

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4228-14T2

IN THE MATTER OF
THE CIVIL COMMITMENT
OF C.E.G., SVP-452-07.

Submitted February 28, 2017 – Decided July 10, 2017

Before Judges Reisner and Rothstadt.

On appeal from the Superior Court of New
Jersey, Law Division, Essex County, SVP-452-
07.

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

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

PER CURIAM

C.E.G. appeals from a judgment entered by the Law Division
continuing his civil commitment 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. On appeal, he contends that there

was no basis for the court to continue his commitment, because his conviction for the New Jersey offense that served as the predicate for his original commitment was vacated as a result of his successful petition for post conviction relief (PCR). He also argues there was insufficient evidence to sustain the court's determination that he was a "sexually violent predator" or that there was a "risk of future recidivism." We disagree and affirm.

We last addressed C.E.G.'s commitment in a 2012 unreported decision¹ in which we summarized his history of violent crimes and his initial commitment. We stated:

C.E.G. was civilly committed under the SVPA by a final order entered on September 7, 2007. We affirmed that order. [C.E.G. I, supra, slip op. at 1.] We described the factual background of C.E.G.'s commitment as follows:

To summarize his history of criminal convictions, from the time he was eighteen to the time he was forty-two, C.E.G. attempted to anally penetrate a three-year old girl in Virginia in 1980; tried to rape a twenty-seven year old female neighbor in 1995; and molested a thirteen-year old boy in 2004. He was also involved in at least two non-sexual offenses in which he was

¹ This is our fourth review and affirmance of the trial court's decisions to continue C.E.G.'s commitment. See In re Civil Commitment of C.E.G. (C.E.G. I), No. A-0823-07 (App. Div. Nov. 12, 2009); In re Civil Commitment of C.E.G. (C.E.G. II), No. A-2953-09 (App. Div. Aug. 2, 2010), certif. denied, 205 N.J. 101 (2011); In re Civil Commitment of C.E.G. (C.E.G. III), No. A-1624-11 (App. Div. June 26, 2012), certif. denied, 213 N.J. 567 (2013).

armed with a gun. C.E.G. spent his prison sentence for the 2004 offense in the New Jersey State facility for sex offenders at Avenel (ADTC). While at ADTC, he made little progress in treatment, "did not acknowledge his sexually inappropriate behavior, and he continued to minimize or deny the offenses."

[C.E.G. I, supra, slip op. at 2-3].]

While at the STU, C.E.G. has declined to participate in treatment. He also declined to be interviewed for the psychological report prepared for his review hearing and declined to attend the hearing itself, which was held on October 20, 2011.

[C.E.G. III, supra, slip op. at 1-2.]

C.E.G. has continued to refuse to participate in treatment or be interviewed for the psychological reports prepared for his review hearings. However, since our last review, C.E.G. successfully pursued a PCR petition that resulted in the vacating of his 2005 conviction for third-degree endangering the welfare of a child (EWC), N.J.S.A. 2C:24-4(a), which was also the only sexual violent offense he committed in New Jersey. He subsequently pled guilty to harassment, N.J.S.A. 2C:33-4, a disorderly persons offense.²

² The PCR court allowed C.E.G. to withdraw his original plea.

Relying on the vacating of his conviction for EWC, C.E.G. filled a motion seeking an order to vacate his original commitment, arguing that harassment did not constitute a predicate offense under the SVPA. In response, Judge Phillip M. Freedman ordered the State to file an updated petition for civil commitment. The State amended its petition to rely upon C.E.G.'s 1995 Virginia conviction for attempted rape as the predicate offense.

On April 24, 2015, Judge Freedman held what he characterized as both a review hearing and "a re-hearing based on the new status of [C.E.G.'s] criminal history." At the hearing, the State presented the unrebutted expert testimony of Dr. John P. Zincone, a psychiatrist, and Dr. Laura Carmignani, a psychologist. C.E.G. offered no testimony or other evidence.

The State's experts confirmed that C.E.G. refused to be interviewed by them or participate in any treatment programs and remains on "refusal status." Because C.E.G. refused to be interviewed, the experts relied solely upon C.E.G.'s criminal history and institutional records, including reports from other experts prepared over the years, to formulate their opinions.

Zincone testified C.E.G. suffers from anti-social personality disorder and other specified paraphilic disorder. He stated the fact that C.E.G.'s conviction for EWC was vacated did not change the underlying facts of his 2004 offense, which C.E.G. recounted

to a doctor at ADTC. Zincone noted C.E.G. has a substantial criminal history involving victims in a "broad age range," including "sexual activity with children in the post-pubescent [and] pre-pubescent age range, [and] non-consenting sex with an adult," in addition to violent non-sexual criminal offenses. The doctor opined that the aggregate of those offenses raises the risk C.E.G. will reoffend if released. Moreover, C.E.G.'s records reflected that he has made statements while at ADTC about not being able to control his sexual impulses and "indicat[ing he had] thoughts of having sex with someone much younger than himself." Zincone concluded C.E.G. "suffers from a mental abnormality or personality disorder which predispose[s] him to sexually reoffend," with a Static-99R score that reflects he is at a moderate to high risk of reoffending.

Carmignani's testimony paralleled Zincone's observations, diagnoses, and conclusions, adding that the Static-99R testing manual "states that overturned convictions can still be counted as the index offense" for purposes of determining the likelihood the subject would reoffend. She also noted, the STU has required that C.E.G. participate "in the treatment orientation process group at least once a week" in an attempt "to convince him to come off treatment refusal status and to engage in treatment."

On May 1, 2015, Judge Freedman entered a judgment continuing C.E.G.'s commitment and placed his reasons on the record on the same date. In his thorough oral decision, the judge reviewed the history of C.E.G.'s commitment and the predicate offense. He also discussed the experts' reports admitted into evidence, their testimony, and their recommendations for continued commitment. He also considered the reports about C.E.G.'s progress in institutional programs, including his refusal to participate in treatment. Judge Freedman found by clear and convincing evidence that C.E.G.

suffer[s] from a mental abnormality in the form of paraphilia [and other] diagnoses, and a personality disorder . . . that affect him mostly cognitively so as to predispose him . . . to engage in acts of sexual violence. And that if released, he would be -- would have serious difficulty controlling his sexually violent behavior and would, for the reasonably foreseeable future, be highly likely to engage in acts of sexual violence.

On appeal, C.E.G. argues:

POINT I.

THE COURT ERRED BY FAILING TO GIVE PROPER WEIGHT TO [C.E.G.'s] CHANGED CIRCUMSTANCES, WHICH SHOULD HAVE UNDERMINED THE STATE'S CASE.

POINT II.

THE STATE FAILED TO PROVE BY CLEAR AND CONVINCING EVIDENCE THAT RESPONDENT [C.E.G.] IS A SEXUALLY VIOLENT PREDATOR AND THAT THE RISK OF FUTURE RECIDIVISM IS AT A SUFFICIENTLY

HIGH LEVEL TO JUSTIFY CONTINUED CIVIL
COMMITMENT UNDER THE CURRENT TREATMENT PLAN.

The scope of our review of a trial court's commitment decision 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 must defer to the trial judge's findings of fact so long as they are supported by sufficient credible evidence in the record. Id. at 175. Deference to the trial judge's factual findings is appropriate because the judge had the "opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy." Id. at 174 (quoting State v. Johnson, 42 N.J. 146, 161 (1964)).

The SVPA permits the involuntary civil commitment of "'a person who has been convicted . . . of a sexually violent offense' who '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.'" Id. at 173 (quoting N.J.S.A. 30:4-27.26). To obtain an order of commitment under the SVPA, the State must prove "by clear and convincing evidence," N.J.S.A. 30:4-27.32(a),

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."

[Ibid. (citations omitted) (quoting In re Commitment of W.Z., 173 N.J. 109, 130 (2002)).]

"Clear and convincing evidence" is "evidence that produces 'a firm belief or conviction' that the allegations are true" and "is 'so clear, direct[,] . . . weighty and convincing' that the factfinder can 'come to a clear conviction' of the truth without hesitancy." R.F., supra, 217 N.J. at 173 (quoting In re Jobes, 108 N.J. 394, 407 (1987)).

Applying these guiding principles, we turn first to C.E.G.'s argument that the judge should not have relied upon an out-of-state conviction as a predicate offense, and we conclude it is without sufficient merit to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E). We affirm substantially for the reasons stated by Judge Freedman in his oral decision. We add the following brief comments.

The PCR court's vacating of C.E.G.'s conviction for EWC did not establish changed circumstances, and Judge Freedman correctly relied upon his out-of-state conviction as a predicate offense to maintain his commitment. Out-of-state convictions that "correspond sufficiently to sexual assaults proscribed under New Jersey law and qualifying as predicate offenses under the SVPA"

can form the predicate offense for commitment, even though they occurred in another state and years earlier. See In re Civil Commitment of R.Z.B., 392 N.J. Super. 22, 44 (App. Div.), certif. denied, 192 N.J. 296 (2007).

Equally without merit is C.E.G.'s challenge based upon the State's failure to file new certificates with its amended petition, see N.J.S.A. 30:4-27.26; N.J.S.A. 30:4-27.28, and his claim that the evidence adduced at trial was insufficient. Contrary to his argument, we will not vacate an order for commitment due to a technical deficiency in an underlying certificate when "the totality of the evidence" establishes defendant was a sexually violent predator suffering from a mental condition that made it highly likely he would reoffend, In re Civil Commitment of T.J.N., 390 N.J. Super. 218, 226 (App. Div. 2007), especially when we conclude, as here, the judge's findings were supported by substantial credible evidence, despite C.E.G.'s ongoing refusal to be interviewed for the reports.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION