

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4227-14T5
A-0417-15T5

IN THE MATTER OF THE
CIVIL COMMITMENT OF C.W.,
SVP-686-13.

Argued April 25, 2018 – Decided May 14, 2018

Before Judges Fuentes, Koblitz and Manahan.

On appeal from Superior Court of New Jersey,
Law Division, Essex County, Docket No. SVP-
686-13.

Joan D. Van Pelt, Designated Counsel, argued
the cause for appellant C.W. (Joseph E.
Krakora, Public Defender, attorney; Joan D.
Van Pelt, of counsel and on the brief).

Victoria R. Ply, Deputy Attorney General,
argued the cause for respondent State of New
Jersey (Gurbir S. Grewal, Attorney General,
attorney; Melissa H. Raksa, Assistant Attorney
General, of counsel; Victoria R. Ply, on the
brief).

PER CURIAM

C.W. has been committed to the Special Treatment Unit (STU)
at the Adult Diagnostic and Treatment Center (ADTC) for control,
care, and treatment pursuant to the Sexually Violent Predator Act

(SVPA), N.J.S.A. 30:4-27.24 to -27.38, since November 2013. In these consolidated appeals, C.W. appeals an April 15, 2014 order committing him to the STU. He also appeals an April 9, 2015 order that continued his commitment following a review hearing predicated upon a finding by clear and convincing evidence that he remained a sexually violent predator in need of involuntary commitment. We affirm.

I.

In March 1990, C.W. pled guilty to burglary, N.J.S.A. 2C:18-2(a)(1), and sexual assault of a child, N.J.S.A. 2C:14-2(b). He was sentenced to the ADTC for a period of ten years for the sexual assault charge and four years for the burglary charge, to run concurrently. Approximately two years after being released from the ADTC, in July 1997, C.W. was implicated in two separate incidents of burglary and sexual assault of children. In the first incident, C.W. entered a home and sexually assaulted a nine-year-old and an eight-year-old girl. Three days later, C.W. entered another home and sexually assaulted a three-year-old girl. C.W. was arrested and charged for the two incidents shortly thereafter.

On April 26, 1999, C.W. was convicted after a jury trial and was sentenced to a state prison term of forty-five years with conditions of community supervision for life and five years parole

ineligibility. Mandatory fines and penalties were imposed. C.W. filed a direct appeal of his conviction, arguing the two cases were improperly joined. We agreed and reversed the convictions. State v. [C.W.], No. A-1737-99 (App. Div. Jan. 25, 2002). C.W. was re-tried for the charges relating to the three-year-old girl. The State did not prosecute the incident involving the other two girls.

After a jury trial in May 2003, C.W. was convicted of sexual assault of a child less than four-years old, burglary, and endangering the welfare of a child. C.W. was evaluated and determined to be eligible for sentencing to the ADTC. The court sentenced defendant to an extended term of twenty years, with ten years of parole ineligibility on the sexual assault conviction. On the third-degree burglary conviction, the court sentenced defendant to a term of five years to run consecutive to the sentence imposed for the sexual assault, and merged the third-degree endangering the welfare of a child conviction with the sexual assault. The court also imposed the mandatory fines and penalties, advised defendant of his obligations under Megan's Law (N.J.S.A. 2C:7-1 to -23), and directed that the custodial sentence for the sexual assault be served at the ADTC.

C.W. filed a direct appeal. We affirmed the conviction but remanded for re-sentencing. State v. [C.W.], No. A-1710-03 (App.

Div. June 30, 2006) (slip op. at 6). On December 8, 2006, C.W. was sentenced to an aggregate term of twenty-five years to the ADTC based upon his conviction for second-degree sexual assault of a child, N.J.S.A. 2C:14-2(b); third-degree burglary, N.J.S.A. 2C:18-2; and third-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a). C.W. was confined at the ADTC from December 2003 until August 2011, and was then transferred to South Woods State Prison to serve his sentence for the burglary conviction.

The State petitioned to have C.W. civilly committed under the SVPA in November 2013. On November 22, 2013, the court ordered C.W. temporarily committed to the STU pending a final hearing on the matter.

II.

A commitment hearing was held on April 15, 2014. During the hearing, the State offered the testimony of two expert witnesses. Prior to their testimony, both experts reviewed numerous documents in C.W.'s record, including his prior mental health evaluations and his criminal history.

Dr. Pogos Voskanian, a psychiatrist, testified that C.W.'s "pattern of offending and arousal to children [] is deep seeded and is [an] integral part" of him. Dr. Voskanian described his impressions from his interview with C.W., noting that C.W. did not take his first incarceration at the ADTC seriously. Dr. Voskanian

opined that "the pathology appears quite complex, because there is an adult type of offending, entering through the window, and there is no grooming, no coercing, no manipulating. . . . And the second component is pedophilic arousal with that." Dr. Voskanian concluded that C.W. suffered from a mental abnormality or personality disorder which predisposed him to sexually reoffend. Dr. Voskanian diagnosed C.W. with pedophilia but did not find any evidence of current psychosis and found C.W. "very engaging, coherent, [and] goal directed."

In Dr. Voskanian's opinion, C.W. suffered from antisocial personality disorder due to "a juvenile history of problems with conduct such as fire setting, and contiu[ous] criminal behaviors as an adult." He further opined that the combination of an antisocial personality disorder and a sexual pathology "markedly elevates" the person's risk to sexually reoffend. Dr. Voskanian believed those conditions caused C.W. to have serious difficulty controlling his sexual offending behavior and to remain at high risk to sexually reoffend. Dr. Voskanian also noted C.W.'s history of drug abuse as a factor relative to a risk of reoffending.

Dr. Jamie Canataro, a psychologist, also testified. Dr. Canataro's assessments and opinions were consistent with those of Dr. Voskanian. Since C.W. declined to be interviewed by Dr. Canataro despite two opportunities, Dr. Canataro reviewed and

relied upon C.W.'s history and current progress at the STU in formulating her opinions. Dr. Canataro opined that C.W. has "behaviorally reinforced this [sexual offending] behavior," which showed "a longer period of the arousal becoming more and more ingrained, more of who [C.W.] is." Dr. Canataro referenced C.W's juvenile history, and sexual and physical abuse as a child. She also noted C.W.'s history of suicidal ideation and attempting suicide.

Dr. Canataro scored the Static-99R¹ and determined C.W. scored a seven, which indicated "a category of high risk to sexually reoffend." Further, Dr. Canataro opined that although C.W. had support from his father and received his GED while incarcerated, those factors were "not significant enough to reduce his risk below the threshold of highly likely [to reoffend]."

C.W. testified that he was dealing with many issues during his initial time at ADTC and was not responsive to treatment. C.W. further testified that he believed he would be "okay" without treatment upon his release. However, he suffered a relapse when a romantic relationship went badly. C.W. described his troubled

¹ The Static-99R is a ten item risk assessment instrument used with adult male sexual offenders at least eighteen years of age at the time of release to the community. See Static-99, <http://www.static99.org/> (last visited May 2, 2018).

family history and his prior criminal actions, and concluded that he would not reoffend if he was released.

C.W. presented the testimony of Hawaiian Thompson Epps, an employee of the Office of the Public Defender (OPD). Epps conducted discharge assessments for the OPD of residents and people facing commitment petitions at the STU. Epps was assigned to C.W.'s case and investigated discharge options for C.W. She testified that she spoke to C.W.'s father about C.W. potentially living with him upon his release. Epps stated that C.W. would be provided with social services if he was discharged into the community.

At the conclusion of the hearing, the court rendered a decision from the bench. The court found C.W.'s history of treatment at the ADTC for almost twelve years had "little if any effect on his understanding of his offending triggers, and little if any effect upon his empathy for the young victims [whom] he had violated." The court concluded:

This [c]ourt is satisfied by clear and convincing evidence and the past record that the resident has been convicted of sexually violent offenses. There is no question about that. That he suffers from a mental abnormality or personality disorder, primarily of pedophilia, which we know does not remit by time, but only by gaining an understanding of how you can avoid circumstances where you expose yourself to that kind of risk.

These are the sort of uncontrolled acts of . . . random behavior, crawling through windows, sneaking into homes at night. They're aggravated burglaries and sexual offenses.

The PCL-R^[2] which . . . we have evidence of it having been done, places him in the psychotic range, at least by the testimony of Dr. Canataro. The - the Static-99 places him at [seven], which is high risk. So, all the objective or semi-objective testing indicates that this resident is a high risk to reoffend.

And based on those analys[e]s and those mental abnormalities and personality disorders, there's clear and convincing evidence that [C.W.] is highly likely to engage in further acts of sexual violence if not confined in a secure facility, that is the STU, for control, care, and primarily for treatment for his improvement and ability to again join civilian life after he's had . . . no treatment which has been meaningful to him.

Premised upon the holding, the court ordered C.W. committed to the STU with a review to be scheduled in one year.

III.

At the April 1, 2015 review hearing, the State offered two expert witnesses, Dr. John Zincone, a psychiatrist, and Dr. Canataro.

Dr. Zincone opined that C.W.'s criminal history of release and re-offense raised a number of concerns, including C.W.'s

² The Hare Psychopathy Checklist-Revised (PCL-R) is a diagnostic tool used to rate a person's psychopathic or antisocial tendencies.

inability to control his sexual impulses. Dr. Zincone reviewed C.W.'s history as well as his treatment notes at the STU. In regard to C.W.'s treatment progress, Dr. Zincone opined:

[H]e's doing fair. He's had some problems in group in terms of exploring his arousal, being open about his crimes. Although he's had several years of treatment at ADTC, his treatment team places him in the beginning stages. He certainly needs to work on exploring his - his arousal to prepubescent females. He needs to be open to feedback from others. And he needs to begin to place his - his own sexual offender dynamics into an assault cycle.

Based upon his interview of C.W., Dr. Zincone rated him at an eight on the Static-99R, which placed C.W. in the high risk to reoffend category. Dr. Zincone diagnosed C.W. with pedophilic disorder, stimulant use disorder, and antisocial personality disorder. These conditions were chronic, and the treatment C.W. received was insufficient to control the impulses caused by the disorders.

Dr. Canataro testified regarding her annual evaluation of C.W. and her report. Dr. Canataro stated that C.W. was recommended to advance to Phase 2 of treatment by the Treatment Progress Review Committee (TPRC) panel. Although C.W. was attending group sessions, Dr. Canataro opined that, "he struggles with relating these concepts to his own offending dynamic, sexual deviance or assault cycle and he continues to utilize many cognitive

distortions." Dr. Canataro further noted that C.W. was not yet beneath the threshold of highly likely to reoffend.

C.W. testified regarding his treatment at the ADTC and his prior inability to respond to that treatment. He stated that while his deviant arousal was "always there" it was not active in his life. C.W. acknowledged that he needed treatment but could receive treatment outside of confinement.

At the conclusion of the hearing, the court issued a decision from the bench holding that the State proved by clear and convincing evidence that C.W. continued to suffer from a mental abnormality and was highly likely to reoffend. The court set a review date for March 18, 2016.

C.W. appealed from both the April 15, 2014 order and the April 9, 2015 order. The appeals were consolidated.

On appeal, C.W. raises the following points:

POINT I

THE COMMITMENT COURT RELIED SOLELY ON THE EXPERT TESTIMONY AND FAILED TO INDEPENDENTLY REVIEW THE EVIDENCE TO DETERMINE WHETHER COMMITMENT WAS APPROPRIATE.

POINT II

THERE WAS NO COMPETENT EVIDENCE AT EITHER HEARING TO SUPPORT THE FINDING RELIED ON BY EACH JUDGE THAT C.L.W. HAD A HIGH LEVEL OF PSYCHOPATHY.

Having considered these arguments in light of our standard of review and the record from both hearings, we conclude that these arguments lack sufficient merit to warrant extended discussion in a written opinion. Rule 2:11-3(e)(1)(E). We add only the following.

The standard governing our review of the trial court's commitment decision is well settled. We must give the trial court's decision the utmost deference; the court's decision should only be modified where the record reveals a clear abuse of discretion. In re Civil Commitment of V.A., 357 N.J. Super. 55, 63 (App. Div. 2003). "The appropriate inquiry is to canvas . . . expert testimony in the record and determine whether the lower courts' findings were clearly erroneous." In re D.C., 146 N.J. 31, 58-59 (1996) (citing State v. Fields, 77 N.J. 282, 311 (1978)).

Notwithstanding our deference, we "must consider the adequacy of the evidence." In re Commitment of M.M., 384 N.J. Super. 313, 334 (App. Div. 2006) (citing D.C., 146 N.J. at 58-59). "[W]e have not hesitated to reverse involuntary commitments when the record failed to contain clear and convincing evidence of 'a substantial risk of dangerous conduct within the reasonably foreseeable future.'" In re Commitment of T.J., 401 N.J. Super. 111, 119 (App. Div. 2008) (quoting In re S.L., 94 N.J. 128, 138 (1983)).

As a general matter, a trial judge in an SVPA commitment hearing may consider hearsay in order to assess the credibility of expert testimony, if the expert has based his opinion on such evidence and the evidence is "of a type reasonably relied upon by experts in the particular field." N.J.R.E. 703; In re Civil Commitment of A.X.D., 370 N.J. Super. 198, 201-02 (App. Div. 2004). An expert is permitted to rely upon hearsay information in forming an opinion with respect to an individual's mental condition. In re Civil Commitment of J.H.M., 367 N.J. Super. 599, 612 (App. Div. 2003). The judge may not consider such hearsay statements as substantive evidence unless the statements come within an exception to the hearsay rule. In re Civil Commitment of G.G.N., 372 N.J. Super. 42, 56 (App. Div. 2004); A.X.D., 370 N.J. Super. at 202. We are satisfied from our review of the record that the judges adhered to these principles in rendering their decisions in this case.

The pertinent query is whether "the opinion ultimately rendered . . . is that of the witness based on his or her own evaluation of the committee, prior offenses, and objective test data." In re Civil Commitment of A.E.F., 377 N.J. Super. 473, 492 (App. Div. 2005). Here, neither Dr. Voskanian, Dr. Canataro, nor Dr. Zincone "simply agree[d] with the opinions of other, non-testifying examiners." Id. at 489. Rather, each formed his or

her opinions based on an assessment of C.W.'s prior history and psychological and psychiatric deficiencies.

Here, we are satisfied that the record amply supports both the court's initial determination to commit C.W. and the court's determination to continue his commitment after the review hearing. Both determinations were premised upon sufficient competent evidence that satisfied the burden of persuasion.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION