

NOTICE

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FILED
October 8, 2019
Carla Bender
4th District Appellate
Court, IL

2019 IL App (4th) 190113-U
NO. 4-19-0113

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

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| <i>In re</i> COMMITMENT OF DONNIE R. BARRETT |) | Appeal from the |
| |) | Circuit Court of |
| (The People of the State of Illinois, |) | Morgan County |
| Petitioner-Appellee, |) | No. 07MR51 |
| v. |) | |
| Donnie R. Barrett, |) | Honorable |
| Respondent-Appellant). |) | Jeffery E. Tobin, |
| |) | Judge Presiding. |

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Holder White and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not err by finding no probable cause shown to warrant an evidentiary hearing where respondent had not engaged in any treatment.

¶ 2 Respondent, Donnie R. Barrett, a person committed under the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/1 *et seq.* (West 2018)), appeals the Morgan County circuit court’s February 4, 2019, order, in which the court found no probable cause to warrant an evidentiary hearing on whether respondent was still a sexually violent person. On appeal, respondent argues the circuit court erred by finding no probable cause. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In August 2007, the State filed its petition to have respondent committed as a sexually violent person under the Act. Due to an updated version of the Diagnostic and Statistical Manual (DSM-5), the State filed an amended petition in December 2014. In October

2016, the circuit court held a jury trial on the State's amended petition. The jury found respondent was a sexually violent person. At the dispositional hearing held on the same day as the sexually violent person finding, the circuit court ordered respondent to be committed to the care and custody of the Department of Human Services (Department) for secure inpatient treatment until he was no longer a sexually violent person. The court found the secure inpatient treatment was the least restrictive means under the circumstances of respondent's case. That same day, the court entered a written order, committing respondent to institutional care in a secure facility.

¶ 5 Respondent filed a posttrial motion and a supplement to the motion. In January 2017, the circuit court held a hearing on respondent's posttrial motions. On March 7, 2017, the court entered a written order denying respondent's posttrial motion. Respondent appealed, and this court affirmed the circuit court's judgment. *In re Commitment of Barrett*, 2018 IL App (4th) 170204-U. Respondent filed a petition for leave to appeal with the supreme court, which denied his petition. *In re Commitment of Barrett*, No. 123697 (Ill. Sept. 26, 2018) (supervisory order).

¶ 6 In October 2018, Amy S. Louck Davis, Psy.D., a licensed clinical psychologist, conducted respondent's reevaluation at issue in this appeal. The report noted respondent was 43 years old and this was his second reexamination. In preparing the report, Dr. Louck Davis attempted to interview respondent, but respondent declined to be interviewed. Dr. Louck Davis did review numerous documents regarding respondent in preparing her report. The report set forth respondent's relevant history, including his criminal, sexual, and treatment histories. Dr. Louck Davis also explained the Department had a five-phase treatment program. The five phases, in order, were the following: (1) assessment, (2) accepting responsibility, (3) self-application, (4) incorporation, and (5) transition. Respondent signed his consent for treatment in

October 2012 but had never meaningfully participated in treatment. He had never completed a treatment group. During the review period at issue, respondent did not participate in any treatment. A nontreatment resident review report was done in April 2018. Respondent did participate in that review and expressed interest in attending a “Good Lives” group and a substance abuse and dependence education group. The report noted respondent had participated in a team building recreational activity and a food sanitation class. Additionally, during the review period, respondent had not been before the behavioral committee.

¶ 7 Regarding mental health disorders, Dr. Louck Davis opined respondent suffered from the following mental disorders based on the DSM-5: (1) pedophilic disorder, sexually attracted to both, nonexclusive type; (2) antisocial personality disorder; and (3) alcohol use disorder, moderate, in a controlled environment. She explained her reasoning for those diagnoses. As to the issue of respondent’s dangerousness, she used the Static-99R and the Static-2002R risk assessments. Respondent placed in the “ ‘Well Above Average Risk’ ” category on both assessments. Respondent’s score of 9 on the Static-99R was associated with a 36.6% to 60.5% sexual recidivism risk over five years, and his score of 10 on the Static-2002R was associated with a 30% to 53.4% sexual recidivism risk over five years. Dr. Louck Davis further explained respondent’s scores were 99.7% higher than the sex offenders in the sample. Respondent’s Static-99R score indicated he was 6.9 times more likely to reoffend than the typical sex offender, and his Static-2002R score indicated he was 7.32 times more likely to reoffend than the typical sex offender. Dr. Louck Davis also noted respondent had the following empirical risk factors for future sexual offending: (1) any deviant sexual interest or sexual interest in children, (2) sexual preoccupation, (3) antisocial personality disorder, (4) grievance or hostility, (5) poor problem-solving, (6) general self-regulation problems, (7) resistance to rules

and supervision, (8) impulsivity or recklessness, (9) history of a nonsexual crime, (10) procriminal attitudes, (11) childhood behavioral problems or criminality, and (12) lack of emotionally intimate relationships with adults. Dr. Louck Davis opined respondent had no protective factors such as age, medical condition, or sex-offender treatment. She further found respondent's mental disorders predisposed him to engage in acts of sexual violence. Dr. Louck Davis opined respondent had not changed since his last reexamination and remained substantially probable to commit a future act of sexual violence. She also opined respondent had not made sufficient progress in his treatment to be conditionally discharged and should continue to be committed to the Department's treatment and detention facility for secure care and sexual offense specific treatment.

¶ 8 On October 30, 2018, the State filed a motion for a finding of no probable cause based upon Dr. Louck Davis's second annual reexamination report. In its motion, the State noted respondent had not affirmatively waived his right to petition the court for discharge, and thus section 65(b)(1) of the Act (725 ILCS 207/65(b)(1) (West 2018)) required the circuit court to hold a probable-cause hearing.

¶ 9 On February 4, 2019, the circuit court held the probable-cause hearing. After the attorneys made their arguments on probable cause, the court found no probable cause was shown to believe respondent was no longer a sexually violent person. That same day, the court entered its written order.

¶ 10 On February 14, 2019, respondent filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. July 1, 2017), and thus this court has jurisdiction under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994). See 725 ILCS 207/20 (West 2018) (noting the proceedings under the Act are civil in nature).

¶ 11

II. ANALYSIS

¶ 12 Respondent's sole contention on appeal is the circuit court erred by finding no probable cause was shown to warrant an evidentiary hearing to determine whether respondent was still a sexually violent person. The State disagrees, arguing the circuit court's decision was correct.

¶ 13 At the time of each reexamination under the Act, the committed person receives notice of the right to petition the circuit court for discharge. 725 ILCS 207/65(b)(1) (West 2018). If the committed person does not affirmatively waive that right, like respondent in this case, the court must "set a probable cause hearing to determine whether facts exist to believe that since the most recent periodic reexamination ***, the condition of the committed person has so changed that he or she is no longer a sexually violent person." 725 ILCS 207/65(b)(1) (West 2018). At such a probable-cause hearing, the court only reviews the reexamination reports and hears the parties' arguments. 725 ILCS 207/65(b)(1) (West 2018). If the court finds probable cause does exist, then it must set an evidentiary hearing on the issue. 725 ILCS 207/65(b)(2) (West 2018). Since the circuit court only considered Dr. Louck Davis's reexamination report and the facts contained in that report are not in dispute, our review of the court's finding of no probable cause is *de novo*. See *In re Commitment of Kirst*, 2015 IL App (2d) 140532, ¶ 50, 40 N.E.3d 1215.

¶ 14 With all probable-cause hearings under the Act, the circuit court's role is "to determine whether the movant has established a *plausible account* on each of the required elements to assure the court that there is a substantial basis for the petition." (Emphasis in original and internal quotation marks omitted.) *In re Detention of Stanbridge*, 2012 IL 112337, ¶ 62, 980 N.E.2d 598 (quoting *In re Detention of Hardin*, 238 Ill. 2d 33, 48, 932 N.E.2d 1016,

1024 (2010)). For a respondent to receive an evidentiary hearing under section 65(b)(2) of the Act, the court must find a plausible account exists that the respondent is “no longer a sexually violent person.” (Emphasis omitted.) *Stanbridge*, 2012 IL 112337, ¶ 67 (quoting 725 ILCS 207/65(b)(2) (West 2008)). Thus, a respondent is only entitled to an evidentiary hearing if plausible evidence shows the respondent (1) no longer suffers from a mental disorder or (2) is no longer dangerous to others because his or her mental disorder no longer creates a substantial probability he or she will engage in acts of sexual violence. *Stanbridge*, 2012 IL 112337, ¶ 68 (citing 725 ILCS 207/5(f), 15 (West 2008)). Under the Act, “substantially probable” means “much more likely than not.” (Internal quotation marks omitted.) *In re Commitment of Curtner*, 2012 IL App (4th) 110820, ¶ 37, 972 N.E.2d 351; see also *In re Detention of Hayes*, 321 Ill. App. 3d 178, 188, 747 N.E.2d 444, 453 (2001).

¶ 15 In this case, Dr. Louck Davis found respondent suffered from (1) pedophilic disorder, sexually attracted to both, nonexclusive type; (2) antisocial personality disorder; and (3) alcohol use disorder, moderate, in a controlled environment. Both the Static-99R and Static-2002R assessments placed respondent in the highest risk categories for reoffending. Respondent’s score of 9 on the Static-99R was associated with a 36.6% to 60.5% sexual recidivism risk over five years, and his score of 10 on the Static-2002R was associated with a 30% to 53.4% sexual recidivism risk over five years. Dr. Louck Davis further explained respondent’s scores were 99.7% higher than the sex offenders in the sample. His Static-99R score indicated he was 6.9 times more likely to reoffend than the typical sex offender, and his Static-2002R score indicated he was 7.32 times more likely to reoffend than the typical sex offender. In addition to respondent being in the highest risk categories for reoffending, Dr. Louck Davis’s report noted respondent had 12 other empirical risk factors that increased his risk

to reoffend. Thus, Dr. Louck Davis considered more than just the percentages in determining respondent was substantially probable to engage in a future act of sexual violence. Respondent contends Dr. Louck Davis did not explain how respondent exhibited the 12 factors or explain how each factor itself affected respondent's risk of reoffending. However, a full review of the report shows the 12 factors are supported by the facts contained in the report. The report also notes the risk factors identified "represent statistically significant correlations with recidivism." Moreover, neither his age nor his medical condition decreased his risk. Respondent takes issue with the fact his age is not a protective factor. However, in her report, Dr. Louck Davis explained the actuarial assessments she used take age into consideration and no additional age-based risk reduction was warranted. The aforementioned evidence indicates respondent still suffered from mental disorders and was dangerous to others because his mental disorders created a substantial probability he would engage in acts of sexual violence.

¶ 16 Since the prior reexamination, respondent did not engage in any sex-offender treatment. He had yet to complete one treatment group. During the review period, respondent had just one nontreatment report, which indicated respondent had only participated in one team building recreational activity and one vocational class. The reexamination report is devoid of any facts showing respondent's conditions and risk had changed during the reexamination period at issue.

¶ 17 Accordingly, we find there was no probable cause to warrant an evidentiary hearing.

¶ 18 III. CONCLUSION

¶ 19 For the reasons stated, we affirm the Morgan County circuit court's judgment.

¶ 20 Affirmed.