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2016 IL App (3d) 150011-U

Order filed March 1, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2016

THE PEOPLE OF THE STATE OF)	Appeal from the Circuit Court
ILLINOIS,)	of the 14th Judicial Circuit,
)	Whiteside County, Illinois,
Plaintiff-Appellee,)	
)	Appeal No. 3-15-0011
v.)	Circuit No. 82-CF-362
)	
JEFF D. BOYER,)	Honorable
)	John L. Hauptman,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Carter and Schmidt concurred in the judgment.

ORDER

- ¶ 1 *Held:* Trial court did not err in revoking defendant's conditional release and recommitting him to the Department of Corrections for violating a condition of the release order even though defendant remained in the physical custody of the department.
- ¶ 2 Defendant, Jeff D. Boyer, appeals from an order of the circuit court revoking his conditional release and recommitting him to the Department of Corrections. We affirm.
- ¶ 3 In 1982, defendant was found to be a sexually dangerous person and was committed to the Big Muddy River Correctional Center. In September of 2012, he filed an application for

discharge or conditional release under the Sexually Dangerous Persons Act (Act) (725 ILCS 205/9 (West 2012)). The trial court granted his request and entered an order of conditional release pursuant to section 9 of the Act. The order contained numerous conditions, included that defendant "shall not possess, have in his control, own, view or use any material that is pornographic or sexually oriented in nature." The order also provided that "prior to his physical release from the Illinois Department of Corrections, the Defendant will be accepted into an aftercare program approved by the Illinois Department of Corrections."

¶ 4 Following entry of the court's order, defendant was unable to find appropriate housing and remained in the department's care as an inmate at Big Muddy River. Six months later, guards at the correctional center found pictures and postcards depicting partially naked women in defendant's cell.

¶ 5 The State filed a petition alleging that defendant violated the order of conditional release by knowingly possessing photographs and postcards that were sexually oriented in nature. Defendant signed a statement admitting that he possessed the material. Following a bench trial, the trial court found that defendant violated the conditional release order and recommitted him to the department under the terms of the original commitment order.

¶ 6 ANALYSIS

¶ 7 Defendant claims that the trial court erred in finding that he violated the order of conditional release. Specifically, he argues that it was impossible for him to violate the order because he was never released from the Department of Corrections.

¶ 8 A person committed to the custody of the Director of Corrections as a sexually dangerous person may submit an application setting forth facts in support of the claim that he has recovered. 725 ILCS 205/9(a) (West 2012). If the court determines that the defendant is no

longer dangerous, he may be discharged. 725 ILCS 205/9(e) (West 2012). If the court finds that the defendant 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," the court may enter an order permitting the defendant to be released subject to conditions and supervision by the director that will adequately protect the public. 725 ILCS 205/9(e) (West 2012). In the event the defendant violates any of the conditions of the release order, the court shall revoke the conditional release and recommit the defendant under the terms of the original commitment. 725 ILCS 205/9(e) (West 2012).

¶ 9 When construing statutory provisions, our primary objective is to ascertain and give effect to the intent of the legislature. *General Motors Corp. v. State of Illinois Motor Vehicle Review Board*, 224 Ill. 2d 1, 13 (2007). The most reliable indicator of that intent is the plain, ordinary and popularly understood meaning of the language used in the statute. *Blum v. Koster*, 235 Ill. 2d 21, 29 (2009). When the language is unambiguous, the statute must be applied as written, without resort to extrinsic aids. *Krautsack v. Anderson*, 223 Ill. 2d 541, 553 (2006). Courts will not depart from the plain language of a statute by including conditions, limitations, or exceptions that are not expressed by the legislature. *Village of Bloomingdale v. CDG Enterprises, Inc.*, 196 Ill. 2d 484, 493 (2001).

¶ 10 Here, defendant filed an application for recovery in accordance with the Act. After finding that he appeared no longer dangerous but that his full recovery could not be determined under the department's care, the trial court entered an order permitting him to leave prison confinement subject to several conditions, including that he not possess sexually oriented material. The order was entered on November 6, 2013. In May 2014, department personnel found defendant in possession of sexually oriented material. Defendant's conduct violated the

terms of the order of conditional release. Accordingly, the trial court did not err in revoking defendant's conditional release and recommitting him pursuant to section 9(e) of the Act.

¶ 11 Defendant maintains that he could not violate the order of conditional release because he had not been physically released from the department and could not be recommitted as set forth in section 9. The plain language of the statute fails to support his claim.

¶ 12 First, section 9 provides that "[i]n the event the person violates any of the conditions of such order, the court shall revoke such conditional release and recommit the person." 725 ILCS 205/9(e) (West 2012). The statute does not refer to a "released" person. It refers to a person who violates a condition of an order of release. Defendant's argument would read into the statute limitations and conditions that are not expressed in its plain language.

¶ 13 Second, the legislature's use of the term "recommit" does imply that a sexually dangerous person has to be physically released before a conditional release order applies. Here, once the order of conditional release was entered, defendant was no longer committed under the terms of the original commitment order. Instead, he was held until he found suitable housing under the conditions and instructions provided in the order of conditional release, which permitted physical release from custody. Under such circumstances, the term "recommit" still has meaning. A person does not need to be physically released before he can be recommitted under the original order committing him to the department. In the event of a violation of a condition of the release order, the terms of the order of conditional release are replaced by those of the original commitment order regardless of physical placement.

¶ 14 As a condition of his release, defendant was required to live in a residence which had received prior approval. That condition stated that defendant could not be released from the sexually dangerous person's program at Big Muddy River Correctional Center until his residence

had been approved by the department. Nothing in the language of the housing condition postponed the effective date of the conditional release order until such time as defendant was actually released. While numerous parole-related conditions would not apply until defendant left the correctional center, the housing condition demonstrates that the order contemplated a future physical release date. Accordingly, the order of conditional release was effective on November 6, 2013, and applied to defendant when he was found in possession of sexually oriented material on May 19, 2014. The trial court properly revoked defendant's conditional release after finding that defendant violated that condition.

¶ 15

CONCLUSION

¶ 16

The judgment of the circuit court of Whiteside County is affirmed.

¶ 17

Affirmed.