

NOTICE

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

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FILED
June 19, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Logan County
CHARLES R. BONE,)	Nos. 11CF46
Defendant-Appellant.)	11CF98
)	11MR87
)	
)	Honorable
)	William A. Yoder,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Pope and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court did not abuse its discretion in denying defendant's motion for an independent evaluation where defendant failed to show bias or prejudice.

¶ 2 In December 2011, the State filed a petition to have defendant, Charles R. Bone, declared a sexually dangerous person. In March 2012, defendant admitted the petition, and the trial court entered an order declaring defendant a sexually dangerous person and appointed the Director of the Illinois Department of Corrections (DOC) as his guardian.

¶ 3 In April 2013, defendant filed an application for discharge or conditional release. That same day, defendant filed a motion for an independent evaluation, which the trial court denied in January 2014. In June 2014, following a bench trial, during which defendant again

moved for an independent evaluation, the court denied defendant's application, finding he remained a sexually dangerous person.

¶ 4 Defendant appeals, arguing the trial court erred by denying his motion for an independent evaluation. We affirm.

¶ 5 I. BACKGROUND

¶ 6 A. The State's Petition

¶ 7 In December 2011, the State filed a petition to have defendant declared a sexually dangerous person pursuant to section 3 of the Sexually Dangerous Persons Act (SDPA) (725 ILCS 205/3 (West 2010)). The State's petition was based on two cases which had been filed against defendant: (1) Logan County case No. 11-CF-46, in which defendant was charged with criminal sexual assault for committing an act of sexual penetration with a 15-year-old girl by the use of force; and (2) Logan County case No. 11-CF-98, in which defendant was charged with two counts of aggravated criminal sexual abuse for committing two acts of sexual conduct with an 11-year-old girl and one count of solicitation of a sexual act committed against the 11-year-old girl's sister. (The offenses in Logan County case No. 11-CF-98 were allegedly committed while defendant was released on bond in Logan County case No. 11-CF-46.) In March 2012, defendant admitted the State's petition, and the trial court entered an order (1) finding defendant was a sexually dangerous person and (2) appointing the Director of DOC as his guardian.

¶ 8 B. Defendant's Application for Discharge or Conditional Release

¶ 9 In April 2013, defendant *pro se* filed an application for discharge or conditional release. Therein, defendant asserted he was no longer a sexually dangerous person as evidenced by his (1) completion of five treatment workbooks, (2) completion of 10 treatment packets, (3) 100% score on his Rational Emotive Therapy (RET) test, (4) completion of five treatment

groups, (5) writing out of six separate cycles, (6) position as a "wing or SDP program support team member," (6) having read eight treatment-related books, (7) participation in "225 plus groups" since his arrival at Big Muddy Correctional Center (Big Muddy), (8) having worked as a "third-shift shower man" where he cleans the shower facility, (9) receipt of three college credits for having passed "Technical Mathematics," (10) current participation in four treatment groups, (11) having not engaged in any sexual misconduct since his solicitation of B.C., and (12) lack of any disciplinary issues since his placement at Big Muddy. Additionally, defendant's application proposed conditions on his release that he believed would adequately protect the public.

¶ 10 That same day, defendant filed a motion for an independent psychiatric examination. Therein, defendant requested the trial court order DOC to pay for a psychiatric evaluation performed by someone "not employed by Wexford Health Services who [*sic*] holds [DOC] medical contracts."

¶ 11 In May 2013, the trial court ordered the Director of DOC to prepare a socio-psychiatric report concerning defendant pursuant to section 9(a) of the SDPA (725 ILCS 205/9(a) (West 2012)). In October 2013, the court received the socio-psychiatric report concerning defendant filed by Dr. Kristopher Clouch of Wexford Health Services.

¶ 12 In November 2013, in response to the report filed by Dr. Clouch, defendant, with the assistance of appointed counsel, filed a new motion for an independent psychiatric evaluation. In January 2014, the trial court held a hearing on defendant's new motion for an independent evaluation. During this hearing, defendant argued Dr. Clouch was biased against him. As evidence of his bias, defendant noted Dr. Clouch (1) used an outdated actuarial instrument in assessing defendant's risk of reoffending, (2) failed to use an actuarial instrument

used in other cases, and (3) failed to consider defendant's completion of his treatment workbooks and packets.

¶ 13 Following the hearing, the trial court denied defendant's motion for an independent evaluation. Thereafter, defendant waived his right to a jury trial on his application for discharge or conditional release.

¶ 14 C. The Bench Trial on Defendant's Application for Release

¶ 15 On two separate days in April and June 2014, the trial court conducted a bench trial on defendant's application for discharge and conditional release.

¶ 16 1. *Dr. Clouch's Testimony*

¶ 17 Dr. Clouch testified he performed the recovery evaluation and prepared the socio-psychiatric report concerning defendant. Dr. Clouch met with defendant for 2 1/2 hours before preparing the report. In preparation for the recovery evaluation, Dr. Clouch reviewed defendant's treatment records, medical and psychiatric information, prior evaluations including the commitment records, and evaluations from prior treatment or incarceration. Additionally, Dr. Clouch spoke to defendant's treatment provider for approximately 15 to 20 minutes.

¶ 18 Dr. Clouch explained his findings in the socio-psychiatric report. According to Dr. Clouch, defendant had a long history of sexual offenses and other criminal offenses. When Dr. Clouch asked defendant about his offense history, defendant minimized or denied some of his past sexual misconduct.

¶ 19 Dr. Clouch also testified about defendant's disciplinary history while in DOC and its relevance to his evaluation. While in the Department of Juvenile Justice for a 1998 offense against his younger sister, defendant did not comply with treatment. During his commitment at Big Muddy, defendant had acquired two minor "institutional violations," which

are given when a committed person breaks rules for the general population at Big Muddy, for "unauthorized movement" and "failure to report." Additionally, in July 2013, defendant received three "program tickets," which are given when a committed person breaks rules specific to the treatment program. Defendant received program tickets for (1) using racial slurs in a peer group, (2) referring to homosexuals as "fags," and (3) being disrespectful toward staff. As a result of these program tickets, which he received after he filed his application for conditional release, defendant was placed on probation within the program for one month.

¶ 20 Dr. Clouch also testified to an incident reported by defendant's primary therapist, which occurred after defendant had filed his application for conditional release. During a phone call with his mother, defendant was very agitated and angry. Defendant was allegedly upset because his wife was living with a black man. Defendant used several racial slurs throughout the conversation and instructed his mother to make false allegations of sexual assault against the man so either the man or the children would have to be removed from the home.

¶ 21 According to Dr. Clouch, the treatment program at Big Muddy consists of four phases. Defendant is in "phase 1," which is an "orientation phase where the [individual is] really working on accepting responsibility for their offenses and talking about those issues as they move through on to the next phase."

¶ 22 Dr. Clouch testified each individual participates in a semiannual program evaluation. During this evaluation, a treatment provider rates the individual in 23 different areas which are important to treatment. According to the socio-psychiatric report, in the most recent semiannual program evaluation Dr. Clouch reviewed, defendant was rated as "unsatisfactory" or "considerable need for improvement" in 17 of 23 areas.

¶ 23 Dr. Clouch also testified about the assignments—the workbooks and treatment packets—that committed persons complete during the course of their treatment. These assignments are used "to help the individuals understand themselves as well as their offending process as they work through the [treatment] program." When an individual completes an assignment, the individual turns it in to an instructor, who reviews it and includes it in their assessment of an individual's progress. According to Dr. Clouch, the assignments are not as important as what the individual "actually works with and talks about in group to show that they're making a significant change in their outlook and the way in which they deal with others and motivation perhaps for change and desires that they have." While the completion of one workbook allows the individual to move onto the next workbook, this does not mean the individual is progressing through treatment. Further, even if defendant had perfectly completed all the workbooks, he would not have changed his opinion that defendant remained a sexually dangerous person.

¶ 24 On cross-examination, defendant's counsel showed Dr. Clouch a series of 18 exhibits, which were the assignments defendant had completed while at Big Muddy. As to each of these assignments, Dr. Clouch testified he did not discuss them with either defendant or treatment staff, even though defendant had told him he completed the assignments. In fact, Dr. Clouch had reviewed only a few of them just prior to trial. Dr. Clouch did not typically review the workbooks completed by the individuals in treatment. He viewed those as being more useful to the individual, whereas he obtained his information "from treatment [staff] as well as when [he met] with the individual." Dr. Clouch had not spoken with treatment staff about the significance of any one assignment contained within the workbooks.

¶ 25 According to defendant's treatment providers, he understands a great deal of the terminology and concepts in treatment. However, defendant has not implemented any changes in his life at this time. Defendant continued to behave in the same manner toward others—he was very disrespectful and shaming of others and believed he was significantly better than other people in the program.

¶ 26 While defendant was able to recognize and understand his deviant cycle and was able to provide appropriate interventions to interrupt it, Dr. Clouch and the treatment staff did not believe he had "truly taken that information in" or made changes in the way he deals with other people. Additionally, Dr. Clouch noted in the report that defendant "understands treatment terms and concepts and will typically use that knowledge to spin the situation to present the story he wants."

¶ 27 As part of the socio-psychiatric evaluation, Dr. Clouch determined whether defendant had a mental disorder. Dr. Clouch opined defendant suffered from "other specified paraphilic disorder, nonconsent," frotteuristic disorder, and alcohol-use disorder. The diagnosis of "other specified paraphilic disorder, nonconsent," qualifies as a mental disorder under the SDPA. According to Dr. Clouch, defendant has had this mental disorder for over a year.

¶ 28 During his evaluation of defendant, Dr. Clouch used the Static-99R, which is an actuarial risk-assessment tool, to determine defendant's risk of reoffending. Defendant's score on the Static-99R placed him in the high-risk category and indicated he was 3.77 times more likely to offend than the average sex offender. In addition to his score on the Static-99R, Dr. Clouch opined defendant had multiple dynamic risk factors that increased his risk of reoffending.

¶ 29 According to Dr. Clouch, no substantial changes in defendant's treatment had been made since the October 2013 socio-psychiatric evaluation. Further, defendant had not

made substantial progress in his treatment, which precludes him from recommending defendant's conditional release. Dr. Clouch opined, based on his education, training, experience, and evaluation of defendant, defendant remained a sexually dangerous person.

¶ 30 On cross-examination, Dr. Clouch testified he did not rely only on what the treatment staff told him about defendant's progress or what was in defendant's semiannual evaluation. Dr. Clouch indicated he spoke with treatment staff about defendant's victim empathy, global empathy, defendant's cycle and whether he had presented it to the group, his behavior while in treatment, and overall progress. When asked whether he spoke with treatment staff about whether defendant was ready for release, Dr. Clouch replied, "I believe that's not typically something that they provide." Dr. Clouch did not discuss defendant's cycle with the treatment staff because defendant had not yet presented his cycle in group sessions. When asked whether he should review all the documents completed by defendant to give a full assessment of defendant's progress in treatment, Dr. Clouch responded, "[d]epends on the material."

¶ 31 Dr. Clouch was not sure whether defendant had received treatment only from his current primary therapist, Jessica Stover. He could not recall whether Toni Isaacs had previously provided treatment to defendant. When asked whether he was getting a full picture from Stover because defendant possibly had other treatment providers, Dr. Clouch responded he reviewed defendant's treatment notes.

¶ 32 *2. Defendant's Renewed Motion for an Independent Evaluation*

¶ 33 At the close of Dr. Clouch's testimony, defendant presented an oral motion seeking the appointment of an independent evaluator. Counsel for defendant argued it was clear Dr. Clouch had not reviewed all the material in defendant's file. Additionally, counsel noted Dr. Clouch did not know who defendant's primary therapist was during his first 15 months of

treatment. Counsel contended Dr. Clouch "didn't do the work that needs [to] be done when preparing an independent evaluation," rather "he simply listened to whatever Jessica Stover told him and whatever the semi[]annual evaluation showed." Counsel further argued Dr. Clouch could not have obtained an accurate depiction of defendant's treatment, which had been ongoing for over 1 1/2 years, by speaking with Stover for only 15 or 20 minutes.

¶ 34 In response, the State argued Dr. Clouch clearly stated the successful completion of the assignments does not indicate success in treatment. Further, the individual who reviewed defendant's assignments—his primary therapist—had indicated he has not successfully completed the treatment.

¶ 35 The trial court denied defendant's motion. In doing so, the court found there had not been any indication of bias or prejudice. The court noted Dr. Clouch's testimony that "what's written in those [assignments] isn't necessarily beneficial to the doctor's determination or his final findings, because, in paraphrasing, my understanding of the doctor's testimony was a person can write anything down." Rather, what is important is whether the individual has carried out what is written in the assignments into the group sessions and the individual's interactions with others in the group.

¶ 36 After the trial court ruled on defendant's motion, the matter was continued to June 2014.

¶ 37 *3. Defendant's Testimony*

¶ 38 When the trial resumed, defendant testified on his own behalf. With regard to the assignments—the workbooks and treatment packets—defendant testified when an individual is given a book, he or she completes it at his or her own pace and then turns them into staff for grading. Once the staff grades the work, the assignments are returned to the individual and staff

gives them the next assignment. Defendant believed his completion of the written assignments indicated he had progressed in treatment to the point he could be released.

¶ 39 Defendant testified Isaacs was his original primary therapist. Isaacs was his therapist for his first 18 months in Big Muddy. Stover is currently defendant's primary therapist.

¶ 40 D. The Trial Court's Order and Defendant's Posttrial Motion

¶ 41 In June 2014, the trial court entered its written order denying defendant's application for discharge or conditional release, finding defendant remained a sexually dangerous person. Later that month, defendant filed a posttrial motion, asserting (1) the court erred in denying defendant's pretrial motion for an independent evaluation, (2) the court erred in denying his motion for an independent evaluation during trial, and (3) the evidence was insufficient to prove he remained a sexually dangerous person. In August 2014, following a hearing, the court denied defendant's posttrial motion.

¶ 42 This appeal followed.

¶ 43 II. ANALYSIS

¶ 44 On appeal, defendant argues the trial court erred by denying his motion for an independent evaluation where the record indicates Dr. Clouch was biased in favor of the State. Specifically, defendant contends Dr. Clouch's bias is evidenced by his (1) failure to review the assignments—the workbooks and treatment packets—completed by defendant, and (2) acceptance of defendant's primary therapist's findings.

¶ 45 A person committed under the SDPA may file an application showing he is recovered and requesting his release from custody. 725 ILCS 205/9(a) (West 2012). Once the application is filed, it is forwarded to the Director of DOC, who then causes a licensed evaluator to prepare and send to the court a socio-psychiatric report concerning the applicant. *Id.* If the

State proves the person remains sexually dangerous by clear and convincing evidence (see 725 ILCS 205/9(b) (West 2012)), the person may not file another application for two years unless it is accompanied by the statement of a treatment provider that (1) the applicant has made exceptional progress and (2) the application contains facts upon which a court could find the condition of the person had so changed that a hearing is warranted. 725 ILCS 205/9(d) (West 2012). The court shall order the discharge of the committed person if the State fails to prove he remains sexually dangerous. 725 ILCS 205/9(e) (West 2012). If the court finds the committed person appears to be no longer dangerous, but cannot determine so with certainty under the conditions of institutional care, the court shall order the conditional release of the person subject to the conditions and supervision of DOC. *Id.*

¶ 46 It is well established an applicant is not entitled to the appointment of an independent evaluator "unless he can show that the experts employed by the State will not give an honest and unprejudiced opinion of the respondent's mental condition." *People v. Burns*, 209 Ill. 2d 551, 562, 809 N.E.2d 107, 115 (2004); see also *People v. Capoldi*, 37 Ill. 2d 11, 18-19, 225 N.E.2d 634, 638 (1967). In other words, to be entitled to an independent psychiatric examination in section 9 proceedings, the person seeking discharge or conditional release must show the experts employed by the State are biased or prejudiced. *Burns*, 209 Ill. 2d at 574, 809 N.E.2d at 121. Professionals being paid by the State are not presumed to be biased or prejudiced in favor of the State. See *id.* at 567, 809 N.E.2d at 118. We review the trial court's denial of a motion for an independent evaluation for an abuse of discretion. See *People v. Botruff*, 212 Ill. 2d 166, 178, 817 N.E.2d 463, 470 (2004) (the respondent was not denied equal protection where trial court did not abuse its discretion in denying the respondent's request for an independent evaluation).

¶ 47 In this case, the record supports the trial court's finding Dr. Clouch was not biased or prejudiced in favor of the State. Despite Dr. Clouch's failure to discuss and review each and every assignment with defendant and the treatment staff, his testimony adequately explained his election not to do so. According to Dr. Clouch, the successful completion of the assignments is not indicative of an individual's recovery. Rather, those assignments are geared toward the individual himself. With regard to the assignments, what is important is whether the individual (1) has discussed the matters contained in the workbooks during group therapy, and (2) is able to implement what is learned from the assignments and group into his or her daily life. The evidence in this case shows defendant was not able to do so.

¶ 48 Further, Dr. Clouch testified an individual can successfully complete the assignments, writing the "right" things in the right places, but still fail to progress in treatment. According to Dr. Clouch, his opinion regarding defendant's progression in treatment would not have changed even if defendant had completed each assignment perfectly. This is so because the completion of the assignments is more relevant to the individual and treatment staff than it is to the evaluator's determination.

¶ 49 Defendant also asserts Dr. Clouch merely accepted the findings of defendant's current primary therapist, Stover, and did not actually evaluate defendant. Defendant highlights the fact Stover had only been defendant's primary therapist for three months at the time of the socio-psychiatric evaluation and could not have had a full picture of defendant's treatment progress. Defendant contends Dr. Clouch should have also spoken with Isaacs, defendant's former primary therapist, who had treated defendant for 15 months prior to Stover taking over defendant's treatment.

