

## RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-4820-14T2

IN THE MATTER OF THE  
CIVIL COMMITMENT OF W.T.  
SVP-687-13.

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Submitted March 1, 2017 – Decided July 18, 2017

Before Judges Fuentes and Simonelli.

On appeal from the Superior Court of New  
Jersey, Law Division, Essex County, Docket No.  
SVP-687-13.

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

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

PER CURIAM

Appellant W.T. appeals from the June 10, 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[.]

"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."

[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)).]

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. With this legal framework in mind, we will now consider the facts that led to W.T.'s commitment under the SVPA.

On December 14, 2000, W.T. pled guilty to first-degree aggravated sexual assault of a child under the age of thirteen, N.J.S.A. 2C:14-2(a)(1). This conviction was predicated on the following facts. On October 14, 2000, W.T., then age eighteen, grabbed a twelve-year-old girl identified here as L.B, pulled on her clothes, and separated her from a friend with whom she was walking. W.T. slapped L.B. in the faced and threw her on the porch of a nearby house. A neighbor interrupted the assault and told W.T. let L.B. go. W.T complied, but followed L.B. and her friends as they walked to a nearby store. W.T. again approached L.B., pulled her hair, grabbed her arm, and forced her into the hallway of an apartment building while covering her mouth and repeatedly striking her on the left side of her face. W.T. pulled down one side of L.B.'s pants and inserted his penis into her vagina. When L.B. resisted, he slapped and choked her and held down her arms. W.T. stopped the assault when L.B. started to scream and cry. The police arrested W.T. shortly thereafter. While being processed, he exposed his penis to a female police officer and told her to "suck this."

Kenneth L. McNiel, Ph.D. conducted a psychological evaluation of W.T. at the Adult Diagnostic and Treatment Center (ADTC) to determine if he was eligible for sentencing under the New Jersey Sex Offender Act (SOA), N.J.S.A. 2C:47-1 to -10. During the evaluation, W.T. reported a chronic history of daily marijuana intoxication and intermittent use of ecstasy and angel dust; and he had an extensive history of delinquency, including car theft and drug dealing. His Family Part dispositions included a period of confinement at the Juvenile Detention Center in Jamesburg. W.T. also reported an extensive pattern of compulsive sexual thoughts and unusual sexual behaviors, including bondage, orgies, exposing himself, and using sexual toys. He said he masturbated several times daily and had compulsive masturbation fantasies involving rough sex and rape. W.T. admitted he was unable to control his sexually aggressive thoughts and fantasies and had raped two or three girls in the fifteen-year-old range.

Dr. McNiel found W.T. presented with severe psychological disturbance, including a likely psychotic disorder, and was a severely disturbed and impulsive individual with co-morbid psychotic symptomatology and sexual pathology. He found W.T. eligible for sentencing under the SOA, and recommended W.T. serve his sentence in the ADTC where he would receive sex offender therapy and psychiatric treatment.

On April 4, 2001, the court sentenced W.T. to an eight-year term of imprisonment to be served in the ADTC, with six years, nine months and twenty-three days of parole ineligibility. W.T. was also sentenced to community supervision for life (CSL) and ordered to comply with the registration requirements of Megan's Law. On August 21, 2003, his sentence was amended to include a five-year term of parole supervision to begin upon completion of his sentence. Defendant was sentenced under the version of the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2, that existed in April 2009, which required the sentencing judge to find defendant committed a "violent crime." The statute defined "violent crime" as any first or second degree offense in which the actor causes death or serious bodily injury. N.J.S.A. 2C:43-7.2(d); see also State v. Thomas, 166 N.J. 560, 567-68 (2001). "The Legislature amended NERA on June 29, 2001, eliminating the "violent crime" provision, opting instead to enumerate the specific crimes subject to NERA." State v. Norman, 405 N.J. Super. 149, 152 n.2 (App. Div. 2009).

While incarcerated at the ADTC, W.T. incurred over 200 institutional infractions for which he was sanctioned. Many of his infractions demonstrated sexually inappropriate behavior, including masturbating in his cell doorway; making sexual gestures; demanding sex from other inmates; having an ongoing

sexual relationship with a fellow inmate; and ejaculating and throwing semen out of his cell. W.T. also committed nonsexual infractions for which he was sanctioned, including numerous assaults; possession of a weapon; assault with a weapon; fighting with a person; threat with bodily harm; setting fires; refusing to obey; conduct which disrupts; and destroying/altering government property. On October 4, 2005, W.T. was charged with fourth-degree aggravated assault. He pled guilty, and was sentenced to ninety days consecutive to his present sentence.

Prior to completion of his sentence, W.T. was referred for civil commitment under the SVPA. Because one of the evaluating psychiatrists found W.T. did not meet the criteria for commitment, he was released from the ADTC on December 10, 2008. On February 9, 2009, he was placed on the Global Positioning Satellite (GPS) Monitoring Program.

W.T.'s criminal activity continued after his release. He was charged with throwing bodily fluids at Department of Corrections employees; pled guilty to an amended charge of improper behavior; and was sentenced to one day in jail. He was charged with aggravated assault with a deadly weapon; pled guilty; and was sentenced to ten days in jail. He cut off his GPS ankle transmitter without the Parole Board's approval, and was charged with failure to comply with sex offender monitoring device and interfering with

sex offender monitoring device. He was charged with fourth-degree failure to register, N.J.S.A. 2C:7-2(e); pled guilty; and was sentenced to one-year in prison. While incarcerated, he was charged with indecent exposure and making sexual proposals/threats, and sanctioned ninety days' administrative segregation for each charge.

Prior to W.T.'s max-out date of January 16, 2014, the State filed a petition seeking his involuntary commitment under the SVPA. Judge Philip M. Freedman conducted a commitment hearing, at which a psychiatric expert, Roger M. Harris, M.D., and a psychological expert, Christine E. Zavalis, Psy.D., testified for the State, and a psychological expert, Timothy P. Foley, Ph.D., testified for W.T.

Dr. Harris diagnosed W.T. with Antisocial Personality Disorder (ASPD) and Cannabis and Alcohol Use Disorders. He explained that these conditions do not spontaneously remit; only through treatment can one learn to control the impulses caused by these disorders; and the combination of an ASPD and Cannabis and Alcohol Abuse Disorders increased W.T.'s risk to sexually reoffend. Dr. Harris testified that W.T. demonstrated he had little ability to control his aggressiveness, both sexual and non-sexual, and when combined with alcohol or cannabis, whatever inhibitions remained would be quickly eroded, allowing W.T. to act

impulsively without thinking and without regard to himself or societal norms.

Dr. Harris testified that W.T.'s ASPD manifested as a serious difficulty controlling his sexual offending behavior. He opined that although ASPD alone does not predispose one to sexually reoffend, it did in W.T.'s case. He was concerned that, in both statements and drawings, W.T. demonstrated extremely poor impulse control, severe cognitive distortions, and anger toward women. Dr. Harris opined that W.T.'s inability to suppress or control himself demonstrated his profoundly poor regulation in both sexual and nonsexual realms. Dr. Harris emphasized that all of these examples overwhelmingly demonstrated that not only was W.T. sexually preoccupied, but was sexually aggressive in ways other than sexually assaulting people, such as the indecent exposure, the throwing of semen, the fantasies of raping, and actual self-reports of raping other minor females.

Dr. Harris testified that W.T. scored a "7" on the STATIC-99R<sup>1</sup> actuarial instrument, indicating that he fell within the high

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<sup>1</sup> 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

risk range to sexually recidivate when released from prison. However, that score did not fully reflect W.T.'s risk, as he also demonstrated dynamic and psychological factors not accounted for in the STATIC-99R that placed him in the high risk category, namely, a profound inability to self-regulate, the use of sex as a coping mechanism, poor cognitive problem-solving, and his sexualized aggression. Dr. Harris also testified that W.T. scored a "32.2" on the Psychopathy Checklist-Revised, 2nd Edition (PCL-R),<sup>2</sup> which indicated he met the diagnostic criteria for psychopathy.

Based on his review of the ADTC reports and the STU treatment notes, Dr. Harris concluded that W.T. made insufficient progress through treatment to mitigate his risk factors to sexually reoffend. He explained that W.T. served the majority of his incarceration at the ADTC in detention because of sanctions for behavioral problems and institutional infractions, and interfered

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SVPA.'" R.F., supra, 217 N.J. at 164 n.9 (quoting In re Commitment of R.S., 173 N.J. 134, 137 (2002)).

<sup>2</sup> The PCL-R provides a dimensional score that represents the extent to which a given individual is judged to match the "prototypical psychopath." The cut-off score on the PCL-R indicative of psychopathy is 30. That is, an individual who receives a score of 30 or above on the PCL-R meets diagnostic criteria for psychopathy.

with his engagement in treatment. Even when W.T. was in the general population at the ADTC, he was noncompliant with treatment and showed very poor cooperation with any rehabilitative and programming efforts.

Dr. Harris testified that since W.T.'s temporary commitment to the STU in 2014, his behavioral problems short-circuited his treatment progress. W.T. did poorly, incurred multiple MAP<sup>3</sup> placements, and was currently on MAP. Dr. Harris noted that at the STU, W.T. continued his ADTC incarceration history of acting out, which demonstrated a profound inability to control himself.

Dr. Harris diagnosed W.T. with Alcohol and Cannabis Use Disorders based on W.T.'s self-reports that he used marijuana daily beginning as an adolescent, and admission to abusing alcohol, cocaine, ecstasy and angel dust, overdosing on hallucinogenic mushrooms, and selling drugs. W.T. reported that he attended outpatient treatment for substance abuse but did not complete the program, and he did not attend substance abuse treatment while on parole and resumed consuming alcohol during this period. Dr. Harris noted that with W.T., an abuse of substances acted as a

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<sup>3</sup> The Modified Activities Program (MAP), a component of the clinical treatment program at the STU that focuses on stabilizing disruptive or dangerous behaviors, is a behavior-related treatment modality. M.X.L. v. NJDHS/NJDOC, 379 N.J. Super. 37, 45 (App. Div. 2005).

disinhibitor and whatever inhibitions remained would be quickly eroded allowing W.T. to act impulsively, criminally, and sexually, without thinking, and without regard to himself or societal norms. Dr. Harris concluded that W.T. had not had sufficient substance abuse treatment to mitigate his risk.

Dr. Harris concluded that W.T. suffers from: (1) a severe personality disorder that affects him emotionally, cognitively, or volitionally so as to predispose him to commit acts of sexual violence; and (2) a disinhibiting Alcohol and Cannabis Abuse Disorder. He opined that W.T.'s ASPD caused him to have serious difficulty controlling his sexual offending behavior such that he was highly likely to sexually reoffend if not confined to the STU for treatment.

Dr. Zavalis diagnosed W.T. with ASPD with Borderline features, which is characterized by a failure to conform to societal norms and lawful behavior, deceitfulness, impulsivity, irritability and aggressiveness, reckless disregard for safety of self or others, irresponsibility and lack of remorse. She also explained that the ASPD diagnosis took into account W.T.'s criminal behavior and aggressiveness, impulsive acts, and lack of any remorse or empathy for his victims.

Dr. Zavalis testified that the borderline features of W.T.'s personality manifested in a pattern of instability in his

interpersonal relationships, self-injurious behavior, paranoia, and intense anger. W.T.'s rape of L.B. demonstrated borderline behavior because W.T. acted sexually aggressive, compulsively, and brazenly in the presence of witnesses who could easily identify him, without any regard for the impact on the victim, the witnesses, or himself. W.T.'s borderline features were further demonstrated when, in response to L.B.'s rejection and resistance to his sexual advances, he repeatedly hit her and then raped her.

Dr. Zavalis noted that W.T.'s personality disorder also manifested in non-sexual ways, as evidenced by his many violent institutional infractions at the ADTC and MAP placements for aggressive behavior since arriving at the STU. Although an ASPD diagnosis alone does not predispose one to sexual violence, Dr. Zavalis concluded it did in W.T.'s case.

Dr. Zavalis also diagnosed W.T. with Cannabis Use Disorder, which refers to a "cluster of cognitive, behavioral, and physiological symptoms indicating that the individual continues using marijuana despite significant substance-related problems." Dr. Zavalis explained that this disorder did not, on its own, predispose W.T. toward sexual violence; however, if W.T. relapsed, it could have a disinhibiting effect on his behavior. Dr. Zavalis testified that the combination of W.T.'s ASPD and Cannabis Use Disorder increased his risk to sexually reoffend.

Dr. Zavalis provisionally diagnosed W.T. with Other Specified Paraphilia Disorder (nonconsent) based on his contradictory statements about his deviant arousal. Despite W.T.'s contradictions, Dr. Zavalis believed that he likely met the criteria for this disorder, but she declined to diagnose the full Paraphilia Disorder. However, she recommended that STU clinicians address the issue of W.T.'s deviant arousal to nonconsensual sex in his treatment. She also provisionally diagnosed W.T. with Borderline Intellectual Functioning based on prior testing administered at the ADTC.

Dr. Zavalis also found it significant the extent to which W.T. acted out while incarcerated. She remarked that the significance of the 200 disciplinary charges was not only the sheer number of infractions, but also the wide variety of the behavior, and found these acts illustrative of W.T.'s significant lack of emotional control and an inability to cope with stressors. W.T. externalized blame for these acts and took no responsibility or ownership of the behaviors that resulted in the sanctions imposed against him.

Dr. Zavalis noted that since arriving at the STU, W.T. incurred several MAP placements, had been on MAP continuously since September 2014, and failed to take any responsibility for these placements. W.T. failed to understand that by acting

similarly at the STU as he did at the ADTC, he was repeating his prior pattern of behavior that resulted in sanctions against him and the removal of privileges. W.T. also attempted to "play" the STU staff against each other, which indicated the strength of his personality disorder.

Dr. Zavalis testified that W.T. scored "32.2" on the PCL-R she administered, which placed him above the threshold for psychopathy, and a "7" on the STATIC-99R she administered, which placed him within the high risk range to sexually recidivate. She noted that W.T. did not have the necessary treatment progress to mitigate his risk; although he engaged in treatment periodically at the STU, his knowledge of concepts was minimal and he lacked coping skills and sufficient relapse prevention strategies; and the strategies he described -- walking away and avoiding the situation -- were unrealistic given his history. W.T. lacked the ability to manage his feelings when he does not get what he wants and resorts to "maladaptive coping strategies when under stress."

In her risk assessment, Dr. Zavalis considered W.T.'s high STATIC-99R and PCL-R scores, and his various dynamic factors unaccounted for in the actuarial tools, including his failure to comply with any type of community or institutional supervision and the frequent violation of both; lack of any deterrent effect of external supervision upon him; hostility, impulsivity, emotional

instability and sexual preoccupation; severe ASPD; use of sex to cope with stressors as evidenced by the almost compulsive masturbation while on the telephone despite complaints by others; and utter disregard for himself or others. Dr. Zavalis found there were no mitigating factors; W.T. had no benefit of any treatment effect; and he failed to comply with CSL conditions as evidenced by his parole violations and demonstrated ongoing behavioral issues.

Dr. Zavalis concluded that W.T.'s severe ASPD affected his emotional, volitional, and cognitive capacities, and predisposed him to commit sexually violent acts, and his Cannabis Use Disorder could act as a disinhibitor and erode any self-regulation should he relapse. Dr. Zavalis opined that W.T. was highly likely to sexually reoffend if not confined.

Dr. Foley agreed that W.T. met the diagnostic criteria for ASPD and Cannabis Use Disorder. However, he did not find that W.T.'s ASPD affected volitional controls that cause a predisposition to commit acts of sexual violence. He testified that in W.T.'s case, he would need more evidence of a pattern of paraphilic acts -- not just the one rape -- in addition to a diagnosis of ASPD in order to find that W.T. is predisposed to sexual violence.

Dr. Foley reviewed W.T.'s sexual and non-sexual offending and previous mental health assessments. He testified that the rape of L.B. was an unambiguous sexually violent act; however, he was unsure whether W.T.'s indecent exposure/masturbation while incarcerated should have been scored on the STATIC-99R as a sexual offense. He was also uncertain whether W.T.'s repeated acts of throwing semen from his cell were sexualized behaviors or just expressions of anger and disgust. Nevertheless, Dr. Foley did not find that these institutional behaviors would necessarily increase W.T.'s risk to sexually reoffend in the community.

Dr. Foley agreed with Dr. McNiel's finding that W.T. suffers from a likely psychotic disorder and Dr. McNiel's questioning of W.T.'s amenability for treatment. He also agreed with Dr. Harris that W.T.'s inability to self-regulate caused self-defeating behaviors that led to sanctions such as MAP placements at the STU, and admitted that W.T. is a "really disturbed impulsive individual with co-morbid psychotic symptomatology and sexual pathology as well." However, he believed that if W.T. dedicated himself, and if his mental health issues were under control, he could participate in treatment. Nonetheless, he conceded that W.T.'s history suggested he would not comply with the treatment program and would have a "great deal of difficulty with it, not so much

with the content, but with the behavioral regulation that would be necessary to go along with it."

Although conceding that W.T.'s ability to control himself in the community was "really questionable," Dr. Foley found that he was less than highly likely to sexually reoffend because of the absence of a Paraphilia diagnosis and his estimation of the STATIC-99R score. Dr. Foley believed that W.T. was highly likely to reoffend in general as opposed to sexually, and stated that if W.T. was re-arrested "the odds are it wouldn't be for a sexually violent offense, it would be for something else." Dr. Foley concluded that a drug treatment program and psychiatric services would be appropriate for W.T. (Aa400) He opined that W.T. did not satisfy the criteria for commitment under the SVPA and should be released.

Judge Freedman rejected Dr. Foley's opinion that W.T.'s ASPD does not predispose him to commit sexually violent acts, or that. W.T.'s behaviors while incarcerated could not be understood as sexual in nature and instead were expressions of anger and disgust. The judge found it more logical and reasonable to conclude that W.T.'s conduct was sexually based. The judge determined there was sufficient evidence to conclude that W.T.'s conduct, in conjunction with the very serious offense of aggravated sexual assault, showed his predisposition to re-offend sexually.

Judge Freedman found that the incident where W.T. exposed himself to a female officer during processing after his arrest for the aggravated sexual assault, and the exposure/masturbation while incarcerated, were significant in this case. The judge noted that Dr. Zavalis correctly utilized indecent exposure/masturbation incident as the predicate sexual offense which corresponded to a higher STATIC-99R score. The judge reiterated:

I think that's the basic issue here -- I think that there's more than an ample basis to conclude that [the indecent exposure/masturbation incident] was sexually motivated . . . that he can't control his sexual conduct . . . and that the experts of the [S]tate are well within reason to rely on all of his conduct after his brazen sexual assault to conclude that his [ASPD] Disorder predisposes him, and that it wasn't just a random . . . anti-social act.

Judge Freedman also discussed Dr. McNiel's report and W.T.'s psychological testing at the ADTC, and stressed the importance of many of W.T.'s representations and admissions during that testing. The judge commented:

Every person that gets convicted of a sexually violent offense goes to Avenel. One of these reports is in every one of those cases. I've never seen [someone's psychological condition] described as severe, and I have never seen a depiction of an ejaculating penis referred to in a house, tree, person test.

. . . .

[T]hese admissions [of additional 15-year-old victims] don't strike me as the kind of admissions somebody makes who is just trying to get into Avenel . . . and that's one of the key issues here, how people look at this particular document[.]

On the issue of conditional release into the community, Judge Freedman found that W.T. would "clearly not be amenable" and pointed to W.T.'s cutting off his GPS transmitter. Moreover, the judge found that because W.T. could not follow rules and regulations when incarcerated, "there's no reason to believe he would do so outside."

In conclusion, Judge Freedman credited the opinions of the State experts and found that W.T. suffers from a personality disorder that affects him cognitively and volitionally such that he is predisposed to engage in acts of sexual violence as demonstrated by the rape of L.B. and his sexually-related conduct thereafter. The judge determined that W.T. would have serious difficulty controlling his sexually violent behavior if released and would be highly likely in the foreseeable future to commit sexually violent acts. The judge stated:

I find that what he "tends to do" can be very dangerous. He hasn't been outside. He resorts to shanks. . . . He's willing to do violence. He's threatened people. He's engaged in threatening conduct. [W]hat he tends to do is very serious. He committed a very serious sex offense. He's engaged in sexually[-] related conduct ever since and there's no

reason to believe that if he were on the street he wouldn't be engaging in sexually violent conduct, as well as other kind[s] of criminal activity.

. . . .

Given the variety, and the extensiveness of his . . . sexually-related conduct, in prison, and at the STU, and his . . . profound inability to control himself . . . for the protection of the public and [W.T.] I will commit him.

The judge committed W.T. to the STU for the protection of the public, and for W.T. himself, because there was no question he would be engaged in conduct that would get him into "serious and deep trouble."

On appeal, W.T. argues that the State failed to prove he suffers from a mental abnormality which predisposes him to commit acts of sexual violence because his diagnosis of ASPD does not qualify as a mental abnormality under N.J.S.A. 30:4-27.26. He also argues that his impulsive conduct is not necessarily sexually motivated, and the State failed to prove that any subsequent conduct in which he may engage if released would be of a sexual nature.

Our review of a commitment determination is extremely narrow. R.F., supra, 217 N.J. at 174. "The judges who hear SVPA cases are generally 'specialists' and 'their expertise in the subject' is entitled to 'special deference.'" Ibid. (citation omitted). "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. (citations omitted). "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. (alterations in original) (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 basis to disturb Judge Freedman's decision. First, it is not necessary that an individual suffer from a mental abnormality to be deemed a sexually violent predator under the SVPA. A personality disorder alone may be used as a basis to conclude that one has a predisposition to sexually reoffend. See N.J.S.A. 30:4-27.26 (defining a "sexually violent predator," in part, as a person 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") (emphasis added); see also In re Civil Commitment of W.Z., 173 N.J. 109, 129 (2002). It is also not necessary that an individual have a sexual compulsion, such as paraphilia, or a complete or total loss of control over his or her behavior to be deemed a sexually violent predator under the SVPA. W.Z., supra, 173 N.J. 129. Rather, the individual must be unable to control his or her sexually violent behavior. Ibid.

The record amply supports Judge Freedman's findings that W.T. presently suffers from a personality disorder and that as a result of his personality disorder, it is highly likely that he will not control his sexually violent behavior and will reoffend if not confined to the STU for treatment. Even though W.T. was not diagnosed with a form of paraphilia, the State's experts diagnosed him with severe ASPD that affected him emotionally, cognitively, or volitionally so as to predispose him to engage in acts of sexual violence. The State's experts opined, credibly, that as a result of his personality disorder, it was highly likely that W.T. would sexually reoffend if not confined to the STU for 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