

2019 IL App (1st) 171826-U

No. 1-17-1826

Order filed March 28, 2019

Fourth Division

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellee, |) | Cook County |
| |) | |
| v. |) | No. 04 CR 30057 |
| |) | |
| JOHN DEWYZE, |) | Honorable |
| |) | Marc W. Martin, |
| Defendant-Appellant. |) | Judge presiding. |

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice McBride and Justice Gordon concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the circuit court's denial of defendant's conditional release from custody of the Illinois Department of Human Services after being found not guilty of first-degree murder by reason of insanity where the court's findings were reasonable and supported by the evidence, and as a whole, its decision was not against the manifest weight of the evidence.

¶ 2 Defendant John Dewyze was found not guilty by reason of insanity of the offense of first-degree murder and additional offenses, and was committed to the custody of the Illinois

Department of Human Services (IDHS) and placed at the Elgin Mental Health Center (EMHC). Approximately 10 years after being found not guilty by reason of insanity, the facility director of EMHC issued a recommendation that defendant be conditionally released to a transitional living program not operated by IDHS. Following a hearing, the circuit court denied defendant conditional release. On appeal, defendant contends that the court's order denying him conditional release was against the manifest weight of the evidence and in reaching its decision, the court relied on improper speculation. For the reasons that follow, we affirm.

¶ 3

I. BACKGROUND

¶ 4

A. Defendant's History

¶ 5 After defendant obtained an associate's degree from Harper College in Quincy, Illinois, he began working for his father's company as an electrician supervisor. Afterward, he began a 17-year career with the United States Postal Service, but in 2001, he had to leave his position due to the onset of mental health issues. At times, he also ran a massage therapy business, and in 2004, he briefly worked for Delta Airlines as a baggage handler, but had to leave the position due to issues of increasing paranoia. Around this time, defendant's wife took him to be examined by a psychiatrist, who diagnosed him with bipolar disorder, recommended psychotropic medication and hospitalization. However, defendant did not follow any of the treatment recommendations. Also at this time, due to financial issues, defendant, his wife and his children lived with his mother in Arlington Heights, Illinois. Defendant's mental health issues were manifesting themselves in various ways, including a belief that he was possessed in preparation for an "apocalyptic experience," a belief that both his wife and mother were being controlled by "outside forces," and a belief that "people's spirits were switching places with each other and

moving from body to body.” Though defendant’s mental health was deteriorating, he did not exhibit any violent behavior.

¶ 6 In the early morning hours of October 27, 2004, defendant began acting very erratic and later in the day, his erratic behavior continued, morphing into suicidal thoughts. During the evening, defendant’s mother, Eileen Dewyze, called the Arlington Heights Police Department due to his behavior. When the police arrived, defendant was inside the house with his son, mother and wife, and he had a knife in his hand. His 17-year-old son attempted to take the knife away, but could not. Then, an officer attempted to grab defendant’s arm, but he slashed the officer’s protective vest. That officer struck defendant in the face and knocked him backward. After defendant’s mother called out his name and grabbed his arm, defendant turned toward her and stabbed her in the chest. The police used pepper spray and were able to subdue defendant. His mother died as a result of the stabbing. After the incident, defendant was transported to the hospital, where he was alert, but did not respond to questions. Toxicology tests came back negative for the use of alcohol or drugs.

¶ 7 The following day, defendant was incarcerated in Cook County jail, but was held in Cermak Hospital, where he was reportedly delusional, withdrawn and refused psychotropic medications. A grand jury eventually indicted defendant with the first-degree murder of his mother, as well as attempted first-degree murder and aggravated battery for using the knife to strike the police officer. In February 2005, the trial court found defendant unfit for trial, and he was transferred to a maximum security IDHS hospital. For a period of time, defendant was under a court order to take mood stabilizing and antipsychotic medications. He progressed enough to be transferred to EMHC, where he began to take psychotropic medications voluntarily and eventually his fitness was restored with medication in March 2006. His case proceeded to a

November 2006 bench trial, where the trial court found him not guilty by reason of insanity and remanded him to the custody of IDHS for evaluation. In January 2007, defendant was admitted to a different unit of EMHC, where he has remained ever since.

¶ 8 In February 2017, Dr. Daniel Hardy, the acting forensic program director at EMHC, issued to the circuit court a written recommendation that defendant be conditionally released from IDHS custody. The recommendation was based on the opinion of defendant's treatment team, who opined that he had "received maximum benefit from inpatient treatment, is no longer in need of hospitalization, and needs mental health services on an outpatient basis." The recommendation requested that defendant be conditionally released to a transitional living program at Alexian Brothers Center for Mental Health (Alexian Brothers) in Arlington Heights, Illinois, where he would re-develop daily living skills (cooking, shopping, budgeting, etc.), re-develop social skills and continue learning to live with his mental illness. The recommendation asserted that defendant's symptoms were in remission with proper psychotropic medication and active treatment, and he was clinically and behaviorally stable. Because defendant's treatment team believed he was "not a danger to [him]self or others," the recommendation requested that the circuit court approve defendant's conditional release to Alexian Brothers for at least one year with court approval for independent living thereafter.

¶ 9 The circuit court subsequently set a hearing based on the facility director's recommendation. The court also directed Cook County Forensic Clinical Services to evaluate defendant for his suitability for conditional release.

¶ 10 **B. Conditional Release Hearing**

¶ 11 At defendant's conditional release hearing, Dr. Hasina Javed, who was his treating psychiatrist at EMHC, testified as an expert in psychiatry. She had treated defendant since

January 2007 when he was admitted to her unit of EMHC. According to Dr. Javed, defendant began experiencing psychotic symptoms in 2001, but never took psychotropic medication nor received consistent psychological or psychiatric treatment. On the day he killed his mother, Dr. Javed described him as multi-symptomatic. Defendant would have “[l]abile moods,” meaning one moment, he would be crying and then the next, he would be happy. He also had “disorganized behaviors,” “dysphoric” feelings and delusions, including a belief that he, his wife and his mother were possessed. Dr. Javed testified that defendant’s diagnosis was schizoaffective disorder bipolar type.

¶ 12 Dr. Javed opined that, from January 2007 until 2013, defendant remained a work in progress concerning his mental illness. During this time, defendant had been resistant to accepting his mental illness and to taking prescription medication. Although he recognized that he killed his mother, he denied that mental illness played any role in his actions and instead blamed a thyroid condition. But beginning in 2013 and continuing to the day of his conditional release hearing, defendant was stable, did not have any active symptoms of his mental illness, and was in full remission. He had become “[v]ery accepting” of his mental illness, understood why he needed to take his medication and consistently took his medication. Dr. Javed attributed defendant’s remission and stability to the extensive treatment and counseling he had received at EMHC, including his medication regimen. At the time of the hearing, defendant was taking a mood stabilizer, an anti-depressant, and an anti-psychotic. For a period of time, defendant did not take the anti-depressant, which was part of his treatment plan, but in 2015, he self-reported mild depressive symptoms, which caused the anti-depressant to be added back to his medication regimen.

¶ 13 Dr. Javed did acknowledge, however, that twice around Easter, once in 2015 and once in 2016, defendant refused to take his medication based on “religious beliefs.” She agreed that, if defendant did not take his medications as prescribed, he would begin to decompensate and his psychotic symptoms would start to appear again, which could lead to another psychotic episode.) According to Dr. Javed, defendant’s mental stability was contingent on him being compliant with his medication, which was not a problem at EMHC, where defendant was given his medication by staff in a highly supervised environment. Based on defendant’s behavior since 2013, Dr. Javed believed that defendant was capable of managing his mental illness outside of the highly regimented confines of EMHC and she did not have “any doubts” that he would remain compliant with his medication if conditionally released.

¶ 14 Additionally, as part of defendant’s treatment at EMHC, he participated in multiple group therapy programs, and was involved in a workshop and horticulture program. In 2014, defendant obtained court-authorized passes that allowed him to be on EMHC’s grounds without supervision and off EMHC’s grounds with supervision. Concerning the on-grounds pass, defendant never abused the privilege and used the pass appropriately every time. Concerning the off-grounds pass, he had used it twice, once to go to the Elgin Public Library and another time to the Elgin Recreation Center, both in 2015. In both instances, defendant used the pass appropriately. However, defendant was only able to use the pass twice, which Dr. Javed attributed solely to funding cuts, and nothing to do with defendant’s behavior. Dr. Javed agreed that a pass existed for off-ground unsupervised privileges but stated it was not the normal policy of IDHS to request such a pass. Although Dr. Javed believed that allowing defendant off EMHC’s grounds without supervision “could be” beneficial to him, she noted the traditional model of IDHS was for a patient to first demonstrate he can handle on-ground unsupervised

privileges and off-ground supervised privileges. If the patient was able to handle those privileges, the next step was generally conditional release in an environment with less supervision than EMHC. Dr. Javed highlighted that, of the 20 conditional releases she had been involved with at EMHC, 19 of them were successful.

¶ 15 Dr. Javed acknowledged that the freedom associated with the recommendation from her and defendant's treatment team was unlike anything defendant had experienced since 2004. In fact, at EMHC, defendant lived in a room by himself, and the facility provided him meals and medication. But she asserted that defendant was not a risk for running away as he knew the consequences of doing so, had never attempted to at EMHC despite being unsupervised various times and had developed sufficient "insight into his illness." Dr. Javed posited that defendant was "very compliant" and took his privileges "seriously." Although defendant did have the violent episode that led to him killing his mother, defendant never inflicted any physical harm on anyone or himself, and had never threatened to inflict harm on anyone or himself while at EMHC. In fact, one time, another patient attacked a staff member in defendant's presence, and defendant was able to subdue the patient and prevent the staff member from receiving a major injury. Based on defendant's history at EMHC, the progress he had made regarding his mental illness and his understanding of it, Dr. Javed did not believe that defendant would cause harm to himself or anyone else if conditionally released.

¶ 16 Dr. Javed did agree, though, that defendant was very resistant to change and acknowledged that a stressor that led to him killing his mother was the prospect of moving out of her house. And in March 2015, defendant was asked to move to another unit within EMHC by the facility's administration, but he resisted and ultimately refused to move. But Dr. Javed explained that defendant had success working with her and the staff of his current unit and

wanted to remain with her and them. She was adamant that the requested move had nothing to do with his treatment or stability, but rather purely administrative purposes.

¶ 17 According to Dr. Javed, defendant had received the “maximum benefit” of inpatient treatment and outpatient treatment was now appropriate. Her recommendation was for defendant to be discharged to the transitional living program at Alexian Brothers. Although defendant’s family had visited him at EMHC, Dr. Javed did not recommend that defendant meet with his family at their house in the beginning, as he would need some time to acclimate to his new environment. At the time of the hearing, defendant’s wife and one of his sons lived in Rolling Meadows, Illinois, while another son lives in Chicago. Dr. Javed believed that a “gradual[]” integration back to the family environment was imperative given what precipitated him killing his mother. Dr. Javed explained that, prior to the death of defendant’s mother, there were interfamily tensions between him, his wife and his mother. She described that “a lot of push and pull between his mother and his wife *** was part of what led to the whole incident of him decompensating further” before killing his mother. And although defendant lived at his mother’s house for financial reasons, being at her house was sometimes “uncomfortable.”

¶ 18 Dr. Kristina Schoenbach, a psychologist with Cook County Forensic Clinical Services, testified as an expert in clinical psychology. Although she examined defendant only once for an hour pursuant to a court order to determine his suitability for conditional release, she reviewed several reports, evaluations and records of him from over the years. During Dr. Schoenbach’s interview with defendant, he did not exhibit any symptoms of his mental illness and based on his medical records, he had “significantly improved in his clinical symptomatology” and there had been “a great reduction in his symptoms.” She attributed his progress to his medications as well as consistent participation in treatment and therapy. Based on his current condition, Dr.

Schoenbach determined that his symptoms were in remission, his medication regimen was working, and he appeared to appreciate the importance of his medicine and psychiatric appointments. Furthermore, Dr. Schoenbach asserted that defendant understood the connection between his mental illness and the killing of his mother, and she believed that he would recognize the reappearance of any symptoms. As evidence of this opinion, Dr. Schoenbach highlighted the instance when defendant self-reported depressive symptoms in 2015. Given this instance and him being compliant with his medication, Dr. Schoenbach opined that he would remain compliant if conditionally released. But she also opined that, if he was not compliant with his medication, he would “likely” become symptomatic again and have another psychotic episode.

¶ 19 Dr. Schoenbach also highlighted the incident at EMHC where defendant intervened with another patient and prevented that patient from seriously injuring a staff member, and observed that it demonstrated defendant’s ability to act appropriately in some situations. Dr. Schoenbach opined that, based on her evaluation of defendant and her review of his records, he was a “low risk” for inflicting harm upon himself or others. She agreed with EMHC’s recommendation that defendant had received the maximum benefit of inpatient care and was ready for outpatient care.

¶ 20 Jeff Silander, the team leader at the transitional living program at Alexian Brothers, also testified for defendant. Silander discussed the facility, which had the capacity for 32 patients. Each patient lived with a roommate of the same gender in a semi-furnished apartment, sharing common areas, including a kitchen and bathroom. In contrast to EMHC, the residents at Alexian Brothers were required to prepare their own meals. At the facility, patients were required to participate in at least 12 hours of group meetings weekly and would re-develop various life-based skills, such as cooking, cleaning, shopping, budgeting, coping and social interacting. The

facility also suggested, but did not require, patients to be examined by an off-site psychiatrist monthly.

¶ 21 Although there was staff on-site at various times and mandatory meetings, the facility operated mostly like an apartment, according to Silander. During the week during the daytime hours, there was staff on-site, but in the evening and on weekends, there was no staff present. When staff was not present, the facility utilized a 24-hour crisis telephone number in case of an emergency, though the patient had the responsibility for using the number in such an event. Silander testified that the facility was not locked or monitored by cameras, and patients could leave the premises whenever they so desired. During the week, case managers would give patients their medication, and while they could observe the patients putting the medicine in their mouths, they did not “look for cheeking,” or whether the patient actually swallowed the medication. On weekends and at night, however, the patients were entirely responsible for taking their medications themselves.

¶ 22 Although the State objected to defendant being conditionally released, it did not call any witnesses. Following the hearing, the circuit court indicated it would take some time to review the testimony and other evidence.

¶ 23 C. The Circuit Court’s Ruling

¶ 24 A month later, the circuit court issued a written decision, finding that defendant failed to prove by clear and convincing evidence that he no longer needed mental health services on an inpatient basis. In the circuit court’s decision, it discussed the evidence related to each factor listed in section 5-2-4(g) of the Unified Code of Corrections (Code) (730 ILCS 5/5-2-4(g) (West 2016))—the section related to proceedings after an acquittal by reason of insanity—including whether defendant appreciated the harm of the conduct that led to him being found not guilty by

reason of insanity, the current state of his illness, his medication regimen, the length of time for him to deteriorate if he stopped taking his prescribed medication, and the potential danger to himself and others. However, the court focused its decision on three main areas of consideration.

¶ 25 The first main area of consideration was defendant's medication regimen. The circuit court observed that all of defendant's witnesses agreed that defendant would pose a danger if he failed to take his medication consistently and noted that it took him many years to accept his need for the medications. The court highlighted that, around Easter in 2015 and 2016, defendant refused to take his medication based on religious beliefs. The court observed that, at EMHC, medical professionals oversaw defendant's daily medication regimen, but at Alexian Brothers, defendant would be entirely responsible for his medication regimen. The court found that, because religious preoccupation was a symptom of defendant's psychosis, there was a *bona fide* doubt about whether he would comply with his medication regimen if he was conditionally released.

¶ 26 The second main area of consideration was the conduct that led to the finding of defendant as not guilty by reason of insanity. As observed by the circuit court, defendant killed his mother in front of his wife and son after engaging in a violent struggle with his son over the knife used in the killing of his mother. The court pointed out that Arlington Heights, where the Alexian Brothers facility was located, abutted Rolling Meadows, where his wife and one of his sons lived. The court noted that Dr. Javed did not recommend defendant be allowed to visit his family at the family home initially. Given this restriction and the freedom defendant would have at Alexian Brothers, including the ability to leave the premises whenever he so desired, the court could not find that the safety to others would be reasonably assured under the terms of defendant's proposed conditional release.

¶ 27 The final main area of consideration was defendant's inability to cope with change. The circuit court noted that, historically, defendant had exhibited rigid thinking, including being resistant to change. The court observed that this rigidity was exemplified by defendant's refusal to move rooms within EMHC and highlighted that one of the stressors leading to defendant killing his mother was the prospect of moving out of her house. The court determined that, until defendant demonstrated a real capacity to cope with change, including one as fundamental as his living arrangements, he remained in need of inpatient services. The court pointed out that, under the terms of defendant's proposed conditional release, the change in his living arrangements would be "drastic." The court compared his current highly supervised and structured living environment at EMHC with the freedom he would encounter at Alexian Brothers. The court further highlighted that defendant had only participated in two supervised visits off of the EMHC facility since he obtained that privilege, though it acknowledged this was not defendant's fault. Given his lack of experience outside of EMHC thus far, the court did not believe he had demonstrated that he could respond to the freedom he would encounter at Alexian Brothers.

¶ 28 In summarizing its findings, the circuit court found the terms of defendant's proposed conditional release were unlike anything he had experienced since 2004, and it was worried that, given such autonomy, defendant could be overwhelmed. The court characterized the terms of his proposed conditional release as simply "too much too soon" or "akin to taking someone who is learning to swim, and throwing him in the deep-end." While the court acknowledged and commended defendant's progress over the past years, it found insufficient evidence to demonstrate that defendant would be able to successfully adapt to unrestricted, outpatient living at this point. The court concluded that the safety of others could not reasonably be assured under the terms of defendant's proposed conditional release and he still needed inpatient care.

¶ 29 Defendant unsuccessfully moved the circuit court to reconsider and appealed.

¶ 30

II. ANALYSIS

¶ 31 Defendant contends that the circuit court erred in denying him conditional release where the uncontradicted evidence, in particular the expert testimony, revealed that he was not reasonably expected to inflict serious physical harm upon himself or another.

¶ 32 When an individual has been acquitted of a crime by reason of insanity, his subsequent proceedings are governed by section 5-2-4 of the Code (730 ILCS 5/5-2-4 (West 2016)). *People v. Jurisec*, 199 Ill. 2d 108, 115 (2002). This section of the Code authorizes IDHS to take custody of such an individual in order to treat his mental illness while also protecting him and the community at large from his potential danger. *Id.* Under section 5-2-4(a), a defendant will be committed to the custody of IDHS if the circuit court finds that he needs “mental health services on an inpatient basis” (730 ILCS 5/5-2-4(a) (West 2016)), which is defined as someone “who, due to mental illness, is reasonably expected to inflict serious physical harm upon himself or another and who would benefit from inpatient care or is in need of inpatient care.” *Id.* § 5-2-4(a-1)(B). Once IDHS takes custody of the defendant, he remains in its custody as long as he needs mental health services on an inpatient basis (*id.* § 5-2-4(a)), *i.e.*, is dangerous and mentally ill (*People v. Bryson*, 2018 IL App (4th) 170771, ¶ 41), but not to exceed the maximum period of incarceration for the most serious offense he committed had he been found guilty less good behavior credits. 730 ILCS 5/5-2-4(b) (West 2016). Both being dangerous and mentally ill are necessary to be held in the custody of IDHS because, “[a]s a matter of due process, ‘it [is] unconstitutional for a State to continue to confine a harmless, mentally ill person.’ ” *Bryson*, 2018 IL App (4th) 170771, ¶ 41 (quoting *Foucha v. Louisiana*, 504 U.S. 71, 77 (1992)).

¶ 33 When the facility director of a state-operated mental health facility, such as EMHC, determines that the defendant no longer needs mental health services on an inpatient basis, but still needs mental health services, the director must issue a recommendation to the circuit court, the State and the defendant that he should be conditionally released and propose the terms of that conditional release. 730 ILCS 5/5-2-4(d) (West 2016). Within 30 days of the recommendation, the circuit court must set a hearing date, after which it may find that the defendant: (1) needs mental health services on an inpatient basis; (2) needs mental health services, but not on an inpatient basis; or (3) no longer needs mental health services. *Id.*

¶ 34 If the circuit court determines that the defendant still needs mental health services on an inpatient basis, the court must order that the defendant shall remain in the custody of IDHS. *Id.* § 5-2-4(a), (d). If the court determines that the defendant needs mental health services, but not on an inpatient basis, the court must conditionally release him under such conditions that “will reasonably assure the defendant’s satisfactory progress and participation in treatment or rehabilitation and the safety of” himself and others. *Id.* Finally, if the court determines that the defendant no longer needs mental health services, the court must order that he be released from IDHS custody. *Id.*

¶ 35 At the hearing, the defendant has the burden to prove by clear and convincing evidence that he no longer needs mental health services on an inpatient basis (*id.* § 5-2-4(g)), or stated otherwise, he is not reasonably expected to inflict serious physical harm upon himself or another. *Id.* § 5-2-4(a-1)(B). On review, we may not reverse the circuit court’s decision to deny conditional release unless that decision was against the manifest weight of the evidence. *People v. Youngerman*, 361 Ill. App. 3d 888, 895 (2005). A decision is against the manifest weight when the opposite conclusion is clearly evident, or the court’s ruling was arbitrary or unreasonable, or

not based on the evidence. *People v. Deleon*, 227 Ill. 2d 322, 332 (2008). Under this standard, we afford much deference to the court, whose responsibility it is to consider and weigh the evidence and resolve any conflicts within that evidence. *Youngerman*, 361 Ill. App. 3d at 894-95. “Given the delicacy of cases involving an individual’s mental health treatment and its relationship to public safety, the discretion vested in the trial court is even greater than an ordinary appeal applying the manifest weight principle.” *People v. Bethke*, 2014 IL App (1st) 122502, ¶ 17.

¶ 36 In this case, it is undeniable that both of defendant’s expert witnesses, Dr. Javed and Dr. Schoenbach, testified that defendant had never harmed anyone or himself while at EMHC and once actually prevented a staff member from being seriously hurt by a fellow patient. Both doctors also agreed that defendant had been compliant with his medications since around 2013, except for two instances, and had come to accept both his mental illness and need for medication. Likewise, both doctors agreed that defendant had received the maximum benefit of inpatient treatment and the next step in his progression was outpatient treatment. But while defendant argues that the circuit court essentially ignored this uncontradicted expert testimony, the court is not supposed to blindly accept such testimony. It is true the court should consider such evidence strongly, but it, as the trier of fact, has the responsibility to weigh the experts’ opinions in conjunction with the other evidence presented at the hearing and ultimately form its own conclusions regarding defendant. See *Bryson*, 2018 IL App (4th) 170771, ¶ 74 (“The recommendation of the facility director or the treatment team is merely one factor to consider,” and the circuit “court did not, and should not, consider it dispositive.”); *People v. Bethke*, 2016 IL App (1st) 150555, ¶ 25 (observing that the circuit court should consider the experts’ opinions with the other evidence and form its own conclusions).

¶ 37 And here, the circuit court clearly considered the opinions of Dr. Javed and Dr. Schoenbach, but also formed its own conclusions regarding defendant based on the expert testimony and the other evidence presented at the hearing. In doing so, the court found three aspects troubling: (1) defendant's failure to take his medication twice; (2) the conduct that led to his verdict of not guilty by reason of insanity; and (3) his strong resistance to change. First, although defendant's failure to take his medicine on two occasions might seem innocuous and was explained away by Dr. Javed as based on religious reasons, the court could properly consider this past failure in determining his potential dangerousness. See *In re Daniel K.*, 2013 IL App (2d) 111251, ¶¶ 26-27. Notably, both Dr. Javed and Dr. Schoenbach agreed that defendant would decompensate and possibly have another psychotic episode if he did not take his medication. Furthermore, under the terms of defendant's proposed conditional release, he would be moving from an environment where his medication regimen was strictly supervised to an environment where, at times, he would have complete responsibility for his medication regimen. As the court suggested, defendant could use religious beliefs as a reason not to take his medication, which could very well coincide when staff would not be present at Alexian Brothers to try and persuade him otherwise. Consequently, the court did not unreasonably conclude that there was still an issue with defendant being compliant with his medication regimen, which if occurred, could lead to defendant being dangerous to others.

¶ 38 Second, although defendant's family had visited him at EMHC, Dr. Javed did not recommend defendant be allowed to visit the family home in Rolling Meadows initially, obviously due to a concern about immediate family reunification at the family home. This concern was exacerbated by defendant's proposed conditional discharge to Alexian Brothers in Arlington Heights, which, as the court observed, was a village directly next to Rolling

Meadows—a fact that we may judicially note. See *Deleon*, 227 Ill. 2d at 326, n. 1. This concern was further exacerbated by the relative freedom defendant would have at Alexian Brothers, where he essentially could leave the premises whenever he desired.

¶ 39 The circumstances of defendant’s release to a location near the family home with a recommendation not to visit the home immediately was interrelated with the circuit court’s third main concern: defendant’s inability to cope with change. While the court noted that defendant refused only once to move units within EMHC, which was based purely on administrative reasons, it observed that a significant change in defendant’s living arrangements—moving out of his mother’s house—was a stressor that led to him killing his mother. See *Bryson*, 2018 IL App (4th) 170771, ¶ 52 (“[W]hen deciding a petition for conditional release, the conduct of the defendant that was the subject of the criminal prosecution is highly relevant to the issue of the reasonable expectation of defendant’s dangerousness.”). Notably, Dr. Javed agreed that, based on her experience with defendant, he was very resistant to change, an assertion that Dr. Schoenbach agreed with based on her review of defendant’s records. And undoubtedly, defendant’s transition from EMHC to Alexian Brothers would involve a drastic change in his living arrangements, moving from a highly regulated and supervised environment where he was not responsible for most aspects of his life to an environment that is mostly unsupervised where he would be responsible again for most aspects of his life. Given that a change in defendant’s living arrangements was a stressor that led to his violent behavior and the proposed drastic change in his living arrangements under the terms of the proposed conditional release, the court could reasonably conclude that defendant was still dangerous and in need of mental health services.

¶ 40 Furthermore, the circuit court reasonably concluded defendant had failed to demonstrate that, at this point in his recovery, he was capable of successfully adapting to the freedom he

would encounter at Alexian Brothers. According to the evidence, defendant was able to use his pass for off-campus supervised visits twice. Though budget issues apparently were the cause of this limitation, not anything in defendant's control, the court aptly observed that the proposed terms of his conditional release would be unlike anything he had experienced since 2004. See *Bethke*, 2016 IL App (1st) 150555, ¶ 23 (finding the circuit court properly denied the defendant an off-grounds pass where it contrasted the controlled and supervised environment of EMHC with the less supervised and "uncontrolled environment" the defendant would face with an off-grounds pass). As the court noted, defendant had no history of successful daily living under conditions less restrictive than his present circumstances at EMHC. And, as such, it suggested defendant demonstrate that he could handle more freedom with something between his current restrictions at EMHC and the lack of restrictions he would encounter at Alexian Brothers. There simply was no program in place to help defendant gradually acclimate to the stressors of everyday life, which as the court aptly observed was akin to taking someone who is learning to swim and throwing him in the deep-end. Consequently, the court's findings regarding defendant, his potential dangerousness and his need for inpatient mental health services were reasonable.

¶ 41 Nevertheless, defendant argues that the circuit court engaged in impermissible speculation when denying him conditional release, including its findings that: (1) there was a *bona fide* doubt he would comply with his prescribed medication; (2) he has exhibited, and continues to exhibit, rigid thinking and powerful resistance to change; and (3) the lack of immediate familial reunification meant the safety of others could not reasonably be assured under the terms of his proposed conditional release.

¶ 42 In arguing that the circuit court improperly relied upon speculation, defendant cites to *People v. Smith*, 126 Ill. App. 3d 5 (1984). However, that case is of no help to him, namely

because when the case was decided, the State had the burden to prove by clear and convincing evidence that the defendant should remain in the custody of IDHS, whereas now and since 2001, the defendant has the burden to prove by clear and convincing evidence that he no longer needs mental health services on an inpatient basis. Compare Ill. Rev. Stat. 1983, ch. 38, ¶ 1005-2-4(g) (“The burden of proof and the burden of going forth with the evidence rest with the State when a hearing is held to review the determination of the facility director that the defendant should be transferred to a non-secure setting, discharged or conditionally released.”) with 730 ILCS 5/5-2-4(g) (West 2016) (“The burden of proof and the burden of going forth with the evidence rest with the defendant or any person on the defendant’s behalf when a hearing is held to review a petition filed by or on behalf of the defendant.”); see also Pub. Act 91-770 (eff. Jan. 1, 2001) (amending 730 ILCS 5/5-2-4(g)). Regardless of defendant’s reliance on *Smith*, we find the court’s findings were all supported sufficiently by the hearing evidence.

¶ 43 Regarding the circuit court’s finding there was a *bona fide* doubt that defendant, if conditionally released, would comply with his prescribed medication, the evidence revealed that he had failed to take his medication twice based on religious grounds. The evidence further revealed that, at EMHC, his medication regimen was strictly supervised whereas at Alexian Brothers, many times he would be completely responsible for his own medication. Therefore, the court’s finding that there was a legitimate doubt defendant would remain compliant was supported by the evidence even though Dr. Javed and Dr. Schoenbach both believed otherwise.

¶ 44 Regarding the circuit court’s finding that defendant has exhibited, and continues to exhibit, rigid thinking and powerful resistance to change, the evidence revealed that, in 2015, he had refused to change rooms at EMHC. Additionally, during the hearing, Dr. Javed was asked by the State on cross-examination: “Now, the defendant is very resistant to change; isn’t that

correct?” Dr. Javed answered affirmatively. Moreover, defendant’s killing of his mother was, in part, prompted by the stressor of moving out of her home. Given these facts, the court’s finding that defendant was very resistant to change and rigid in his thinking was supported by the evidence.

¶ 45 Defendant also suggests that the circuit court relied on its own personal views and experiences when making its finding regarding his thinking. During closing arguments, the circuit court interjected and mentioned with regard to rigid thinking: “I happen to know a little bit about this, and I know believe me first hand how difficult it is for someone who manifests this condition, inability to cope with change, I deal with it on a daily basis in my personal life. I know how difficult that is.” Even if the court referenced its own life experiences during closing argument, nothing in our review of the record demonstrates that the court considered anything but the hearing evidence and the law when ultimately denying defendant conditional release. See *People v. Joiner*, 2018 IL App (1st) 150343, ¶ 69 (where the circuit court is the trier of fact, it is presumed that it considered only competent evidence unless there is affirmative evidence in the record indicating otherwise).

¶ 46 Defendant further posits that the circuit court suggested he had autism despite no support in the record. During the hearing, the court asked Silander whether Alexian Brothers accepted individuals with autism and during closing arguments, the court remarked that Silander’s answer was unclear. In response, defendant’s attorney clarified with the court that defendant had never been diagnosed with autism. In reply, the court stated that it was not saying defendant had autism, but rather was “drawing that analogy” that people who had been diagnosed with autism have a difficult time coping with change. The court’s inquiry regarding autism was not to insinuate that defendant had the disorder, but rather whether Alexian Brothers was capable of

managing patients with autism, and thus, patients who had difficulties coping with change, an issue of defendant's. Ultimately, the court's query was to determine whether Alexian Brothers would be able to help defendant's rigid thinking.

¶ 47 Regarding the circuit court's finding that the lack of immediate familial reunification meant the safety of others could not reasonably be assured under the terms of the proposed conditional release, the evidence showed that defendant killed his mother in front of his wife and son, and according to Dr. Javed, there were various interfamily issues ongoing before defendant killed his mother. Additionally, it is undisputed that Dr. Javed believed defendant should not be completely integrated into the family environment right away, meaning he needed time to acclimate to his new environment before he encountered additional stressors. As it was clear that Dr. Javed's recommendation was because defendant could react adversely to too many stressors, there was sufficient evidence for the court to conclude that the limitation on familial reunification was to ensure the safety of defendant's family.

¶ 48 In sum, we recognize that defendant has made considerable progress in treating his mental illness. But the circuit court in this case made a detailed record, fully demonstrating that it had carefully listened to the testimony of Dr. Javed, Dr. Schoenbach and Jeff Silander as well as considered the other hearing evidence. And after considering this evidence, the court made various findings, none of which we can say were unreasonable or unsupported by the evidence. Accordingly, the circuit court's decision to deny defendant conditional release was not against the manifest weight of the evidence.

¶ 49

III. CONCLUSION

¶ 50 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 51 Affirmed.