

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0217-15T2

IN THE MATTER OF THE CIVIL
COMMITMENT OF C.C. SVP-705-14

Submitted May 2, 2017 – Decided July 18, 2017

Before Judges Yannotti and Sapp-Peterson.

On appeal from Superior Court of New Jersey,
Law Division, Essex County, Docket No. SVP-
705-14.

Joseph E. Krakora, Public Defender, attorney
for appellant (Nancy C. Hayes, Designated
Counsel, on the brief).

Christopher S. Porrino, Attorney General,
attorney for respondent (Melissa H. Raksa,
Assistant Attorney General, of counsel; Amy
Beth Cohn, Deputy Attorney General, on the
brief).

PER CURIAM

This is an appeal from an order of civil commitment under the
Sexually Violent Predator Act (SVPA), N.J.S.A. 30:4-27.24 to -
27.38.

In 1989, appellant, C.C., was convicted in Florida of two counts of armed sexual battery, armed robbery, burglary, armed kidnapping and committing a lewd act in the presence of a child. These convictions arose out of C.C.'s forcible entry into the home of the victim, whom he initially approached about purchasing a vehicle the victim was selling. Once he forcibly entered her home, C.C. sexually assaulted the victim in the presence of her two-year old child and committed the robbery. The court imposed a twenty-five year custodial sentence in a Florida State prison. In addition, he was subject to parole supervision for life and registration as a sex offender. Upon his release, he relocated to New Jersey where he lived with his sister.

In January 2011, C.C. pled guilty to second-degree sexual assault of his seventeen-year old niece, whom he impregnated. Prior to sentencing, C.C. was sent to the Adult Diagnostic Treatment Center (ADTC) in Avenel for the purpose of determining his eligibility for sentencing under the New Jersey Sex Offender Act (SOA), N.J.S.A. 2C:47-1 to -10 (requiring diagnosis of repetitive and compulsive sexual behavior). It was determined that he was not eligible for sentencing under the SOA. At sentencing, the court imposed a five-year custodial sentence, parole supervision for life, Megan's Law registration requirements and a Megan's Law Restraining Order.

On November 7, 2014, prior to C.C. completing his sentence, the State filed a petition seeking C.C.'s involuntary commitment under the SVPA. The trial court conducted a two-day commitment hearing. The State presented two expert witnesses, psychiatrist Roger Harris, M.D., and psychologist Nicole Paolillo, Ph.D. C.C. presented one expert witness, psychologist Christopher P. Lorah, Ph.D.

Dr. Paolillo concluded that C.C. suffers from a mental abnormality or personality disorder that predisposes him to sexually re-offend. She found that his personality disorder included anti-social features, which are reflected in his criminal background, impulsivity, poor judgment, substance abuse, and lack of concern for others. She concluded that these traits predispose C.C. to commit sexual offenses because they provide him with the motivation or the lack of concern for others when he wants to meet his needs.

Dr. Paolillo noted that C.C.'s PCL-R¹ score was 27.8. She explained that although this score does not meet the threshold of psychopathy, it is sufficient to demonstrate that such traits are

¹ The Hare Psychopath Checklist - Revised (PCL-R) is a diagnostic tool utilized as a predictor of future violence. <http://www.statisticssolutions.com/hare-psychopathy-checklist-revised-pcl-r/> (last visited June 19, 2017)

present. Further, on his Static-99R assessment², C.C. received a score of seven. This score placed C.C. in the high-risk category.

The State's second expert, Dr. Harris, similarly opined that C.C. suffers from a mental abnormality or a personality disorder, which predisposes him to sexually re-offend. He specifically diagnosed C.C. with antisocial personality disorder, finding that C.C.'s behavior spoke to antisocial attitudes and a pervasive pattern of disregard for the rights of others.

Dr. Harris did not, however, diagnose C.C. as suffering from a sexual pathology. He explained that although C.C. meets the criteria for paraphilia, C.C. did not reveal what motivated him in committing the sexual assaults. Thus, Dr. Harris expressed the opinion that C.C.'s actions were characterized by an inability to control his impulsivity, and "taking opportunities to sexually gratify himself in spite of the impact it has on others[.]" Consequently, while acknowledging that antisocial personality disorder does not predispose a person to sexually re-offend, Dr. Harris concluded that C.C.'s mental abnormality led him to sexually offend.

² Static 99 is a ten-point actuarial assessment instrument utilized to assess the risk of re-offense on the part of sex offenders. Static-99/Static-99R, Static99 Clearinghouse, www.static99.org (last visited June 13, 2017).

Dr. Lorah, in his testimony on behalf of C.C., concluded that although C.C. needed intervention to address his acting out sexually, he did not believe the level of intervention required the most restrictive setting posed by a civil commitment. Dr. Lorah did not diagnose C.C. as suffering from a personality disorder because C.C.'s history had "not demonstrated evidence of conduct disorder prior to the age of [fifteen]," which he testified is "a mandatory condition for the full diagnosis." He ultimately concluded that C.C. was less likely to re-offend.

Based upon the evidence presented at the hearing, the court found C.C. to be a sexually violent predator and requires continued involuntary commitment as a sexually violent predator. In reaching its decision, the court credited the testimony of the State's two experts and found the State presented clear and convincing evidence that: (1) C.C. has been convicted of sexually violent offenses; (2) he suffers from a mental abnormality or personality disorder; (3) has had a long history of antisocial behavior that predisposes him to sexual violence; and, (4) is presently highly likely to commit further acts of sexual violence if not confined for control, care, and treatment. The court entered an order of civil commitment to the Special Treatment Unit. The present appeal followed.

On appeal, C.C. advances one argument. He contends the State failed to prove by clear and convincing evidence that he is a sexually violent predator and the risk that he would engage in future acts of sexual violence "is at a sufficiently high level to justify continued civil commitment under the current treatment plan."

We reject the argument advanced. We affirm the order of commitment under the SVPA, substantially for the reasons expressed in Judge Mulvihill's comprehensive oral opinion of May 26, 2015. We add the following comments.

Our scope of review of a SVPA commitment trial "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)). We accord "deference to the findings of [] trial judges 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)). "The judges who hear SVPA cases are 'specialists' and 'their expertise in the subject' is entitled to 'special deference.'" Id. at 173. Accordingly, a trial court's determination is accorded substantial deference and may "be modified only if the record reveals a clear mistake." 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). Three requirements must be satisfied to classify a person as a sexually violent predator:

(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." Ibid. 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; see also N.J.S.A. 30:4-27.26.

It is undisputed that C.C. committed two sexually violent offenses in 1988 and 2009. It was also established through the credible testimony and findings of the State's two experts that C.C. suffers from a mental abnormality or personality disorder and is highly likely to sexually reoffend in the future. Although the experts reached slightly different conclusions regarding C.C.'s personality disorder, both experts based their conclusions on C.C.'s criminal background, impulsivity, poor judgment, substance abuse problems, failure to conform to social norms, and reckless disregard for the rights of others. Further, both experts reviewed C.C.'s records, conducted in-person interviews, and considered the past and present condition of C.C. We discern no basis in the record to disturb Judge Mulvihill's findings.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION