

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2217-15T5

IN THE MATTER OF THE
CIVIL COMMITMENT OF A.M.
SVP-716-15.

Submitted January 11, 2018 – Decided March 28, 2018

Before Judges Haas, Rothstadt and Gooden
Brown.

On appeal from Superior Court of New Jersey,
Law Division, Essex County, Docket No. SVP-
716-15.

Joseph E. Krakora, Public Defender, attorney
for appellant A.M. (Alison Perrone, 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).

PER CURIAM

A.M. appeals from a September 22, 2015 judgment ordering his
involuntary commitment to the Special Treatment Unit (STU)
pursuant to the New Jersey Sexually Violent Predator Act (SVPA),

N.J.S.A. 30:4-27.24 to -27.38. For the reasons that follow, we affirm.

Sixty-four-year-old A.M. was convicted on two separate occasions of violently raping two adult women. In both instances, he physically assaulted and drove his victims to a secluded area while threatening to kill them, then raping and throwing them out of his car. He committed the first assault at age twenty-four, against a thirty-three-year-old woman. Police later arrested A.M. and charged him with, among other offenses, rape and kidnapping. On April 10, 1979, he pled guilty to the rape charge and was later sentenced to "an indeterminate term not to exceed . . . ten (10) years."

On January 11, 1983, A.M. was paroled from the correctional facility. Nine months later, A.M. committed another sexual assault, this time against a twenty-one-year-old woman, but in essentially the same violent manner. The same day, A.M. was arrested and charged with, among other offenses, kidnapping, and aggravated sexual assault. This arrest violated the terms of his parole for the first sexual assault.¹ On June 17, 1986, a jury found A.M. guilty on all counts and the court sentenced him to an

¹ In addition to committing those two offenses, A.M. admitted to "numerous incidents" of sexual assaults, beginning at a very young age of other women who refused his sexual advances.

aggregate thirty-year term in prison, subject to a fifteen-year period of parole disqualification, followed by an aggregate term of twenty years in the Adult Diagnostic and Treatment Center, subject to a ten-year period of parole ineligibility. A.M. spent eight years of this sentence at the Adult Diagnostic and Treatment Center (ADTC), and several of those years were spent in administrative segregation.

While imprisoned, A.M. accrued a record of institutional infractions including fighting, refusing to obey, threatening bodily harm, attempting to assault an officer, engaging in disruptive conduct, and possessing a weapon. A.M.'s last infraction – for which he received 365 days in administrative segregation – involved striking his cellmate with a metal lock he had inserted inside of a sock. A.M. also has a history of suicide attempts, cocaine dependence, and other drug use.

On March 12, 2015, the State filed a petition seeking A.M.'s involuntary commitment under the SVPA. At the ensuing commitment hearing, the State presented testimony from two expert witnesses – a psychiatrist, Dr. Roger Harris, and a psychologist, Dr. Nicole Paolillo. A.M. presented testimony from his expert Dr. Barry

Zakireh, a psychologist, and from Hawaiian Epps, an investigator for the Public Defender.²

Harris testified that he interviewed A.M. twice, once in March 2015, and again in August 2015. Based on A.M.'s self-reports, Harris diagnosed A.M. with other specified paraphilic disorder, coercion with sadistic traits; antisocial personality disorder (ASPD); and alcohol and cannabis use disorders. Harris testified that these disorders do not remit over time because only "through treatment . . . can [a patient] learn to control the impulses caused by these disorders."

Harris diagnosed A.M. with other specified paraphilic disorder, coercion with sadistic traits because of his "history of compulsive masturbation[,] violent rape fantasies, two prior rape convictions that involved humiliating and forcing the victims to submit, and his admission that he "forced himself sexually upon" female acquaintances on "numerous" occasions. In support of his diagnosis, Harris cited A.M.'s sodomizing his first victim and his "repeated punching and hurting" his second victim, and "even after the sexual assault[,] making [the second victim] lie down, kicking her and leaving her without clothes, as if [the sexual assault] was not significant enough."

² Epps testified about a proposed discharge plan for A.M.

Harris reported that a person with ASPD displays a pattern of disregard and violation of the rights of others, which includes behaviors like "fail[ing] to conform to social norms with respect to lawful behaviors, . . . deceitfulness, . . . impulsivity, irritability and aggressiveness, . . . consistent irresponsibility, . . . and [a] lack of remorse as indicated by [his or her] rationalizing having hurt [or] mistreat[ing]" others. In support of this diagnosis, Harris cited A.M.'s long history of antisocial behavior dating back to childhood, continuing throughout his adulthood, and including his violent assault on his cellmate.

In Harris' opinion, A.M. possessed a heightened risk to re-offend because he suffers from a combination of both a paraphilic disorder and ASPD. This, coupled with his disinhibiting diagnosis of alcohol and cannabis disorders, further increased his risk to reoffend. He noted that even though A.M. served about ten years in prison for his first sexual assault, he re-offended shortly after his release. According to Harris, A.M.'s incarceration "did not have an impact on his [deviant] arousal [and] his level of aggression and antisociality remained [intact], was undeterred, and he was going to reoffend again." Additionally, Harris considered A.M.'s sexual offenses committed as a juvenile to be a strong aggravating factor because when an individual offends as

an adolescent, their "risk is even greater to sexually reoffend in the future."

In addition to the other diagnoses, Harris discussed A.M.'s history of emotional dysregulation and testified he has "a good deal of difficulty controlling his emotional reactivity." Harris explained that A.M.'s emotionality leads him to physical violence, which includes sexual violence against women. Harris also noted that A.M.'s institutional infraction record was "illustrative . . . that his antisocial personality disorder has continued in spite of multiple sanctions[.]" According to Harris, as A.M. approaches seventy, he continues to act with extreme aggression, which demonstrates that his ASPD "has not diminished [and] is alive and well." Harris noted a statement A.M. made to a clinician in May 2015 where he said, "[A]m I violent? You bet I'm violent." According to Harris, this demonstrates that A.M., despite his exposure to treatment at the ADTC, is willing to be a violent person today.

Harris testified that A.M.'s claim that he is "no longer violent, that he's a 'a new person[,]" was unfounded. He explained that A.M. likely sees himself this way, but his recent institutional infractions – especially his assault on his cellmate – show he is still unable to control his emotionality and violent

impulses. With regard to the progress A.M. made in treatment, Harris found it was minimal.

Using the Static-99R³ actuarial test, Harris scored A.M. with a "3," meaning that he poses a "low to moderate risk" to reoffend. Despite this low-moderate score, Harris believed A.M.'s risk of recidivism is higher because the Static-99 test does not address dynamic and psychological factors, such as A.M.'s "deviant arousal, strong antisocial attitudes and behaviors, very poor self-regulation and poor cognitive problem solving[.]" In Harris's opinion, A.M. did not receive sufficient treatment to manage his sexual impulsivity or to mitigate the risk he poses to women. He concluded A.M. was still highly likely to reoffend due to his "arousal pattern" throughout his life, his "compulsive masturbation to -- violent rape fantasies[,]" his "insufficient treatment to . . . manage [his] deviant arousal pattern[,]" his

³ "The Static-99 is an actuarial test used to estimate the probability of sexually violent recidivism in adult males previously convicted of sexually violent offenses." In re Civil Commitment of R.F., 217 N.J. 152, 164 n.9 (2014) (citing Andrew Harris et al., Static-99 Coding Rules Revised-2003 5 (2003)). The New Jersey 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.'" Ibid. (quoting In re Commitment of R.S., 173 N.J. 134, 137 (2002)).

recent admission that he is violent, and his "beating up his cell mate."

Because A.M. refused to be interviewed by Paolillo, she testified at the hearing based on a report she authored after reviewing A.M.'s file.⁴ She reviewed A.M.'s sexual offense history and observed that he committed his first sexual offense when he was only thirteen years old. She testified that A.M. committed his second sexual assault while on parole, which demonstrated "a lack of deterrent effect from being supervised." She noted A.M.'s history of child abuse and then later, his lack of stable relationships with his parents and his wife contributed to his "poor ability to . . . attach and bond with others."

Paolillo diagnosed A.M. with "other specified paraphilic disorder, non-consent"; "other specified personality disorder with antisocial features"; and alcohol, cannabis, and stimulant use disorders. According to Paolillo, these disorders do not spontaneously remit, but require treatment so that a patient can learn to control the impulses caused by the disorders. In her opinion, A.M. had a heightened risk to reoffend because he suffers

⁴ In August 2015, A.M. refused to be interviewed by Paolillo. In generating her report, the doctor relied on sources of information that are generally acceptable in performing such assessments. Although Paolillo reviewed reports that reflected others' opinions, she formulated her own diagnoses and conclusions.

from a paraphilic and a personality disorder, and his substance abuse "leaves [him] more inclined to act in . . . unlawful manners [and] less inclined to restrain [himself]."

Paolillo diagnosed A.M. with other specified paraphilic disorder, non-consent because he violently and sexually assaulted at least two women. This diagnosis was also based on A.M.'s history of violent rape fantasies, compulsive masturbation, and his "struggl[e] with strong urges to go out and find a woman to rape."

Paolillo's diagnosis of other specified personality disorder with antisocial features was based on A.M.'s pervasive "maladaptive pattern of inner experience and behavior which deviates markedly from the expectations of the individual's culture[.]" Like Harris, Paolillo also found it significant that A.M. had such a long and frequent institutional infraction history. According to Paolillo, this demonstrates A.M.'s antisocial and aggressive tendencies still persist despite his age and that he is not able to restrain himself "verbally . . . or physically."

Paolillo also scored A.M. with a "3" on the Static-99 test. Despite the score's indication of a low-moderate risk to reoffend, the doctor cited multiple factors that show A.M.'s score underestimates the risk he poses to reoffend. Specifically, she explained:

It's my opinion that the Static is an underestimate in this case. That [A.M.] is an atypical individual of his age, that . . . at [fifty-nine] years old he accrued a significant infraction resulting in one-year of confinement in an already confined setting. His relationship history is marked for — marked by instability. His behavior is marked by a lack of concern for others.

He is inclined to be impulsive. It seems as though he falls victim to emotional dysregulation, which can then link to not thinking before acting. It's my opinion he lacks cognitive problem solving, which then could kind of interrupt some of the negative emotionality and impulsive tendencies.

He also suffers from a deviant sexual arousal. And while . . . under supervision in the community or even in the supervision of the Department of Corrections, he struggles with being able to follow the rules.

And so all of those aggravating factors, in my opinion, heighten his risk to make him highly likely [to reoffend].

Paolillo also cited as a risk of recidivism A.M.'s lack of treatment because, according to the doctor, sexual offenders who complete treatment are less likely to reoffend than those without treatment. Paolillo testified that A.M. does not have the skills to control his sexually and physically violent tendencies, and any progress A.M. made in his short stints in treatment were likely undermined by his long periods spent in administrative segregation. Although A.M. has been able to refrain from acts of sexual violence in prison, Paolillo noted that there are no adult

women in prison "other than officers." She concluded A.M. is "an untreated sex offender [and h]is inability to articulate, even basic treatment concepts . . . is meaningful[,]" and he still suffers from deviant sexual arousal to nonconsensual sex that makes it highly likely that he will reoffend if released.

Zakireh, an expert qualified in psychology who testified on A.M.'s behalf, interviewed A.M. on August 18, 2015, and issued a report based on the interview and the doctor's review of other documents in A.M.'s file. In reviewing A.M.'s history, Zakireh reported that A.M.'s behaviors were consistent with sexual arousal centered on power and control. According to Zakireh, A.M.'s sexual offenses were "poorly planned, haphazard and impulsively enacted with a high likelihood of impairment due to substance abuse and emotional instability[.]" He reported there was "no evidence of any sexually inappropriate behavior since the instant offense, with a corresponding progress and gains in response to intensive and specialized treatment programs." He also testified that A.M. reported that he had not masturbated to rape fantasies since his treatment at the ADTC. Based on this report, Zakireh found A.M.'s paraphilic interests "stopped over [the past twenty] years."

Zakireh diagnosed A.M. with other specified paraphilic disorder (sexual arousal to coercion and nonconsent); ASPD; substance abuse disorders; post-traumatic stress disorder (PTSD);

and dysthymic disorder. He also reviewed A.M.'s ADTC treatment notes and concluded A.M. can "be managed safely in the community" and would benefit from continuing treatment. The doctor acknowledged that A.M. spent about half of his time at ADTC in administrative segregation, but nevertheless found he benefited "at least to a modest moderate degree" from the treatment he did receive.

On the Static-99R test, Zakireh scored A.M. with a "3" and noted that sex offenders' recidivism rates diminish significantly after the age of sixty. Regarding A.M.'s dynamic factors, Zakireh acknowledged A.M. has a predisposition to nonconsensual sexual acts, but claimed his "paraphilic disorder has been in relative remission for a significant period of many years." Despite finding his paraphilic diagnosis to be in remission, Zakireh found A.M.'s overall risk along the "Sexual Interest Domain" to be moderate to high based on his history. When considering all factors, the doctor found A.M. was a moderate risk to sexually reoffend.

In conclusion, Zakireh found A.M. to be "very motivated, self-motivated to continue treatment[,]" and would comply with the conditions of his parole. With certain safeguards in place – like treatment, stability in his support system and residence, and electronic monitoring – Zakireh found A.M. to be a "good candidate for discharge[.]" Even with no conditions imposed on his release,

Zakireh surmised A.M. would be highly unlikely to commit another rape.

Judge Mulvihill issued an oral decision on September 21, 2015 finding the State met its burden by clear and convincing evidence that A.M. was a sexually violent predator. He found the State's expert witnesses credible, knowledgeable, comprehensive, and forthright. He also found Zakireh credible, however he disagreed with "his conclusion that [A.M.'s] other specific paraphilic disorder [was] in a remission [and] that [A.M. was] not at a high risk to sexually reoffend."

Judge Mulvihill found clear and convincing evidence that A.M. has been convicted of a sexually violent offense and a "[c]lear escalation of violence" between his first convicted offense and second convicted offense. He also noted that within one year of being released from prison the first time, A.M. perpetrated his next sexual offense.

Judge Mulvihill concluded A.M. suffers from other specified paraphilic disorder, non-consent; ASPD; and alcohol, cannabis, and stimulant use disorders. He found these disorders do "not spontaneously remit[.]"

Finally, Judge Mulvihill found that even though A.M. is in his sixties, he still poses "a high risk to sexually reoffend." To support this conclusion, he emphasized A.M.'s self-report that

he still believes he is dangerous, his frequent institutional infractions, and that he committed the instant crime while still on parole for his first conviction for sexual assault, which demonstrates that prison has no deterrent effect on his behavior. He also found that A.M.'s institutional infractions are indicative of his likelihood of noncompliance with conditions of his release. Judge Mulvihill acknowledged that although A.M. had received treatment at ADTC, his participation was "sporadic" because of his institutional infractions and was underscored by his treatment records that state the treatment he received was insufficient to mitigate his risk to reoffend. In conclusion, he stated A.M. is "presently . . . highly likely to sexually reoffend, engage in further acts of sexual violence if not confined to a secure facility[.]"

Judge Mulvihill entered a final judgment committing A.M. to the STU, which was to be reviewed after one year. This appeal followed.

On appeal, A.M. argues that the judgment "must be reversed because the State failed to prove by clear and convincing evidence that [he] suffers from a mental condition that predisposes him to commit acts of sexual violence." According to A.M., the State's two experts "essentially ignored this fact in assessing [his] risk" because he "has been institutionalized for the past [thirty-

two] years with no record of sexually inappropriate behavior, and thus, there is no evidence to support their assumption" that he still suffers from a disorder. In the alternative, he contends that even if the trial court accepted the experts' diagnosis of antisocial personality disorder, he does not automatically have "the inability to control his sexual behavior." Moreover, although A.M. admits to having "a lengthy record of institutional infractions," he argues "not one of the[m] involve anything of a sexual nature." Finally, he challenges the State's experts' reliance on hearsay to reach their conclusions. We disagree.

We begin with a review of basic principles. 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. "[T]he State must prove that threat [to the health and safety of others because of the likelihood of his or her engaging in sexually violent acts] by demonstrating that the individual has serious difficulty in controlling sexually harmful behavior such that it is highly likely that he or she will not control his or her sexually violent behavior and will reoffend." In re Commitment of W.Z., 173 N.J. 109, 132 (2002). The court must address "his

or her present serious difficulty with control over dangerous sexual behavior[,]" and the State must establish "that it is highly likely that" the individual will reoffend "by clear and convincing evidence." Id. at 132-33; see also In re Civil Commitment of J.H.M., 367 N.J. Super. 599, 610-11 (App. Div. 2003).


Our review of a judgment for commitment under the SVPA "is extremely narrow." R.F., 217 N.J. at 174 (quoting In re D.C., 146 N.J. 31, 58 (1996)). We must "give deference to the findings of our 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)). Moreover, "[t]he judges who hear SVPA cases generally are 'specialists' and 'their expertise in the subject' is entitled to 'special deference.'" Ibid. (quoting In re Civil Commitment of T.J.N., 390 N.J. Super. 218, 226 (App. Div. 2007)). Accordingly, a trial court's determination is accorded substantial deference, and may "be modified only if the record reveals a clear mistake." D.C., 146 N.J. at 58 (citations omitted).

Applying that standard, we conclude that A.M.'s arguments "are without sufficient merit to warrant discussion in a written opinion[.]" R. 2:11-3(e)(1)(E). We discern no "clear mistake" in Judge Mulvihill's determination that the State proved by clear

and convincing evidence that A.M. suffered from a mental abnormality or personality disorder that predisposed him to sexual violence and warranted his commitment. We affirm substantially for the reasons expressed by Judge Mulvihill in his thorough oral decision.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION