

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4011-14T2

IN THE MATTER OF THE
CIVIL COMMITMENT OF P.P.,
SVP-711-15.

Submitted April 5, 2017 – Decided July 18, 2017

Before Judges Simonelli and Gooden Brown.

On appeal from the Superior Court of New
Jersey, Law Division, Essex County, Docket No.
SVP-711-15.

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

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

Appellant P.P. filed a pro se supplemental
brief.

PER CURIAM

Appellant P.P. appeals from the April 27, 2015 Law Division
judgment involuntarily committing him to the Special Treatment
Unit (STU) as a sexually violent predator pursuant to the Sexually

Violent Predator Act (SVPA), N.J.S.A. 30:4-27.24 to -27.38. We affirm.

An involuntary civil commitment can follow service of a sentence, or other criminal disposition, when the offender "suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for control, care and treatment." N.J.S.A. 30:4-27.26; see also N.J.S.A. 30:4-27.25. To civilly commit an individual, the State must prove by clear and convincing evidence:

(1) that the individual has been convicted of a sexually violent offense; (2) that he suffers from a mental abnormality or personality disorder; and (3) that as a result of his psychiatric abnormality or disorder, it is highly likely that the individual will not control his or her sexually violent behavior and will reoffend[.]

[In re Civil Commitment of R.F., 217 N.J. 152, 173 (2014) (citations omitted) (quoting In re Commitment of W.Z., 173 N.J. 109, 130 (2002)).]

"Although the first two elements derive directly from the statute, to comport with substantive due process concerns, [the] Court interpreted the third statutory element as requiring the State to show that a person is 'highly likely,' not just 'likely,' to sexually reoffend." Ibid.

In order to be considered a sexually violent predator, an individual must have committed a sexually violent offense. N.J.S.A. 30:4-27.26. Sexual assault is considered a sexually violent offense. Ibid. In this case, in 1995, P.P., then age twenty-one, pled guilty to endangering the welfare of a twelve-year-old girl, E.G., with whom he had oral and vaginal intercourse on three occasions. He was sentenced to 364 days in the county jail, three years' probation, community supervision for life (CSL), and ordered to undergo a psychological evaluation and follow all recommendations.

In January 2003, P.P. pled guilty to two counts of second-degree sexual assault, N.J.S.A. 2C:14-2(c), of two fourteen-year-old girls, A.S. and J.F., with whom he had sexual intercourse. P.P. impregnated A.S. who bore a child. P.P. was sentenced to two concurrent eight-year terms of imprisonment and CSL, and ordered to comply with Megan's Law registration requirements.

In 2007, while investigating a complaint that P.P. had sexually assaulted a six-year-old girl, the investigator discovered that P.P. was not living at the address he had registered under Megan's Law. In January 2011, P.P. pled guilty to the CSL violation, and was sentenced to eighteen months in State prison.

In May 2008, P.P. was arrested and charged with violating the condition on special sentence that prohibited him from using the internet to access social network websites. P.P. was found guilty of the charge and sentenced to eighteen months in State prison.

In May 2010, an investigator from the Gloucester County Prosecutor's Office was monitoring the internet and found suspicious file extensions on P.P.'s computer. An investigation revealed files showing an adult male engaging in various sex acts with a prepubescent female and a tutorial demonstrating how to use various objects as sex toys with a preteen daughter and avoid detection.

In August 2010, P.P. pled guilty to second-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(b)(5)(a),¹ and fourth-

¹ N.J.S.A. 2C:24-4(b)(5)(a) provides as follows:

A person commits a crime of the second degree if, by any means, including but not limited to the Internet, he:

(i) knowingly distributes an item depicting the sexual exploitation or abuse of a child;

(ii) knowingly possesses an item depicting the sexual exploitation or abuse of a child with the intent to distribute that item; or

(iii) knowingly stores or maintains an item depicting the sexual exploitation or abuse of a child using a file-sharing program which is designated as available for searching by or copying to one or more other computers.

degree violation of special sentence for failure to register and notify the police of a change of address, N.J.S.A. 2C:43-6.4(d). P.P. was sentenced to six years in State prison on the endangering charge, and a concurrent eighteen months on the CSL violation. P.P. also has an adult nonsexual criminal history that includes convictions for simple assault, terroristic threats, and domestic violence resulting in a final restraining order issued against him.

On January 9, 2015, the State filed a petition seeking P.P.'s involuntary commitment under the SVPA. Judge James F. Mulvihill conducted a commitment hearing, at which a psychiatric expert, Roxanne Lewin, M.D., and a psychological expert, Nicole Paolillo, Psy.D., testified for the State. Defendant testified on his own behalf.

Dr. Lewin attempted to interview P.P., but he declined to attend. Based on her review of P.P.'s records, the doctor found it significant that P.P. continued to sexually assault young girls in 2002 even after a prior conviction for the same type of sexual offense in 1995. She also found it a high risk behavior that P.P. viewed child pornography while on CSL for these prior sex

convictions. She scored P.P. with a "6" on the STATIC-99R² actuarial instrument, indicating he fell within the high risk range to sexually recidivate in the community.

Dr. Lewin diagnosed P.P. with Paraphilic Disorder, Not Otherwise Specified, because of his arousal to prepubescent females which resulted in multiple convictions for sexual assault. She noted that even though P.P. was subject to CSL, he participated in internet file sharing of child pornographic material, further reinforcing his sexual deviance. She considered this offense when determining P.P.'s ability to be monitored in the community. She found it unlikely that P.P. thought all of his young victims were of adult age.

Dr. Lewin also diagnosed P.P. with a Personality Disorder, NOS with Antisocial Traits, because of his demonstrations of unlawful behavior and disregard for the rights of others beginning at age nineteen. She found that P.P. was unable to control his

² The STATIC-99R is an actuarial test used to estimate the probability of sexually violent recidivism in adult males previously convicted of sexually violent offenses. See Andrew Harris et al., Static-99 Coding Rules Revised-2003 5 (2003). Our Supreme Court has explained that actuarial information, including the Static-99, is "simply a factor to consider, weigh, or even reject, when engaging in the necessary factfinding under the SVPA." R.F., supra, 217 N.J. at 164 n.9 (quoting In re Commitment of R.S., 173 N.J. 134, 137 (2002)).

impulses and that prior legal sanctions had no deterrent effect on him. She also considered P.P.'s multiple arrests for nonsexual criminal offenses.

Dr. Lewin testified that while P.P. had participated in some outpatient sex offender treatment sessions, they had no helpful or significant effect. She could not point to any factors, such as treatment progress, age, or current medical problems that mitigated P.P.'s current high risk.

Dr. Lewin concluded that P.P. suffers from a Paraphilia and Personality Disorder that affect him emotionally, cognitively, or volitionally so as to predispose him to commit acts of sexual violence. She opined that P.P.'s disorders cause him to have serious difficulty controlling his sexual offending behavior such that he is highly likely to sexually reoffend if not confined to the STU for treatment. She pointed to P.P.'s deviant sexual arousal to young girls, his antisocial personality traits, multiple victims, and prior failures under supervision as aggravating factors leading her to conclude he is highly likely to reoffend if not confined.

Dr. Paolillo twice attempted to interview P.P., but he declined. Based on her review of P.P.'s records, she testified that during an evaluation with Jeffrey B. Allen, Ph.D. at the Adult Diagnostic Treatment Center, P.P. acknowledged that he knew

E.G. was twelve years old when they had sexual intercourse. The doctor found P.P.'s offending history significant because of the consistency of the ages of his young victims and his commission of the 2002 sexual offenses while on CSL. She testified: "It's reflective of non-compliance with supervision, which is a robust predictor of recidivism. . . . [P.P. is] a repeat offender of the supervision that's been imposed upon him[,]" namely, failure to register under Megan's Law, accrual of new charges, and possession of photos of children engaged in sex acts.

Dr. Paolillo found it improbable that P.P. could not know many of the files found on his computer contained child pornography because of the file names "pedo, preteen, baby, underage, child lover, and 12-, 11-, 10-, 9-, 8-, 7-, 6- year old." She was concerned that someone with P.P.'s history of sexual offenses against children was reinforcing his deviant sexual arousal through child pornography. She stated: "It's a precipitator to [sexual] offending. It's an exceptionally high risk behavior." She explained that by viewing explicit sexual images of children, P.P. was reinforcing his sexually deviant arousal that, in turn, becomes part of his sexual assault cycle.

Dr. Paolillo testified that P.P. had not been exposed to sex offender treatment beyond the few court-ordered sessions following

his first sexual offense conviction. She found it significant that P.P. sexually reoffended after exposure to treatment.

Dr. Paolillo diagnosed P.P. with Pedophilia, sexually attracted to females, non-exclusive, because his criminal history demonstrated his sexual arousal to female children between the ages of twelve and fourteen. She testified that Pedophilia does not spontaneously remit.

Dr. Paolillo also diagnosed P.P. with Other Specified Personality Disorder with Antisocial Features, which is characterized by a pervasive, persistent, maladaptive pattern of behaviors and inner experience. She explained that the antisocial features of P.P.'s personality manifest in a pattern of disregard for the wellbeing of others, failure to conform to social norms, lack of genuine remorse, and impulsive and manipulative proclivities in pursuing young impressionable children for sex.

Dr. Paolillo also diagnosed P.P. with Alcohol Use Disorder, mild, based on P.P.'s report that he was intoxicated when he sexually assaulted E.G. The doctor explained that this disorder does not by itself predispose P.P. toward sexual violence, but alcohol "facilitates his expression of his sexual deviance, as well as his antisocial tendencies. It's a disinhibiting factor. It provides license to pursue behaviors that an individual would typically stop themselves from pursuing."

In forming her risk assessment, Dr. Paolillo considered P.P.'s score of "6" on the STATIC-99R, his failure to comply with supervisory conditions, and his substance abuse disorder that serves as a disinhibiting influence on him and a component of his sex assault cycle. She found no mitigating factors and that P.P. had not benefitted from any treatment.

Dr. Paolillo concluded that P.P.'s Pedophilia and Personality Disorder affect his emotional, volitional, and cognitive capacities, and predispose him to commit sexually violent acts. She opined that P.P.'s Alcohol Use Disorder could act as a disinhibitor and "facilitate[] his expression of his sexual deviance as well as his antisocial tendencies." She found P.P. highly likely to sexually reoffend if not confined.

During his testimony, P.P. admitted he had sexual intercourse with E.G. in 1995, and denied knowing whether she was over or under the age of sixteen. He insisted he did not know his victims were twelve or fourteen years old.

In a comprehensive oral decision, Judge Mulvihill found by clear and convincing evidence that: P.P. was convicted of sexually violent offenses; continues to suffer from a mental abnormality or personality disorders of paraphilia and pedophilia that do not spontaneously remit; and was highly likely to engage in further

acts of sexual violence if not confined to a secure facility for control, care, and treatment. The judge concluded that

[C]learly [P.P.] is a danger to the community.

It's not at all believable that he didn't know the ages of these children when he sexually abused them. And the State has proven by clear and convincing evidence that [P.P.] is a threat to the health and safety of others because of the high likelihood of his engaging in sexually violent acts. The State has proven by clear and convincing evidence that [P.P.] has serious difficulty controlling his sexually harmful behavior. It's highly likely he will not control his sexually violent behavior and will reoffend by clear and convincing evidence and has a present serious difficulty with control, and it's highly likely he will . . . reoffend by clear and convincing evidence.

On appeal, P.P. contends that the State failed to prove by clear and convincing evidence that he suffers from a present mental abnormality and is a sexually violent predator with a high risk of future recidivism.³ We disagree.

Our review of a commitment determination is extremely narrow. R.F., supra, 217 N.J. at 174. "The judges who hear SVPA cases

³ We decline to address P.P.'s contention in his pro se supplemental brief that classification of his strict liability convictions as sexually violent offenses for the purpose of the SVPA violates his due process rights. P.P. did not raise this issue before Judge Mulvihill and it is not jurisdictional in nature nor does it substantially implicate the public interest. Zaman v. Felton, 219 N.J. 199, 226-27 (2014) (citation omitted).

generally are 'specialists' and 'their expertise in the subject' is entitled to 'special deference.'" Ibid. "The final decision whether a person previously convicted of a sexually violent offense is highly likely to sexually reoffend lies with the courts, not the expertise of psychiatrists and psychologists. Courts must balance society's interest in protection from harmful conduct against the individual's interest in personal liberty and autonomy." Ibid. "A trial judge is 'not required to accept all or any part of [an] expert opinion[].' The ultimate determination is 'a legal one, not a medical one, even though it is guided by medical expert testimony.'" Ibid. (quoting In re D.C., 146 N.J. 31, 59, 61 (1996)). We should not modify the judge's determination "unless 'the record reveals a clear mistake.'" Id. at 175 (quoting D.C., supra, 146 N.J. at 58). "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 State v. Johnson, 42 N.J. 146, 162 (1964)).

Governed by these standards, we discern no reason to disturb Judge Mulvihill's decision. The documentary evidence and testimony of Dr. Lewin and Dr. Paolillo, which Judge Mulvihill found credible, amply supports the judge's findings that P.P. presently suffers from both a mental abnormality and personality disorders, and that as a result of his mental abnormality or

personality disorder, he is highly likely to engage in further acts of sexual violence if not confined. Dr. Lewin diagnosed P.P. with a paraphilia characterized by arousal to prepubescent females, and Dr. Paolillo diagnosed him with Pedophilia characterized by his sexual arousal to female children between the ages of twelve and fourteen. Both doctors opined that these conditions predispose P.P. to commit future acts of sexual violence and do not spontaneously remit.

Dr. Lewin and Dr. Paolillo also diagnosed P.P. with a Personality Disorder, and opined this condition also predisposes him to commit future sexually violent acts. Dr. Paolillo further opined that P.P.'s risk to reoffend was heightened by his Alcohol Use Disorder. Both doctors opined that P.P. had not benefitted from sex offender treatment.

We are satisfied that the record amply supports Judge Mulvihill's decision that P.P. is a sexually violent predator who suffers from a mental abnormality and personality disorder that make him highly likely to engage in acts of sexual violence if not confined to a secure facility for control, care and treatment.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION