SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0202-16T5

IN THE MATTER OF THE CIVIL
COMMITMENT OF B.R., SVP-753-16.

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Submitted August 30, 2017 – Decided September 12, 2017

Before Judges Rothstadt and Vernoia.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Docket No. SVP-753-16.

Joseph E. Krakora, Public Defender, attorney for appellant B.R. (Susan Remis Silver, Assistant Deputy Public Defender, of counsel and on the brief).

Christopher S. Porrino, Attorney General, attorney for respondent State of New Jersey (Melissa H. Raksa, Assistant Attorney General, of counsel; Stephen Slocum, Deputy Attorney General, on the brief).

PER CURIAM

B.R. appeals from a judgment entered by the Law Division committing him to the Special Treatment Unit (STU) pursuant to the Sexually Violent Predators Act (SVPA), N.J.S.A. 30:4-27.24 to 27.38. He contends there was insufficient evidence supporting the court's determination that he suffered from a mental abnormality

or personality disorder and presents a high risk of reoffending, the court erred by shifting the burden of proof to him during the commitment hearing, and the State failed to sustain its burden of proof. We disagree and affirm.

Based on B.R.'s exposure of his penis to a ten-year-old boy and his request that the child perform fellatio on him, B.R. was convicted in January 1985 of child abuse and sentenced to probation and participation in counseling. Ten months later, he was convicted of lewdness and received a suspended sentence with probation after exposing himself to another ten-year-old boy.

In 2001, B.R. approached a nine-year-old boy in a casino video arcade and placed his penis on the boy's shoulder or neck. He pleaded guilty to second-degree sexual assault, N.J.S.A. 2C:14-2(b), and was sentenced to a five-year custodial sentence to be served at the Adult Diagnostic and Treatment Center (ADTC), community supervision for life, N.J.S.A. 2C:43-6.4, and compliance with the requirements of Megan's Law, N.J.S.A. 2C:7-1 to -23. On November 6, 2006, B.R. was released on parole.

In August 2008, B.R. pressed his groin against the back of a six-year old boy in a casino arcade. B.R. was charged, and subsequently pleaded guilty to second-degree sexual assault, N.J.S.A. 2C:14-2(b). He was sentenced to an eight-year custodial term subject to the requirements of the No Early Release Act,

N.J.S.A. 2C:43-7.2, compliance with Megan's Law, N.J.S.A. 2C:7-1 to -23, and parole supervision for life, N.J.S.A. 2C:43-6.4. The court ordered that B.R. serve his sentence at the ADTC.

In August 2016, the State requested B.R.'s civil commitment pursuant to the SVPA. The State arranged for Dr. Roger Harris, a psychiatrist, and Dr. Debra Roquet, a STU psychologist, to evaluate B.R., but B.R. refused to meet with them. Dr. Harris and Dr. Roquet conducted forensic evaluations of B.R. based on his ADTC records and other records related to his offense history.

Dr. Harris and Dr. Roquet testified at the final commitment hearing. They recognized that reports from B.R.'s prior treatment included favorable information, but they separately and independently determined B.R. suffered from a mental abnormality or personality disorder, and presented a high likelihood of reoffending.

Dr. Harris testified B.R. suffered from pedophilic disorder. He based the diagnosis on B.R.'s history of sexual crimes and offenses committed against young boys, his determination that B.R. compulsively repeated deviant behavior, and B.R.'s reporting of years of sexual fantasies involving boys between the ages of six and twelve.

Dr. Harris further opined that the pedophilic disorder predisposed B.R. to engage in acts of sexual violence and that

B.R. demonstrated an inability to control his impulses. Dr. Harris noted B.R. had been in treatment when he committed his criminal offenses, committed the criminal offenses following prior convictions for sexually deviant conduct toward young boys, and committed the crimes in public places where there was a high risk of being caught. Dr. Harris observed that defendant suffered from some traits of antisocial personality disorder including impulsivity, which contributed to B.R.'s inability to "override his sexual desire" for young boys.

In part, Dr. Harris's opinion was also based on his use of the Static-99 assessment instrument.[1] According to Dr. Harris, B.R.'s score of seven on the assessment showed B.R. had a high risk of reoffending.

Dr. Harris testified that B.R.'s disorders would not spontaneously remit. He stated that although the records included favorable information concerning B.R.'s prior treatment, B.R.'s treatment did not effectively mitigate his risk of reoffending. Dr. Harris explained that B.R. was in the "high-risk category of men who sexually reoffend when released." Based on all of the information he considered, he opined that B.R. presented a current

[1] The Static-99 is a ten item actuarial assessment instrument utilized to assess male sex offenders' risk of re-offense. Static99/Static99R, Static99 Clearinghouse, http://www.static99.org (last visited August 31, 2017).

risk of a high likelihood of reoffending if placed in a setting less restrictive than the STU.

Dr. Roquet testified that she conducted a forensic evaluation of B.R. based on the ADTC treatment records and other records related to B.R.'s prior offenses. She explained that B.R. admitted he was sexually attracted to pre-pubescent boys and that there had been occasions he could not resist his impulse to act on his attraction. She testified B.R.'s attraction to young boys was "powerful" and "behaviorally compelling" and observed that B.R.'s history showed an escalation from noncontact to physical contact offenses.

Dr. Roquet acknowledged the ADTC records showed B.R. did well in treatment prior to his release in 2006 and again in 2016. She noted, however, that B.R. reoffended following the completion of his ADTC treatment in 2006, and while he was serving community supervision for life. She opined that B.R.'s ostensible success in treatment did not mitigate his risk of reoffending because of his history, the power of his arousal for young boys, and his inability to control his impulses.

Dr. Roquet diagnosed B.R. with pedophilic disorder and substance abuse issues with cocaine and cannabis that are in remission. She testified that B.R.'s age, fifty-one, is the primary factor mitigating against his reoffending. She concluded,

however, that based on B.R.'s history, powerful pedophilic arousal, substance abuse issues, and the failure of treatment to effectively mitigate against the risk of reoffending, it was highly likely that B.R. would reoffend if he was released. Dr. Roquet also relied upon B.R.'s score of seven on the Static-99 assessment instrument as support for her conclusion B.R. represented a high risk of reoffending.

B.R. did not present any witnesses. The court found Dr. Harris and Dr. Roquet were credible witnesses. Based on their testimony, the court determined the State clearly and convincingly proved B.R. suffers from a mental abnormality and personality disorder, pedophilia, that does not spontaneously remit, he is predisposed to sexual violence, he has serious difficulty controlling his violent behavior, and presently is highly likely to reoffend. The court entered a civil commitment order in accordance with the SVPA, and B.R. appealed.

B.R. makes the following arguments:

> POINT I
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> THE COMMITMENT COURT COMMITTED REVERSABLE LEGAL ERROR WHEN IT SHIFTED THE BURDEN OF PROOF TO B.R. AND HELD THAT UNLESS B.R. SUBMITTED TO AN INTERVIEW WITH THE STATE DOCTORS AND CONVINCED THE COMMITMENT COURT THAT HE WAS NOT HIGHLY LIKELY TO REOFFEND, THEN THE COURT HAD NO CHOICE BUT TO COMMIT HIM.

POINT II

REVERSAL IS REQUIRED BECAUSE THE STATE INTRODUCED NO EVIDENCE THAT B.R. HAS A CURRENT MENTAL ABNORMALITY OR PERSONALITY DISORDER THAT MAKES HIM A CURRENT RISK OF BEING HIGHLY LIKELY TO SEXUALLY REOFFEND.

POINT III

[B.R.'S] COMMITMENT ORDER MUST BE REVERSED BECAUSE THE STATE WITNESSES RELIED SOLELY ON DOCUMENTS THAT THE STATE NEVER ENTERED INTO EVIDENCE. AS A RESULT, THE STATE FAILED TO MEET ITS BURDEN BY CLEAR AND CONVINCING EVIDENCE THAT B.R. REQUIRED CIVIL COMMITMENT UNDER THE SVPA.

The scope of our review of a commitment determination under the SVPA is "extremely narrow." In re Civil Commitment of R.F., 217 N.J. 152, 174 (2014) (quoting In re D.C., 146 N.J. 31, 58 (1996)). "The judges who hear SVPA cases generally are 'specialists' and 'their expertise in the subject' is entitled to 'special deference.'" Ibid.

We give deference to trial judges' findings of fact because "they have the 'opportunity to hear and see the witnesses and to have the "feel" of the case, which a reviewing court cannot enjoy.'" Ibid. (quoting State v. Johnson, 42 N.J. 146, 161 (1964)). We will "not overturn a trial court's findings because it 'might have reached a different conclusion were it the trial tribunal' or because 'the trial court decided all evidence or

inference conflicts in favor of one side' in a close case." Ibid. (quoting Johnson, supra, 42 N.J. at 162).

"So long as the trial court's findings are supported by 'sufficient credible evidence present in the record,' those findings should not be disturbed." Ibid. (quoting Johnson, supra, 42 N.J. at 162). We "should not modify a trial court's determination either to commit or release an individual unless 'the record reveals a clear mistake.'" Ibid. (quoting D.C., supra, 146 N.J. at 58).

Under the SVPA, "[i]f the court finds by clear and convincing evidence that the person needs continued involuntary commitment as a sexually violent predator, it shall issue an order authorizing the involuntary commitment of the person to a facility designated for the custody, care and treatment of sexually violent predators." N.J.S.A. 30:4-27.32(a). To classify a person as a sexually violent predator, the State must establish the following:

> (1) that the individual has been convicted of a sexually violent offense; (2) that he [or she] suffers from a mental abnormality or personality disorder; and (3) that as a result of his [or her] psychiatric abnormality or disorder, "it is highly likely that the individual will not control his or her sexually violent behavior and will reoffend.
>
> [R.F., supra, 217 N.J. at 173 (citations omitted) (quoting In re Commitment of W.Z., 173 N.J. 109, 130 (2002)); see also N.J.S.A.

30:4-27.26 (enumerating the three requirements).]

The SVPA defines a "[m]ental abnormality," as a "condition that affects a person's emotional, cognitive or volitional capacity in a manner that predisposes that person to commit acts of sexual violence." N.J.S.A. 30:4-27.26. Although the SVPA does not define "personality disorder," our Supreme Court has held that it is sufficient if the offender has a mental condition that adversely affects "an individual's ability to control his or her sexually harmful conduct." See W.Z., supra, 173 N.J. at 127; N.J.S.A. 30:4-27.26.

We first address B.R.'s contention that there was insufficient evidence supporting the court's determination that he suffered from a current mental abnormality or personality disorder resulting in a current risk that he is highly likely to sexually reoffend. B.R. argues the State did not present evidence showing his "current mental state and present state of dangerousness and therefore did not establish that he will engage in "sexually violent behavior and will reoffend . . . in the foreseeable future." See W.Z., supra, 173 N.J. at 132-33 (finding commitment under the SVPA must be based on the offender's "present serious difficulty with control over dangerous sexual behavior"). B.R. argues Dr. Harris, Dr. Roquet and the court erroneously

ignored his success in treatment at the ADTC and, as a result, the court's finding that he currently presents a high likelihood of reoffending is not supported by competent evidence.

B.R. relies on In re Commitment of G.G.N., 372 N.J. Super. 42, 58 (App. Div. 2004), where we found the State's experts' testimony was insufficient to sustain a commitment order. The experts in G.G.N. did not consider the offender's fourteen years of treatment while in ADTC and "came close to testifying that in their view, commission of the original offenses, twenty-one years earlier, was sufficient for SVP[A] commitment." Ibid. Here, Dr. Harris and Dr. Roquet did not ignore B.R.'s long-term treatment or the favorable reports about his treatment, and they did not rely exclusively on the commission of B.R.'s prior offenses to support their conclusions.

The doctors testified directly about B.R.'s treatment and favorable reports, but offered opinions discounting the mitigating effects of the treatment on B.R.'s risk of reoffending. They explained B.R. underwent treatment after his first criminal offense and continued treatment after being released in 2006, but that he nevertheless could not resist the impulse to again sexually assault a young boy in a public place. They relied on B.R.'s admitted powerful compulsion to sexually assault young boys and concluded that his impulsivity and substance issues result in an

inability to control his compulsion. They each utilized the Static-99 assessment instrument and separately graded B.R. at level seven, which supported their conclusions that B.R. was currently highly likely to sexually reoffend in the future. We therefore discern no basis in the record to reverse the court's findings and conclusions.

We find B.R.'s remaining arguments to be of insufficient merit to warrant extensive discussion in a written opinion. R. 2:11-3(e)(1)(E). We add only the following comments.

We are not persuaded by B.R.'s contention that the court improperly shifted the burden of proof to him. B.R. argues the court shifted the burden by observing that he refused to meet with Dr. Harris and Dr. Roquet and by stating that had he met with them, he may have provided information supporting a finding that his treatment mitigated his risk of reoffending.

It is not disputed that the State had the burden of proving by clear and convincing evidence each of the necessary statutory elements for a civil commitment under the SVPA. In re Civil Commitment of D.Y., 218 N.J. 359, 380 (2014). The court found that based on the testimony of Dr. Harris and Dr. Roquet, the State satisfied that burden here.

The court's reference to B.R.'s refusal to speak to Dr. Harris and Dr. Roquet did not alter or shift the burden. B.R. did not

have a right to refuse to speak with the doctors and he cannot benefit from his refusal to do so. In re Civil Commitment of A.H.B., 386 N.J. Super. 16, 29 (App. Div.), certif. denied, 188 N.J. 492 (2006). Nevertheless, the court did not indicate that it held B.R.'s refusal against him. To the contrary, when the court discussed B.R.'s refusal to speak with the doctors, it said B.R. had no obligation to speak with them.

The court never said or suggested that B.R. had the burden of proving anything related to his commitment and the court never relied upon B.R.'s refusal to speak with the doctors as a basis for its finding that the State met its burden. The court noted only that B.R.'s decision deprived the doctors of an opportunity to obtain information that might have changed their opinions about the effectiveness of B.R.'s treatment. In any event, the record shows that it was the doctors' testimony, and not B.R.'s refusal to speak with them, that provided the clear and convincing evidence upon which the court relied for its findings and conclusions.

We also reject B.R.'s contention that the court's findings cannot be sustained because the reports and records relied upon by Dr. Harris and Dr. Roquet were not admitted in evidence. The court based its findings and conclusions upon the testimony of the witnesses, who testified in detail concerning the various documents they reviewed and relied upon to form their respective

opinions. Also, there was no objection to the testimony based on the failure to admit the documents in evidence.

Affirmed.