, forced her to engage in sexual intercourse, and engaged in sexually aggressive and sadistic behaviors. Dr. Smith further testified that while in the DHS custody, respondent received several disciplinary tickets for insolence and trading and trafficking, and on one occasion, he physically assaulted another resident in the facility.

¶ 8 As to respondent's mental condition, Dr. Smith testified that respondent had been diagnosed with Other Specific Paraphilic Disorder, or OSPD. He described OSPD as occurring when an "individual experiences strong sexual arousal and interests involving either sexual urges or sexual fantasies, or engag[es] in sexual behaviors with nonconsenting persons" for a period of at least six months. He opined that respondent's convictions combined with police reports of

additional sexually assaultive behavior and the references to sexual behavior in early childhood supported the diagnosis. Dr. Smith noted the chronic nature of the disorder and respondent's recidivistic nature, even after a lengthy period of incarceration, and concluded that respondent continues to suffer from OSPD.

¶ 9 Dr. Smith described Antisocial Personality Disorder (APD) as “a condition in which by the age of 15 an individual has demonstrated a significant pattern of behavior, of attitudes, emotional regulation and impulse control” that increase an individual's willingness to violate the laws and rules of society. Respondent was diagnosed with APD based on his aggressive and violent behavior and his willingness to harm others that has continued from a young age.

¶ 10 Last, Dr. Smith compared respondent's treatment options in a secure treatment facility to those options available upon conditional release. He explained that in a treatment facility respondent would be first evaluated to determine his individual treatment needs and then receive daily services to help him address his disorders and develop intervention plans. Respondent would also participate in anger management and substance abuse groups. Dr. Smith testified that the goal in a secure facility is to receive intensive daily treatment to transition back into the community successfully. Dr. Smith testified that respondent has received some treatment services since entering DHS custody in 2012 but requires further treatment to accept responsibility and change his behavior. He stated that treatment on conditional release is not nearly as stringent in terms of frequency or intensity and that such treatment is often unable to address an individual's needs. He opined that within a reasonable degree of psychological certainty respondent required commitment to a secure facility for care and treatment.

¶ 11 Following closing arguments, the trial court found that, regardless of the stipulation, the State had proven that respondent was a sexually violent person. The court also found that the

State has proved by clear and convincing evidence that respondent remained a danger to society. The court noted that “[i]f [respondent] were released into society at this point he would clearly be a high risk to re-offend.” The court then concluded that a secure facility was the least restrictive environment in which respondent could be placed and entered an order committing him to the Rushville Treatment and Detention Facility.

¶ 12 ANALYSIS

¶ 13 Respondent argues that the trial court abused its discretion by failing to consider the proper statutory factors prior to committing him to a secure facility.

¶ 14 Section 40(a) of the Act provides that, when a person is found to be a sexually violent person, the court “shall order the person to be committed to the custody of the Department for control, care and treatment until such time as the person is no longer a sexually violent person.” 725 ILCS 207/40(a) (West 2014). The commitment order shall specify either institutional care in a secure facility or conditional release. 725 ILCS 207/40(b)(2) (West 2014). In determining the appropriate placement, the court is instructed to consider (1) the nature and circumstances of the behavior that was the basis of the allegations in the State's petition, (2) the person's mental history and present mental condition, and (3) what arrangements are available to ensure that the person has access to and will participate in necessary treatment. 725 ILCS 207/40(b)(2) (West 2006).

¶ 15 We review the trial court's decision to commit a person to a secure facility under an abuse of discretion standard. *In re Detention of Erbe*, 344 Ill. App. 3d 350, 374 (2003). An abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court. *Id.* A trial court does not abuse its discretion by committing a person to a secure facility where the person's

mental disorders make it substantially probable that he or she will commit future acts of sexual violence. *In re Detention of Tittlebach*, 324 Ill. App. 3d 6, 13 (2001).

¶ 16 Here, the record shows that the trial court heard and considered evidence pertaining to all the relevant factors prior to ordering respondent committed to a secure facility. Dr. Smith testified that respondent suffered from mental disorders that made it substantially probable that he would engage in future acts of sexual violence. Moreover, the record establishes that respondent has refused to take responsibility for past sexual offenses and had failed to successfully complete treatment for his mental disorders. Although respondent claims that the trial court failed to consider all three statutory factors, the record shows that the trial court was presented with and considered all of the evidence and its relationship to the factors listed in section 40(b). On review, we will not reweigh the relevant factors or substitute our judgment for that of the trial court. See *Erbe*, 344 Ill. App. 3d at 374.

¶ 17 Respondent also argues that the trial court improperly cited “clear and convincing” evidence as the State’s burden of proof. Although that standard does not apply to a dispositional hearing under the Act (see 725 ILCS 207/40(b) (West 2014)), we find no error in the trial court’s statement at the conclusion of the hearing. The court’s statement of burden of proof placed a higher standard on the State than the statute requires, not a lower burden. Moreover, while the court’s oral pronouncement did not track the specific language of section 40(b)(2), nothing in its ruling suggests that the trial court abused its discretion by refusing to consider the required factors. See generally, *People v. Scott*, 2015 IL App (1st) 131503, ¶¶ 55-56 (no abuse of discretion at sentencing where trial court did not specifically refuse to consider required mitigating factors).

