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2013 IL App (3d) 120948-U

Order filed August 30, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF)	Appeal from the Circuit Court
ILLINOIS,)	of the 14th Judicial Circuit,
)	Whiteside County, Illinois,
Petitioner-Appellee,)	
)	Appeal No. 3-12-0948
v.)	Circuit No. 90-CF-340
)	
DAVID M. HANDEL,)	Honorable
)	John L. Hauptman,
Respondent-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE WRIGHT delivered the judgment of the court.
Justices Holdridge and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* Respondent's due process right to a speedy trial was not violated.

¶ 2 In 1991, respondent, David M. Handel, was adjudicated a sexually dangerous person. In December 2011, respondent filed an application for discharge or conditional release. After a bench trial, the trial court found respondent was still sexually dangerous and denied his application. On appeal, respondent argues he was denied his constitutional right to a speedy trial. We affirm.

¶ 3

FACTS

¶ 4 In March 1991, respondent was adjudicated a sexually dangerous person, and the Department of Corrections (DOC) was appointed guardian pursuant to section 105-8 of the Sexually Dangerous Persons Act (Act). Ill. Rev. Stat. 1991, ch. 38, ¶ 105-8.

¶ 5 On December 28, 2011, respondent filed an application for discharge or conditional release. The trial court appointed the public defender. Two days later, the court held a preliminary hearing. Respondent's counsel asked that the sociopsychiatric report be filed by April 30, 2012. The State responded that it could not "make any promises" as it had not spoken to anyone at the DOC. The court acknowledged the State's position and ordered that respondent's report be filed by April 30, 2012.

¶ 6 On January 17, 2012, the State filed a motion for additional time to prepare the sociopsychiatric report due to a backlog of reports in the DOC. A letter from the DOC, attached to the State's motion, reported that there were 22 reports awaiting completion before respondent's report, and each report took between 40 and 50 hours.

¶ 7 On January 18, 2012, respondent's counsel filed a speedy trial demand pursuant to section 103-5 of the Code of Criminal Procedure of 1963. 725 ILCS 5/103-5 (West 2010). However, at a subsequent hearing on February 28, 2012, respondent's counsel agreed a speedy trial issue was not then before the court. At that time, the court granted the State's motion for additional time, ordered respondent's report filed on or before August 9, 2012, and scheduled the case for a bench trial on September 13, 2012.

¶ 8 On August 6, 2012, respondent filed a motion for relief based on a speedy trial violation. On August 9, 2012, the sociopsychiatric report was filed, and a hearing was held on respondent's

motion. The court found that the delay in obtaining the evaluation was reasonable and there was no violation of respondent's constitutional right to a speedy trial.

¶ 9 On August 30, 2012, the State filed a motion to continue the case because one of respondent's evaluating psychiatrists was out of the country on the date respondent's case was set for trial. Respondent's counsel objected on speedy trial grounds. The court allowed the motion over respondent's objection and continued the case for a bench trial on October 31, 2012.

¶ 10 On September 27, 2012, respondent's counsel renewed her motion for relief for a speedy trial violation. After considering the speedy trial factors, the court denied the motion, and the case was continued for the previously scheduled bench trial on October 31, 2012.

¶ 11 At trial, Dale Spitler opined that respondent would be at a high risk to reoffend if he were released into the community. Similarly, Dr. Kristopher Clounch stated his analysis placed respondent in a high risk category for future sexual reoffense. Finally, Dr. Jagannathan Srinivasaraghavan testified it was substantially probable that respondent would engage in sexual offenses in the future if he was not confined. Following closing arguments, the trial court concluded that respondent remained a sexually dangerous person. Respondent appeals.

¶ 12 ANALYSIS

¶ 13 On appeal, respondent argues his due process right to a speedy trial was violated. Although proceedings under the Act are civil in nature, those subject to its proceedings are accorded the same essential protections of a criminal defendant. 725 ILCS 205/3.01 (West 2010); *People v. Trainor*, 196 Ill. 2d 318 (2001). Among these protections, a respondent has a due process right to a speedy trial. *People v. Donath*, 2013 IL App (3d) 120251. Four factors must be balanced to determine whether a respondent's constitutional right to a speedy trial has

been violated: (1) the length of delay in bringing respondent to trial; (2) the reasons for the delay; (3) the prejudice, if any, to respondent; and (4) respondent's assertion of his right. *People v. Crane*, 195 Ill. 2d 42 (2001). The remedy for a constitutional speedy trial violation is dismissal of the charges. *Strunk v. United States*, 412 U.S. 434 (1973).

¶ 14 Due to the seriousness of the remedy of dismissal, "the right to a speedy trial should always be in balance, and not inconsistent, with the rights of public justice." *Crane*, 195 Ill. 2d at 47. We review the ultimate determination of whether respondent's constitutional speedy trial right has been violated *de novo*. *Donath*, 2013 IL App (3d) 120251.

¶ 15 On one hand, respondent correctly points out his hearing was delayed for approximately 10 months after his speedy trial demand dated January 18, 2012. Yet, due to backlog in the DOC, the record reveals the sociopsychiatric report was completed and filed on August 9, 2012. The record reveals the actual hearing took place on October 31, 2012, less than 90 days after both parties received the sociopsychiatric report prepared by DOC.

¶ 16 On the other hand, the majority of the delay prior to the hearing was attributable to the preparation of the respondent's evaluation by DOC. Ultimately, the evaluators concluded respondent should not be released. Thus, respondent suffered little prejudice from the delay in this case. After balancing all of the necessary factors, we agree with the trial court that respondent's constitutional right to a speedy trial was not violated in this case.

¶ 17 CONCLUSION

¶ 18 For the foregoing reasons, the judgment of the circuit court of Whiteside County is affirmed.

¶ 19 Affirmed.