2016 IL App (1st) 150059-U

SIXTH DIVISION
March 31, 2016

No. 1-15-0059

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re COMMITMENT OF LEONARDO SIMMONS,	)	Appeal from the Circuit Court of Cook County.
(The People of the State of Illinois,	)	
Petitioner-Appellee	)	
v.	)	No. 01 CR 80005
Leonardo Simmons,	)	
Respondent-Appellant).	)	Honorable Thomas J. Byrne, Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Justices Hoffman and Hall concurred in the judgment.

ORDER

¶ 1 ***Held:*** The trial court properly revoked respondent's conditional release.

¶ 2 On May 14, 2004, the trial court adjudged respondent Leonardo Simmons to be a sexually violent person under the Illinois Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/1 *et seq*. (West 2004)). Simmons was conditionally released in 2009, but the court revoked that release in 2014, because he had violated the terms of his conditional release plan by failing to fully participate in his treatment. On appeal, he contends that the language in

paragraph 3 of his conditional release plan, and the statute on which it is based, are unconstitutionally vague. He alternatively contends that the State failed to prove by clear and convincing evidence that his conditional release should be revoked. We affirm the judgment of the trial court.

¶ 3 BACKGROUND

¶ 4 Respondent had been civilly committed to the control, care, and treatment of the Illinois Department of Human Services (IDHS) since 2004, when the trial court adjudicated him to be a sexually violent person under the Act. His underlying offenses included a 1988 conviction of eight charges of aggravated criminal sexual assault (Ill.Rev.Stat.1987, ch. 38, par. 12-13)) and one charge of aggravated criminal sexual abuse (Ill.Rev.Stat.1987, ch. 38, par. 12-16)), and a 1999 conviction of two counts of aggravated criminal sexual abuse (720 ILCS 5/12-16 (West 1998)).

¶ 5 On May 21, 2001, the State petitioned to have respondent civilly committed under section 35(f) of the Act (725 ILCS 207/35(f) (West 2000)). The State alleged that his criminal history demonstrated "a pervasive and deeply ingrained pattern of preying upon, sexually abusing, and exploiting young boys," and that imprisonment and parole failed to deter his conduct. On May 14, 2004, the trial court adjudicated him to be a sexually violent person under the Act, and ordered him to be committed to the custody of IDHS until such time as he is found to no longer be a sexually violent person.

¶ 6 Following his adjudication, IDHS institutionalized respondent in a secure facility. Under section 55(a) of the Act, the IDHS conducts periodic re-examinations to determine whether persons adjudicated to be sexually violent persons: (1) have made sufficient progress in treatment to be conditionally released; and (2) their condition has so changed since the most

recent periodic re-examination that they are no longer sexually violent persons. 725 ILCS 207/55(a) (West 2004). After respondent's fifth re-examination, an Illinois Department of Corrections evaluator recommended his conditional release so long as he agreed to abide by a conditional release agreement. The evaluator found it was "substantially probable that respondent will engage in acts of sexual violence in the future [but] the least restrictive setting respondent can be managed is in the community on Conditional Release."

¶ 7 On June 29, 2009, the trial court found that respondent qualified for conditional release and ordered that IDHS prepare a conditional release plan pursuant to section 40(b)(3) of the Act (725 ILCS 207/40(b)(3) (West 2008)). In accordance with section 40(b)(5)(F) of the Act, respondent's conditional release plan imposed the following conditions, among others:

> "To the extent appropriate to you based upon the recommendations and findings made in the DHS evaluation or based upon any subsequent recommendations by the DHS case management team, [you shall] attend and fully participate in assessment, treatment, including the use of any prescribed medications, and behavioral monitoring, including but not limited to, medical, psychological or psychiatric treatment specific to sexual offending, drug addition, or alcoholism, and attend and fully participate in periodic polygraph examinations, plethysmograph testing and Abel screening."

The release plan also required that respondent "comply with all other special conditions that the LHC regional coordinator and DHS case management team may impose that restrict you from high-risk situations and limit your access to potential victims."

¶ 8 On August 27, 2009, respondent signed and initialed a certificate of compliance indicating his understanding and agreement to comply with all conditions of the plan, and that

his conditional release would be revoked if he failed to abide by the conditions. The plan was incorporated into a court order.

¶ 9 From August 2009 until June 2014, respondent remained on his conditional release plan. On June 19, 2014, the State filed a petition to revoke his conditional release, alleging that he violated the plan when: (1) he interfered with the administration of a polygraph examination; (2) he was terminated from treatment; (3) he refused to sign a release allowing his psychiatrist, Dr. Abdi Tinwalla, to communicate with his medical doctor; (4) while in the waiting room at Meacham Counseling Services, he threw his bag causing a disturbance; and (5) he raised his voice and threw his bag when he met with Rhonda Meacham, his therapist, and Ed Sweis, his conditional release agent.

¶ 10 At a December 12, 2014 hearing on the petition, the State presented Dr. Tinwalla and Meachum as witnesses. Dr. Tinwalla testified that he had provided medical treatment to respondent both during his IDHS detention and while he was on conditional release. Dr. Tinwalla requested that respondent sign a consent release form allowing him to confer with his internist regarding medical conditions that could be affecting his treatment. Respondent refused to sign the consent form, telling Dr. Tinwalla that if he needed a signature, he should "go to the court to get the approval."

¶ 11 Next, Meachum testified that she discharged respondent from the treatment program due to the following factors: (1) "failure to work collaboratively with the case management team;" (2) "a lack of willingness and/or ability to consider feedback or utilize his feedback to make behavior adjustments;" (3) "hostile interactions with co-participants of the treatment program and members of the case management team;" (4) "irrational fears that the case management team is attempting to sabotage his progress;" (5) "inappropriate expressions of anger and low

frustration tolerance; defensiveness or guardedness when discussing issues related to sexuality;" and (6) "significant interpersonal skill deficits and consistently receiving results indicative of deception or distortion of tests when completing polygraph examinations."

¶ 12 Meachum explained that respondent failed to work collaboratively with his management team because he resisted incorporating or involving support persons into the treatment process. Respondent signed a consent form only after discussions with his attorney and after being told that he could not participate in the program without providing consent. Meachum described respondent's lack of willingness to allow team members to engage with his family. She testified respondent refused recommendations to take medication to control his anxiety, and that he demonstrated a reluctance to accept or incorporate feedback from his treatment team. Meachum noted respondent's hostile interactions with co-participants of the treatment program and members of the case management team. During therapy sessions, respondent became argumentative and refused to cooperate when there was discussion of sensitive issues. Meachum stated that there were incidents where respondent "exhibited irrational fears that the case management team [was] attempting to sabotage his progress." Respondent became defensive and guarded when discussing issues related to sexual interest in minors. During a meeting with respondent's family, the respondent refused to participate and stated he felt that the therapist was using his family to force him to discuss his current court status. Respondent became agitated and angry when a member of his case team asked him to sign a release form that would permit his doctors to consult with his psychiatrists.

¶ 13 During cross-examination, both Dr. Tinwalla and Meachum stated that respondent was capable of making further progress but simply refused to fully cooperate with his case management team. They also testified that respondent's treatment team was aware of his mental

health deficits and attempted to work with him to overcome the problems. Respondent did not present any evidence.

¶ 14 The trial court found the State demonstrated by clear and convincing evidence that respondent failed to participate fully in his treatment. Although respondent had personality traits "that make it difficult for him to collaborate in treatment," the trial court concluded that such collaboration was not impossible. The trial court stated that none of respondent's personal characteristics would prevent him from signing the waivers that were required for his medical treatment, and further noted that it was reasonable for Dr. Tinwalla to have access to respondent's health information in order to serve as his psychiatrist. The court found respondent in violation of his conditional release plan, and ordered him to remain in the custody of IDHS until such time that a court determines he is no longer a sexually violent person or that he qualifies for conditional release. This appeal followed.

¶ 15 ANALYSIS

¶ 16 Respondent argues that the language in paragraph 3 of his conditional release plan provided him, his treatment team, or the trial court with no guidance as to what constituted a failure to "fully participate" in treatment and, therefore, was unconstitutionally vague. As this language nearly mirrored the governing statute, he makes the same argument as to the corresponding provision of the statute itself. He also contends the State failed to prove by clear and convincing evidence that his conditional release should be revoked.

¶ 17 We address respondent's arguments first in the context of the governing statute. In Illinois, "[a]ll statutes are presumed to be constitutional, and the burden of rebutting that presumption is on the party challenging the validity of the statute to demonstrate clearly a constitutional violation." *People v. Greco*, 204 Ill. 2d 400, 406 (2003) (citing *People v. Sypien*,

198 Ill. 2d 334, 338 (2001)). When possible, we construe a statute "so as to affirm its constitutionality and validity." *Greco*, 204 Ill. 2d at 406 (citing *People v. Fuller*, 187 Ill. 2d 1, 10 (1999)). The constitutionality of a statute is a question of law which we review *de novo*. *People v. Malchow*, 193 Ill. 2d 413, 418 (2000).

¶ 18 The State contends that respondent forfeited his constitutional argument because he failed to raise the issue in the trial court. Respondent indeed failed to object to paragraph 3 of the conditional release plan when he signed it and certified that he understood and agreed to abide by it.

¶ 19 "Generally, arguments not raised before the circuit court are forfeited and cannot be raised for the first time on appeal." *Mabry v. Boler*, 2012 IL App (1st) 111464, ¶ 15. Constitutional challenges to a criminal statute may be raised at any time. See *People v. Guevara*, 216 Ill. 2d 533, 542 (2005). However, a proceeding to determine whether a person is sexually dangerous is not a criminal prosecution. *People v. Allen*, 107 Ill.2d 91, 100 (1985). "Since treatment, not punishment, is the aim of the statute, the legislative determination that the proceedings are civil in nature [citation.] is eminently reasonable." *Id.* at 100-01. Respondent did not raise his constitutional argument in the trial court during either the 2009 or the 2014 proceedings. Therefore, he has forfeited this challenge. See *Sherman v. Indian Trails Public Library District*, 2012 IL App (1st) 112771, ¶ 21 ("In civil cases, constitutional issues not presented to the trial court are deemed forfeited and may not be raised for the first time on appeal.").

¶ 20 Forfeiture aside, respondent's arguments are without merit. Paragraph 3 of the conditional release plan is largely taken from section 40(b)(5)(F) of the Act (725 ILCS 207/40(b)(5)(F) (West 2008)). Our supreme court has already upheld the Act against a host of

constitutional challenges. See *In re Detention of Samuelson*, 189 Ill. 2d 548, 558-64 (2000). The statute specifically provides that respondent's conditional release should be revoked if he "violated any condition or rule" of his release, which is what occurred here. 725 ILCS 207/40(b)(4)(West 2008)).

¶ 21 Respondent affirmatively certified that he understood all of the enumerated conditions set forth in his conditional release plan and signed a certification stating that "by placing my initials next to each condition of release set forth herein, [I] am indicating that I understand the condition and agree that I will abide by its contents." The signed agreement demonstrates that respondent knew that he was required to participate fully and comply with the conditions in his plan. In addition, respondent received directions from Meachum and his attorney that failure to participate fully in the program would result in termination from the program. These facts, and the testimony below, amply demonstrate that this was not a close case where the respondent might have had some simple misunderstanding regarding his obligations under the conditional release plan. Instead, he took affirmative steps to defy several direct, and clear, directives from his support team. "Due process requires that a statute give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." (Internal quotations omitted.) *People v. Einoder*, 209 Ill. 2d 443, 450 (2004). Whether viewed in isolation or together, we believe it was clear to any person of ordinary intelligence that the respondent's acts would violate the "fully participate" language of the conditional release plan.

¶ 22 While it is not binding authority on us, we also note that the Supreme Court of Vermont has rejected an argument virtually identical to that made here. In *State v. Peck*, 547 A.2d 1329, 1331 (1988), a sexual offender challenged the condition of his probation which required him to attend counseling, treatment, and rehabilitation "to the full satisfaction of [the] probation

officer." The court noted that the instructions gave the probationer fair notice of what was required of him and that he " 'simply chose not to abide by them.' " *Id.*

¶ 23 Respondent alternatively contends that the State failed to prove by clear and convincing evidence that his conditional release should be revoked. He argues that the State presented evidence showing that "he was unilaterally terminated by the treatment team simply because his treatment proved a difficult task for the team."

¶ 24 Section 40(b) of the Act governs proceedings to revoke conditional release. 725 ILCS 207/40(b) (West 2008). A trial court's ruling that the state established by clear and convincing evidence that the "safety of others" required revocation of the respondent's conditional release will not be disturbed unless it is against the manifest weight of the evidence. *In re Commitment of Rendon*, 2014 IL App (1st) 123090, ¶ 32. Clear and convincing evidence is "the quantum of proof that leaves no reasonable doubt in the mind of the fact finder as to the truth of the proposition in question." *Bazydlo v. Volant*, 164 Ill. 2d 207, 213 (1995). A trial court's finding is not against the manifest weight of the evidence unless an opposite conclusion is clearly evident; in other words, if there is any evidence in the record to support the trial court's judgment, we must do so. *In re Estate of Wilson*, 238 Ill. 2d 519, 570 (2010); see also *People v. Urdiales*, 225 Ill. 2d 354, 433-34 (2007). A reviewing court does not "substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of witnesses." *People v. Brown*, 2013 IL 114196, ¶ 48.

¶ 25 Respondent's claims amount to no more than an attack on the credibility of the witnesses and the weight given to their testimony. The record provides ample support for the trial court's determination. It was in the best position to observe the conduct and demeanor of the witnesses and was in the best position to assess their credibility. Additionally, the evidence regarding the

respondent's non-compliance was largely uncontested. We conclude the trial court's decision to revoke respondent's conditional release was not against the manifest weight of the evidence.

¶ 26 CONCLUSION

¶ 27 For these reasons, we affirm the judgment of the trial court.

¶ 28 Affirmed.