2011 IL App (2d) 100720-U
No. 2-10-0720
Order filed September 28, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Lee County.
Plaintiff-Appellee,	)	
v.	)	No. 05-CF-73
JOHN D. CONLEY,	)	Honorable Charles T. Beckman,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Burke and Schostok concurred in the judgment.

ORDER

Held: The trial court properly denied defendant's application for discharge from commitment as a sexually dangerous person: the court's finding that defendant remained a sexually dangerous person was not against the manifest weight of the evidence, as despite his various attacks on the evidence it amply supported the opinion of two expert witnesses that he was substantially likely to reoffend if released; the court properly denied defendant an independent examination, as he did not contend that he showed that the State's experts were biased or prejudiced. We affirmed the judgment of the trial court.

¶ 1 In 2006, defendant, John D. Conley, was adjudicated sexually dangerous person under the Sexually Dangerous Persons Act (the Act) (725 ILCS 205/0.01 *et seq.* (West 2004)) and committed to the Department of Corrections (DOC). In 2007, he applied to be discharged, claiming that he had

recovered (see 725 ILCS 205/9 (West 2006)). After a bench trial, the trial court denied the application. Defendant appeals, contending that (1) the State did not prove that he was still sexually dangerous; and (2) the trial court abused its discretion when it denied his motion for an evaluation by an independent expert. We affirm.

¶ 2 On September 2, 2005, the State petitioned to have defendant declared sexually dangerous as defined by the Act:

> "All persons suffering from a mental disorder, which mental disorder has existed for a period of not less than one year, immediately prior to the filing of the petition hereinafter provided for, coupled with criminal propensities to the commission of sex offenses, and who have demonstrated propensities toward acts of sexual assault or acts of sexual molestation of children, are hereby declared sexually dangerous persons." 725 ILCS 205/1.01 (West 2004).

¶ 3 The State's petition alleged as follows. Defendant was currently charged with (1) predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2004)) in that, in 2004, being over the age of 17, he committed an act of sexual penetration with D.A.H., a four-year-old whom he had been babysitting; and (2) aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(i) (West 2004)) in that he committed an act of sexual conduct with D.R.K., a seven-year-old whom he had been babysitting. On May 5, 2004, defendant's parole officer found him in possession of child pornography; later, an examination of defendant's computer revealed sexually explicit images of prepubescent children. On January 5, 2005, defendant pleaded guilty to possessing child pornography (720 ILCS 5/11-20.1(a)(6) (West 2004)). On June 23, 1993, defendant had been convicted of the aggravated criminal sexual assault and aggravated criminal sexual abuse of his

daughter and sentenced to concurrent prison terms of 18 and 7 years, respectively, and he had been on parole for the 1993 convictions when he committed the 2004 offenses.

¶ 4 On May 4, 2006, the trial court adjudicated defendant sexually dangerous and committed him to the DOC. Later, the State dismissed the criminal charges involving D.A.H. and D.R.K.

¶ 5 On May 4, 2007, defendant applied for discharge or conditional release, alleging that, having undergone therapy at Big Muddy Correctional Center (BMCC), he was no longer sexually dangerous. He also moved for an independent psychiatric examination, alleging that an examination by a psychiatrist not employed by the DOC was necessary to a fair hearing on his application.

¶ 6 On July 30, 2007, the trial court ordered that a copy of defendant's application be sent to BMCC and that BMCC cause to be prepared a social-psychiatric report on defendant. On September 24, 2008, defendant again moved for an independent evaluation. Recognizing that he had no due-process right to one (see *People v. Burns*, 209 Ill. 2d 551, 565 (2004)), he contended that fairness required that he be examined by someone other than the State's expert, Dr. Mark Carich, who, he alleged, had refused to allow him to participate in various treatment programs at BMCC. The State responded that the trial court could not presume that Carich was biased. Defendant replied that Carich had relied on the Minnesota Sex Offender Screening Tool-Revised (MnSOST-R) and the Static-99 risk-prediction instruments, which were of dubious accuracy. On February 25, 2009, the trial court denied defendant's motion, explaining that he had not shown any bias and that any weaknesses in Carich's methodology could be raised by cross-examination.

¶ 7 On June 25, 2010, the cause proceeded to trial. The State first called Dr. Angeline Stanislaus, a forensic psychiatrist assigned to the sexually-dangerous-person unit at BMCC. Stanislaus testified on direct examination as follows. She was part of the "recovery healing evaluation team," along with Carich and Karen Spilman, a social worker. The team evaluated

applicants for recovery hearings. To prepare, the team examined the legal documents relating to the inmate's offenses; his treatment progress notes and prior psychiatric evaluations; and information derived from the screening tools. Also, the team interviewed the inmate.

¶ 8 Stanislaus testified that the evaluation team reviewed defendant's legal records and the results of evaluations in 2005 by a Dr. Killian (apparently in connection with the original commitment proceeding). Defendant had a record of both sexual offenses and nonsexual offenses. The former included a 1983 conviction of indecent liberties with a 15-year-old female who lived at a Lutheran children's home where he had worked. Defendant had been fired because the girl had written him a "sexualized message." Later, she came to his house, and they had sexual contact. Defendant received probation. In 1993, he was convicted of the two felony sex offenses against his daughter, who was four or five years of age at the time. He was paroled in 2001. In 2004, while still on parole, he was convicted of possessing child pornography on his computer. He returned to prison but was paroled that year. In 2005, he was charged with the offenses against D.A.H. and D.R.K.

¶ 9 Stanislaus stated that, on August 20, 2007, she, Carich, and Spilman interviewed defendant for two hours. Based on defendant's criminal record, treatment reports, screening-tool results, and the interview, Stanislaus diagnosed him with two mental disorders: pedophilia and antisocial personality disorder. Defendant exhibited symptoms of pedophilia since at least 1992 or 1993, when he molested his daughter. The diagnosis of antisocial personality disorder was based on defendant's history of getting into fights in school and on his numerous nonsexual offenses, including theft, forgery, unlawful possession of a firearm, battery, and violating an order of protection. Moreover, defendant had "very little remorse for his actions" and "lack[ed] empathy."

¶ 10 Stanislaus explained that an antisocial personality disorder "makes the pedophilia behaviors worse" because the person feels "very self-entitled" and believes that he can do whatever he wants.

Thus, control, which is difficult enough for a pedophile, is "even diminished further." In defendant's case, he had shown that he was unable to control his illness even when he was closely supervised, having committed the 2004 offenses shortly after being paroled. This conduct "definitely demonstrate[d] lack of volitional capacity." Moreover, since entering treatment in the DOC in 2006, defendant had taken no responsibility for any of his wrongful acts; he was still "in significant denial and, therefore, nothing significant ha[d] really changed."

¶ 11 Stanislaus opined, to a reasonable degree of psychiatric certainty, that it was substantially probable that defendant would reoffend if he were released. She based her opinion on (1) his pedophilia; (2) his recurrent acts of pedophilia, over a long period, even when he was on parole; and (3) his denial of any offenses other than the one in 1983. Because defendant was still in denial, there had not been "much significant change" since 2006. Imposing conditions on defendant's release would not change Stanislaus' opinion, because he had previously offended while on parole, and also because he still had not developed the insight or treatment skills that he needed.

¶ 12 On cross-examination, Stanislaus admitted that the only time that she had seen defendant was at the interview. She had not reviewed any of his workbooks, although she had relied on information from staff members who had. Asked whether she had an opinion "as of 2010" about defendant's likelihood of reoffending, Stanislaus responded, "I do have an opinion because *** I have talked to other staff since then. Even though I have not talked to Mr. Conley since 2007, I [have] talked with his treatment staff since then to look at progress and what he's done."

¶ 13 Stanislaus conceded that defendant had been only 20 when he had the encounter with the 15-year-old girl. Stanislaus did not know the "details" of defendant's offenses against his daughter, and she conceded that he had never been convicted of the charges involving D.A.H. and D.R.K.

¶ 14 On redirect examination, Stanislaus testified that, since the interview, she had spoken to staff members about defendant's treatment and had learned that "[t]here ha[d] not been much progress since the evaluation." Defendant had admitted the offense against the 15-year-old, but even there he shifted the responsibility to her, explaining that she dressed provocatively and he "just gave in." On re-cross-examination, Stanislaus conceded that he had admitted that his acts had been wrong.

¶ 15 The State next called Carich, who testified that he administered the program for treating sexually dangerous persons at BMCC. Carich had known defendant for several years, as defendant had been in several therapy groups that Carich had coordinated. Carich's primary role in defendant's evaluation team, aside from participating in the interview, was to produce the part of the team's report that addressed "dynamic factors." To prepare, Carich had reviewed police records and records from defendant's treatment file, and he had spoken with staff members about defendant's progress in treatment.

¶ 16 Carich explained that the goal of treatment is to enable an offender to reduce his deviance and manage his behavior, so as to minimize the danger to society. Group cognitive therapy is central to achieving these goals. A person in treatment must complete a four-phase program consisting of (1) orientation; (2) the "working phase," which involves "the intensive work"—identifying deviant patterns, developing arousal control, acquiring empathy, strengthening appropriate interpersonal relations, and restructuring the distorted thinking that led to offending; (3) the "pre-release phase," in which the person is trained to deal with his risk factors; and (4) release, or preparation for returning to society. Defendant was currently in the second phase.

¶ 17 Carich identified eight "dynamic factors" in recovery and described how they relate to a person's readiness for release and to defendant in particular. The first factor, motivation and commitment, requires that the offender participate regularly and actively in treatment and

homework. Also, he must be internally motivated—*i.e.*, genuinely want to get better—and not merely externally motivated—*i.e.*, want only to get out of prison. Defendant had attended group therapy regularly, but he often had to be called on instead of participating spontaneously. Also, his versions of his actions over the previous 20 years differed greatly from the official records. In Carich's judgment, defendant was externally motivated, but his internal motivation was "superficial": he was trying to understand not what he needed to change to avoid reoffending, but only what he had to do "to get out the door." Carich added that, although the evaluation had taken place in 2007, he had since talked to the treatment staff twice a week about defendant.

¶ 18 Carich testified that the second factor is taking responsibility for one's behavior, as opposed to denying, rationalizing, or blaming others. Defendant had admitted that he did "act out" with the 15-year-old girl, but even there he "sort of justified it" by insisting that the relationship had been consensual and that he had been "looking out for her." Defendant still denied that he had molested his daughter, and he blamed Alan T., the father of D.A.H. and D.R.K., both for the allegations that he sexually abused the children and for the presence of child pornography on his computer. Since the interview, defendant had made little or no progress, even after he entered a more advanced therapy group. Also, he admitted to having touched a female staff member inappropriately, though not sexually. In all, he had not taken responsibility for his actions or changed his distorted thinking.

¶ 19 The third factor, "social interest," refers to empathy or caring for others, primarily victims. Without understanding victims' emotions, a person is much more likely to reoffend. The treatment program used a scale of 0 to 5, with a goal of having an offender achieve level 4. A person with level 1 empathy can understand in a superficial way what the victim experienced but lacks any emotional connection. In Carich's opinion, defendant was at level 1, or level 2 at best, as he had minimized the effect of his offense with the 15-year-old and had denied the others.

¶ 20 The fourth factor, the "social-effective dimension," involves interpersonal relationships and mood management, including developing deeper relationships without sexual connotations and appropriately managing anger, depression, and other mood dysfunctions. To merit being released, an inmate should have developed social skills, assertiveness without aggressiveness, and deep interpersonal relationships with appropriate boundaries. Defendant had developed social skills, conflict-resolution skills, and a proper level of assertiveness, but his interpersonal relationships were mostly superficial, and some were "enabling," *i.e.,* tending to encourage others to reoffend. Talking with staff members had persuaded Carich that defendant had made no progress since 2007.

¶ 21 The fifth factor, "the offense process and relapse intervention," involves the offender developing an awareness of his risk factors for offending, so that he can "intervene" as early as possible to stop himself from offending. Defendant, however, was adhering to denial, minimization, and blaming others for most of his offenses, so for the most part he was "going nowhere." Carich based this conclusion on both the 2007 evaluation and his regular discussions with the treatment staff. Asked whether defendant had an "intervention plan" in place, Carich responded, "Well, it's kind of hard to intervene when you don't have a problem and that's where we're at."

¶ 22 The sixth element, lifestyles and behaviors, involves addressing personality disorders. In defendant's case, this meant narcissism and antisocial personality disorder. Carich opined that defendant needed to be more honest with himself about his behaviors and, more fundamentally, to restructure his thinking and give up his "superior attitude." However, there had been "no reduction."

¶ 23 The seventh element, "core issues," involves what causes someone to offend, other than sexual gratification. For defendant, this meant, in part, "female authority issues" and "anger and resentment issues," which he would have to manage if not resolve. Defendant had admitted in the interview that "he had resentments and stuff," and this was corroborated by his improper touching

of the female staff member. Based on talking with staff members, Carich believed that defendant's deficiencies in the "core issues" were "about the same" as they had been in 2007. He explained, "From what the therapist indicated, [defendant did not] directly address the issues."

¶ 24 The eighth factor is reducing and managing deviant sexual arousal, in part by dealing with deviant fantasies and urges. This skill is crucial to avoiding reoffending. Defendant had denied having any deviant arousal. Asked whether defendant had dealt with this issue, Carich testified, "[O]ther than claiming he doesn't have no [*sic*] problem in that, that's the way he deals with it." Further, because he denied his pedophilia, defendant had developed no "self-regulation skills."

¶ 25 Carich testified that the evaluation team had used two risk assessment tools on defendant: the Static-99, which is widely accepted in the field and has been validated numerous times, and the MnSOST-R, which is a "16-factor file review." The Static-99 has 10 questions, and the scoring is based on actuarial data. Defendant's score was 5, which meant that he had a "high moderate" risk of reoffending. The MnSOST-R's scoring range goes from negative numbers through "after 13 it doesn't matter." A score of 12 puts a person in the high-risk range. Asked defendant's score at the time of the evaluation, Carich responded, "I think, if I recall, he scored in the middle ***. I think it was a 6 or 7." People in that range have a 59% recidivism rate, according to researchers.

¶ 26 Carich testified that, based on all of the dynamic and static factors, the interview, and discussions with defendant's treaters, it was substantially probable that defendant would engage in a sex offense were he released. Defendant was "at high risk" of reoffending. His history showed a propensity to offend; he suffered from pedophilia, narcissism, and antisocial personality disorder; and the dynamic factors supported Carich's assessment of risk. Conditionally releasing defendant would in no way change Carich's opinion.

¶ 27 On cross-examination, Carich admitted that he was familiar with the treatment standards promulgated by the Sex Offender Management Board and set out in the Illinois Administrative Code, but he explained that these were not requirements and that staff shortages, among other reasons, could make full compliance impossible. Most of the standards had been followed in defendant's case. Defendant had not been tested by plethysmograph, because BMCC's had been "broke [*sic*]" for six years. Carich conceded that the Abel assessment had not been used on defendant, but he explained that it was not required, only suggested. Defendant had not been given a polygraph test, as administrators had not allowed the test since 2001.

¶ 28 Defendant's attorney asked Carich about various statements in the evaluation report, which had been admitted into evidence. Carich conceded that, at one point, the report stated that defendant never provided any detail about the allegations involving his daughter, but elsewhere, the report said that he had provided some details. Similar contradictions existed as to whether defendant had provided details about his work history and about his behavioral issues in school.

¶ 29 Asked whether defendant had been aggressive in the treatment program, Carich admitted that, other than the improper touching of the female staff member, defendant had not hit anybody or acted out sexually, and he had shown restraint when provoked by others. When his cell mate made improper contact with him, defendant managed the situation well: he told the cell mate that he would not accept such behavior, and the issue was addressed the next day. The report stated that defendant's sexual outlet was "unknown"; asked whether defendant might not have any sexual outlet, Carich responded, "Well, it's possible, I guess. Anything's possible."

¶ 30 Defendant's attorney showed Carich a copy of a version of the scoring sheet used in the MnSOST-R, and which was later admitted into evidence. Carich stated that the format was different from the one that had been used for defendant but the questions and the "numbers" were the same.

Spilman had scored defendant's results, so Carich did not know specifically how she had come up with the score of seven for defendant. Carich admitted that the definitions of the terms used in the MnSOST-R, and the consequent rules for scoring, were actuarially based and did not always accord with his views. Going through the questions one at a time, Carich explained how he would score defendant at the time of the hearing. He concluded that he would give defendant a score of seven, but that it might drop to four depending on the definition of "force" in the question, "Was force or the threat of force used to achieve compliance in any sex offense (charged or convicted)?"

¶ 31 Carich testified that someone who was externally motivated to obtain his release would not necessarily admit his offenses just to get out. "Some would and some wouldn't." Also, Carich had recommended a release for one inmate who had been in denial, although that was partly because the inmate had passed a polygraph examination, which had not been an option for defendant. Carich acknowledged that defendant had generally followed the treatment program's rules, the only major exception being his touching of the female staff member.

¶ 32 On redirect examination, Carich testified that the inmate who had been released despite denying some of his offenses had taken responsibility for other offenses, developed empathy with victims, admitted that he had struggled with deviant fantasies, and corrected much of his distorted thinking—all of which distinguished him from defendant.

¶ 33 After the State rested, defendant testified on direct examination as follows. He still denied that he had molested Alan T.'s children, although he could make things easier for himself by falsely admitting guilt. The evaluation interview lasted well short of two hours and consisted of "a total of 30 questions asked and that was it." The report correctly stated that defendant had told the team that his attorney had acquired records from Sinnissippi Mental Health Center to show that defendant had

successfully completed treatment there. Defendant had offered these records to the BMCC treatment staff, but the staff did not want them and had never reviewed them.

¶ 34 Defendant testified that the report contained numerous inaccuracies. According to the report, defendant had told the evaluators that, in a collateral proceeding to challenge his conviction of molesting his daughter, she had recanted her earlier testimony that he had molested her; actually, he testified, he had told the evaluation team that his daughter "came to your [*sic*] office and talked to one of your people and *** denied that [defendant] sexually abused her." The report also misstated defendant's accounts of why he and his wife had separated; the location of one of his employers; how many girlfriends he had had in school; whether he had ever had an extramarital affair; and his role in a school fight that had gotten him and several others suspended for a week.

¶ 35 Further, defendant testified, the report stated that, during the 2006 intake interview, he had said that his daughter had not tried to contact him; actually, he testified, they had written each other regularly. Also, while the report stated that his daughter had been described as " 'mentally retarded' in the historical documents available for review for this evaluation," she was very bright, but, in group therapy, Carich had routinely called her "mentally retarded." The report also referred to letters or notes that Dr. Killian had reviewed in 2005. The report said that defendant had written the notes to Alan T.; defendant testified that Alan T. had forged the notes and admitted it.

¶ 36 Defendant testified that he had never dropped out of therapy and had consistently attended sessions. In September 2006, he completed phase 1 and began phase 2. By April 2008, he completed the task of "identifying arousal," through homework that he gave to his therapist. Defendant described his "arousal" as adult females; he was no longer aroused by women between 18 and 25. As to "initiating arousal control," defendant had not masturbated since 2003; if he saw

"something sexual" on television, he shut it off and later talked with his therapy group about the problem. On April 30, he "completed the chart and stuff *** on arousal control."

¶ 37 Defendant testified further, "Taking complete responsibility [for] offenses that you have done is the next one. I completed that on October 8th of 2009." He completed a "letter of responsibility" and presented it to his group. He finished this phase late because, until 2009, "they never asked" him to write a letter of responsibility. "The next [stage]" was developing empathy for victims, which was an "ongoing" process with no homework other than a "victim empathy book," which he had completed. After that came "identifying key core beliefs and motivations," which he completed, via homework, in September 2006. "Developing secure social skills" was an "ongoing process" with no homework. "Being able to see cognitive restructuring interventions" was completed via homework in September 2006. "Developing appropriate relationships" was "an ongoing process," and defendant had tried to avoid inmates who had touched him inappropriately. "Identifying [defendant's] self-cycle" was completed in February 2008.

¶ 38 Defendant testified that, in November 2007, having completed all the requirements for phase 2, he asked Carich for advancement to phase 3. However, in January 2008, Carich denied his request. Carich told defendant that he could not participate in group counseling but would have to complete the workbook on his own. Defendant did so on August 14, 2008. He was not allowed to participate in the next phase, the relapse intervention group. However, he completed the relapse intervention handouts in February 2009 and talked about them in group therapy. He completed his "life history" in June 2008, and three more written assignments—"understanding and resolving core key issues," "changing dysfunctional key beliefs," and "developing effective relapse interventions"—in October 2008. Defendant completed "Assuming 100 percent responsibility and accountability for offenses that you have done" in October 2009 and presented it to his group.

¶ 39 Defendant testified that he had completed more than 2,600 hours of group therapy since entering the program in 2006. He was currently undergoing six hours per week, which was all that was available. He had taken leadership roles as the secretary of one group and then the facilitator of a group of "mentally challenged guys."

¶ 40 Asked what assurances he could give that, if released, he would not reoffend, defendant said that his family would "kick [his] butt if [he] even thought about" reoffending. Also, by undergoing group therapy, he had learned to talk openly to others about his problems and to seek their help. He had arranged "the possibility of going to therapy on the outside" with his previous counselor.

¶ 41 On cross-examination, defendant admitted that he had been convicted of the charges involving his daughter. He asserted that he had never been sexually attracted to children.

¶ 42 In arguments, the State asserted that defendant's pedophilia and antisocial personality disorder impaired his ability to avoid reoffending. The State pointed to defendant's convictions of sexual offenses; his failure to develop skills, such as empathy with victims, that he would need to avoid reoffending; his scores on the risk-prediction tools; his admitted failure to get beyond phase 2 of the recovery program; and his commission of several of his offenses while out on parole. The State contended that defendant was substantially likely to reoffend if released.

¶ 43 Defendant responded in part that he had consistently denied having committed any offenses against either his daughter or Alan T.'s children; he had accepted responsibility for his indecent liberties with the 15-year-old girl and his child-pornography offense; and the evaluation report was more than two years old and riddled with inaccuracies. Further, Carich had equivocated on defendant's proper score on the MnSOST-R, and defendant's treatment program had not conformed to state administrative standards.

¶ 44 The trial court found that the State had proved beyond a reasonable doubt that defendant was still sexually dangerous. Defendant had "paid lip service to the treatment aspects and ha[d] not been rehabilitated." After defendant's motion to reconsider was denied, he timely appealed.

¶ 45 On appeal, defendant contends first that the State failed to prove beyond a reasonable doubt that, at the time of the hearing, he was still sexually dangerous. Defendant raises various challenges to the sufficiency of the State's evidence. For clarity of discussion, these challenges may be grouped as follows: (1) the evaluation report was (a) outdated and (b) fraught with errors; (2) the State's witnesses (a) relied on dubious risk-assessment instruments and (b) failed to use measures that were called for by state administrative standards; (3) the State's witnesses, and the trial court, improperly counted against defendant his refusal to admit that he committed sexual offenses against his daughter and Alan T.'s children; and (4) the State's evidence was otherwise unsatisfactory.

¶ 46 We note first that, although defendant contends that the State was required to prove its case beyond a reasonable doubt—and the trial court used this standard—the actual burden was proof by clear and convincing evidence. See 725 ILCS 205/9(b) (West 2006); *People v. Craig*, 403 Ill. App. 3d 762, 767-68 (2010) (after effective date of amendatory legislation (see Pub. Act 94-404,§5 (eff. Jan. 1, 2006)), burden of proof at recovery hearing is no longer beyond a reasonable doubt but by clear and convincing evidence). The trial court's error did not prejudice defendant, because clear and convincing evidence is, if anything, a somewhat lesser burden than proof beyond a reasonable doubt. See *Craig*, 403 Ill. App. 3d at 768. The trial court's finding that defendant was still sexually dangerous may not be disturbed on review unless it was against the manifest weight of the evidence. *In re Commitment of Sandry*, 367 Ill. App. 3d 949, 978 (2006).

¶ 47 Before we turn to defendant's attacks on the trial evidence, we note that considerable evidence, some of which defendant challenges and some of which he concedes, supports the trial

court's finding that defendant was still sexually dangerous. It will be helpful to summarize this evidence before addressing defendant's specific arguments.

¶ 48 First, both of the State's experts testified that, in their opinions, defendant still suffered from two mental illnesses—pedophilia and antisocial personality. Defendant does not directly challenge these diagnoses, which are amply supported by his criminal record and his initial adjudication as a sexually dangerous person. Both experts also opined, to a reasonable degree of scientific certainty, that it was substantially probable that defendant would reoffend were he released. Thus, to the extent that the trial court could accept the experts' opinions, it had ample grounds for its judgment.

¶ 49 Second, many of the facts upon which the experts' opinions were based were essentially uncontroverted, although defendant did and now does attempt to contest the significance of these facts. Defendant has been convicted of several sexual offenses, including taking indecent liberties with a minor; aggravated criminal sexual assault and aggravated criminal sexual abuse against his prepubescent daughter; and possession of child pornography. The experts based their opinions heavily on this record—and on defendant's repeated denial or minimization of his culpability for his offenses. Moreover, defendant's criminal record also includes a list of nonsexual offenses, detailed at trial.

¶ 50 Third, it is uncontested that, for whatever reason, defendant had completed only two phases of the four-phase therapy program that, Carich testified, was crucial to preparing him to return to society. Carich also testified in detail that defendant had made only slight progress on the eight "dynamic factors" that were crucial to preparing him to be released. Fourth, on the Static-99, defendant scored in the "high-moderate" range and, on the MnSOST-R, he scored in the "moderate" range.

¶ 51 Given this abundant evidence, defendant's burden to demonstrate that the judgment is against the manifest weight of the evidence is considerable. Defendant makes a number of attacks on the State's evidence. We turn to the specifics of these attacks.

¶ 52 Defendant argues that the evaluation report was both outdated and fraught with errors, so that it did not support the judgment. We turn first to the report's alleged untimeliness. Defendant notes that the report is dated October 29, 2007, but the hearing on his recovery petition was not held until June 25, 2010. He reasons that a report that was almost three years old proved nothing about whether he was still sexually dangerous.

¶ 53 The evaluation report's age did not require the trial court to place zero weight on its conclusions. Although the delay between the issuance of the report and the trial is potentially disturbing, both Stanislaus and Carich testified that, since October 2007, they had regularly consulted with members of the treatment staff, who informed them that defendant had made little or no progress since and that the conditions described in the report had not changed. While we recognize the potential pitfalls from the expert witnesses' reliance on staff members who were not named and whose communications with the witnesses were not described in any depth, we also note that defendant did not call any staff members who might have rebutted the expert witnesses' testimony. Also, Carich himself was involved in defendant's post-2007 treatment; therefore, his opinion that defendant had not made progress was not based merely on the word of others.

¶ 54 Of course, even if the report could be considered fatally dated in some respects, there were others in which it was still current: defendant's criminal record was unaffected, as was his denial of several of the offenses of which he had been convicted. In other respects, the potential staleness of the information in the report was for the trial court, as fact finder, to weigh. For example, we cannot say as matter of law that defendant's 2007 interview could not assist the trial court in

determining whether he was still sexually dangerous in 2010. Defendant's history of sexual offenses and deviance dated back at least to the early 1980s, and this entire history was pertinent to his condition in 2010.

¶ 55 Also short of compelling is defendant's assertion that the report is "so fraught with errors, inaccuracies, and assumptions" as to be inherently unworthy of belief in any substantial respect. We note three things. First, the report is 46 single-spaced pages, so that, in context, the number of alleged errors is not altogether remarkable. Second, defendant's claim that the report is inaccurate relies primarily on his own assertions of error, although he does point out several internal inconsistencies. These inconsistencies appear to be the result of poor editing and are not inherently misleading. For instance, if the report states that defendant did not discuss a given matter, but elsewhere recites what he said about that matter, the reader can avoid any confusion or mistake. The trial court did not have to resolve every conflict between the report and defendant's testimony in his favor. Third, many of the alleged errors involve collateral matters, such as the address of one of defendant's employers and the details of a fight at school. Thus, although the report may not have been a model of scholarship, the trial court as fact finder did not need to disregard it or minimize its credibility.

¶ 56 We turn to defendant's next set of challenges. He contends in part that the State's reliance on the results of the MnSOST-R was improper, because, on cross-examination, Carich could not reproduce Spilman's results, obtaining a "lower score." Defendant's characterization of the evidence is not quite accurate: Carich testified that he *might* have to give defendant a lower score than had Spilman, depending on the interpretation of one question on the MnSOST-R. Defendant did not demonstrate that Spilman's scoring had been inaccurate or that the MnSOST-R was scientifically unsound in any way. Also, he does not contest the validity of the Static-99 results,

which placed him into the "high-moderate" category for risk of reoffending. Any weaknesses in the risk-prediction tools did not prevent the trial court from reasonably relying on them.

¶ 57 Defendant also contends that the evaluation team failed to comply with state standards, in that the report did not contain information about defendant's "IQ functioning level" and the evaluators never employed a plethysmograph, polygraph, or "Abel assessment."

¶ 58 Defendant's contention is not well taken. The standards to which he refers are set out in a 13-page section of the Illinois Administrative Code. This section prefaces the long list by stating, "Pre-sentence [sex-offender] evaluations must include the following elements *using one or more of the listed possible evaluation procedures as clinically indicated*." (Emphasis added.) 20 Ill. Adm. Code 1905.240 (2010). Although an evaluation must include certain "elements," among them "Evaluation of mental and/or organic disorders," "Evaluation of drug/alcohol use," and others, the evaluation need not employ all of the numerous tests, predictive tools, and other "evaluation procedures" listed in the section. 20 Ill. Adm. Code 1905.240(a), (b) (2010). Instead, according to the plain language that we have quoted, how many and which of these procedures to use is left to the clinical judgment of the evaluators. Thus, defendant can establish no impropriety merely by pointing out that the evaluation team did not use the plethysmograph, polygraph, or Abel assessment in his case. Also, on the matter of IQ assessment, Carich testified that, although the report did not "per se" contain information about defendant's "IQ functioning level," it did note that defendant was "at a higher level IQ."

¶ 59 Defendant does make a specific argument about one of the tools that the evaluators could have used—the polygraph examination. Defendant raises this matter in connection with his next challenge to the evidence—that the State's witnesses and the trial court improperly relied on his refusal to admit that he had committed the offenses against his daughter and Alan T.'s children.

Defendant asserts that it was improper to hold his honest professions of innocence against him, and he also contends that the evaluators unfairly denied him the opportunity to take a polygraph examination that could have corroborated his claim that he never committed these offenses.

¶ 60 Defendant's primary challenge uses inherently dubious and potentially dangerous logic. If someone is alleged to be sexually dangerous, based in part upon a judicial finding beyond a reasonable doubt that he committed a sex offense, then it would be strange policy to allow him to neutralize that evidence merely by saying that he is really innocent. A trial court deciding whether a person is still sexually dangerous should not be required to disregard a prior adjudication that he committed a sexual offense—at least without serious grounds to believe that the prior adjudication was erroneous.

¶ 61 Here, a jury had already found beyond a reasonable doubt that defendant had committed aggravated sexual assault and aggravated sexual abuse against his daughter, and this court had affirmed his convictions. *People v. Conley*, No. 2-93-0889 (1995) (unpublished order under Supreme Court Rule 23). Moreover, although defendant emphasizes that the State dismissed the criminal charges involving Alan T.'s children and proceeded under the Act instead, he has not provided a record of the proceedings in that case that would show that the trial court discredited the allegations related to the children. The trial court may well have found, based on credible evidence, that defendant committed offenses against the children. In any event, we cannot say that here the trial court erred in assuming that defendant had committed indecent liberties, child pornography, and the two offenses against his daughter. Defendant denied having committed the offenses against his daughter, and there was evidence that he repeatedly minimized his responsibility for committing indecent liberties with the underage victim. Thus, we cannot say that the trial court erred in taking defendant's refusal to admit his crimes as evidence that he had not recovered. Defendant's

contention that he should have been offered a polygraph examination may have merit as a policy recommendation, but he has not established how a polygraph examination, even one that produced favorable results, would have affected the result of the trial.

¶ 62 Finally, we note that defendant makes other attacks on the evidence. He contends that the finding that he was still sexually dangerous was against the manifest weight of the evidence, in part because Carich testified that defendant had, for the most part, followed the rules while in BMCC, had not acted out sexually, and had dealt appropriately with improper touching by his cell mate. Carich did concede this much, although he also noted that defendant had inappropriately, though not sexually, touched a female staff member. However, what defendant did in a strictly supervised prison environment, interacting predominantly with other adult males, did not prevent either the State's experts or the trial court from concluding that, upon being released from prison, defendant would retain his propensity toward committing sexual offenses against minors, especially females. As we have noted above, there was ample reason for the trial court to find that defendant would still be sexually dangerous once he was out of custody.

¶ 63 Defendant contends also that the State did not prove that conditionally releasing him would not adequately protect the public. We note that, under the Act, the trial court may order conditional release "[i]f the court finds that the person appears no longer to be dangerous but that it is impossible to determine with certainty under conditions of institutional care that such person has fully recovered." 725 ILCS 205/9(e) (West 2010). Here, the trial court did not make the predicate finding; it did not conclude that defendant appeared no longer to be sexually dangerous. As we have explained, the court's unequivocal finding that defendant was still sexually dangerous was not against the manifest weight of the evidence. In any event, the trial court could consider that conditional release would be improper given defendant's prior offenses while on parole.

¶ 64 The trial court's finding that the State proved by clear and convincing evidence that defendant was still sexually dangerous must stand. Thus, we reject defendant's first claim of error.

¶ 65 Defendant contends second that the trial court abused its discretion in refusing to allow him an independent evaluation. Defendant asserts that merely allowing him to cross-examine the State's witnesses was insufficient to bring out the deficiencies in their evaluation methods.

¶ 66 A person seeking a discharge under section 9 of the Act "is not entitled to an independent psychiatric examination unless he can show that the experts employed by the State are biased or prejudiced." *Burns,* 209 Ill. 2d at 574. Thus, bias or prejudice is the sole ground on which defendant could claim a right to an independent examination—and defendant does not now contend that he showed that Stanislaus and Carich were biased or prejudiced. Therefore, he has, in effect, forfeited this issue. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008); *People v. Evans*, 405 Ill. App. 3d 1005, 1007 (2010) (points not argued on appeal are forfeited). Defendant's contention that an independent examination was needed for him to be able to rebut the State's evidence is the very argument that the supreme court rejected in *Burns*. As did the trial court here, the court reasoned that, absent bias on the part of the State's examiners, the right to have counsel who can cross-examine the State's experts obviates any need for an independent examination. *Burns,* 209 Ill. 2d at 569. Therefore, we reject defendant's argument that the trial court erred when it refused to grant him an independent evaluation.

¶ 67 For the foregoing reasons, we affirm the judgment of the circuit court of Lee County.

¶ 68 Affirmed.