

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4537-15T5

IN THE MATTER OF THE CIVIL COMMITMENT
OF R.N. SVP-227-02.

Argued January 23, 2018 - Decided February 7, 2018

Before Judges Gilson and Mayer.

On appeal from Superior Court of New Jersey,
Law Division, Essex County, Docket No. SVP-
227-02.

Susan Remis Silver, Assistant Deputy Public
Defender, argued the cause for appellant R.N.
(Joseph E. Krakora, Public Defender, attorney;
Susan Remis Silver, 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

Appellant, R.N., who is presently confined to the Special
Treatment Unit ("STU") under the Sexually Violent Predator Act
("SVPA"), N.J.S.A. 30:4-27.24 to -27.38, appeals from the trial

court's June 7, 2016 judgment continuing his civil commitment after a review hearing.¹ Relying on the expert testimony for the State, the trial court found appellant continues to be a sexually violent predator in need of commitment. We affirm.

Howard Gilman, M.D., the State's psychiatric expert, testified during the review hearing. Dr. Gilman reviewed appellant's sexual offense history and noted that anti-social behavior and the use of violence were well-established in his history. According to Dr. Gilman, appellant has a history of substance abuse, including alcohol, cocaine, cannabis, and PCP. Of particular note to Dr. Gilman was appellant's use of PCP when committing sexual offenses.

Dr. Gilman summarized appellant's treatment history at the STU. Appellant advanced to the Therapeutic Community (TC) in the late 2000s, but left in 2011 because he was frustrated that he was not advancing to the discharge stage. Appellant reentered treatment in 2012, and reentered the TC in 2014. According to Dr. Gilman, reports on appellant's progress since 2014 indicate that he has excellent attendance but "vacillates between [being]

¹ Appellant has had eight prior review hearings since his initial commitment. The background preceding appellant's civil commitment is set forth in In re Civil Commitment of R.S.N., Nos. A-4274-02, A-4434-02 (App. Div. Jan. 31, 2005); see also In re Civil Commitment of R.S.N., No. A-6427-04 (App. Div. Oct. 11, 2006).

actively engaged [in therapy] and appearing bored." Dr. Gilman concluded that appellant is "in an advanced stage of treatment."

Dr. Gilman diagnosed appellant with sexual sadism disorder, substance abuse disorders involving a variety of substances, and antisocial personality disorder. He noted that these diagnoses affect appellant cognitively, emotionally, and volitionally. Dr. Gilman opined that these disorders also cause appellant significant difficulty in controlling his sexually violent behavior, making him highly likely to sexually reoffend if not confined to the STU. Several factors contributed to the doctor's determination, including appellant's level of treatment progress, offending history, testing scores, and repeated sexual offenses after being released from prison.

The judge also heard testimony from Timothy Foley, Ph.D., appellant's psychology expert, who interviewed appellant on April 26, 2016. Dr. Foley recounted appellant's sexual criminal history and noted that he used PCP during each of those incidents. According to Dr. Foley, appellant has a "long history of aggressive sexual behaviors," "severe" drug and alcohol use, and struggles with post-traumatic stress disorder as a result of being raped by his father. Dr. Foley agreed with Dr. Gilman that appellant does well in treatment, attends group sessions, and completed an extensive number of treatment modules.

Dr. Foley diagnosed appellant as having antisocial personality disorder, PCP use disorder, other specified paraphilic disorder, and rape fantasies. However, Dr. Foley opined that appellant gained control over his rape fantasies through treatment and appellant's rape fantasies did not mean that he would rape in the future. Dr. Foley testified that appellant is "a treated sex offender who can manage his problems." He recommended a conditional discharge plan that included drug screens, an approved residence, continued treatment, and GPS monitoring.

Also testifying at the review hearing was Rosemarie Vala Stewart, Ph.D., an expert psychologist and member of the STU's Treatment Progress Review Committee (TPRC), who reviewed appellant's treatment and progress as part of her job responsibilities in the fall of 2015. At the time of the TPRC review, appellant was in Phase 3B² of treatment. Dr. Stewart recommended that appellant remain in Phase 3B of treatment based on his high risk status. Appellant's arousal to forceful sex, sexually violent history, antisocial thinking and behaviors, substance abuse, and history at the STU factored into Dr. Stewart's recommendation. Dr. Stewart opined that if appellant maintained

² Phase 3B aims to mitigate identifiable sexual reoffense risk factors by working on treatment goals twenty-four hours a day, seven days a week.

his treatment progress he would be "a serious candidate for Phase [Four]" at his next evaluation. Phase Four, known as "maintenance phase," governs STU residents beginning the discharge planning process. Dr. Stewart recommended that appellant finish revising his sexual history questionnaire, remain active in the TC, and continue addressing sex offense related issues. She concluded that appellant should focus on his antisocial thoughts and behaviors, healthy versus deviant arousals, and his ability to understand and express his feelings and emotions.

The State's experts confirmed that appellant continues to exhibit antisocial thinking and behavior at the STU. Moreover, the State's experts analyzed appellant's reoffending potential using tests designed to conceptualize risk. Appellant scored a seven out of ten on the Static-99R, which puts him in the high risk range for committing another sexual offense. The Stable-2007 test, which assesses risk status and predicts recidivism in sexual offenders, indicates that appellant presently continues to struggle with relationship stability, hostility toward women, negative emotionality, impulsivity, and general lack of concern for others.³

³ The risk factors identified in the Stable-2007 test may not be overtly observable, or may manifest to a lesser degree, given the effect of the STU's highly structured environment and its suppression of socially undesirable behavior.

The judge considered appellant's case history and the experts' testimony presented during the review hearing. The judge found the State's experts more persuasive than appellant's expert. The judge acknowledged that the case was moving into the "difficult range" because appellant progressed in treatment, but required further treatment according to all three experts.

Considering the testimony, appellant's treatment notes, and the record from prior review hearings, the judge found that the State met its burden of proving by clear and convincing evidence that appellant is highly likely to sexually reoffend if not confined. The judge concluded that appellant suffers from a mental abnormality, inclusive of a personality disorder, paraphilia, and substance abuse problems. While acknowledging appellant's significant treatment progress, the judge concluded that appellant had not mitigated his risk of sexually reoffending, and continued appellant's commitment.

On appeal, appellant contends that the judge erred in determining appellant's risk of reoffending without considering that appellant has gained control over his behavior and past arousal preferences through successful treatment at the STU.

The scope of an appellate court's review of a SVPA commitment determination "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)). "The 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)). A trial court's determination may only "be modified . . . if the record reveals a clear mistake." D.C., 146 N.J. at 58.

An individual may be involuntarily civilly committed following service of a sentence, or other criminal disposition, when that individual "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.

It is the State's burden to prove the

threat [to the health and safety of others because of the individual's likelihood of 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 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).

After thoroughly reviewing the record and considering the arguments of counsel, we are satisfied that the State met its burden in this case. All three experts diagnosed appellant with a form of paraphilia, antisocial personality disorder, and substance abuse disorder. Based on the experts' collective testimony and other evidence from the review hearing, there was no clear mistake in the judge's conclusion that appellant continues to meet the criteria for commitment.

Appellant argues that the judge improperly relied on appellant's expressed preference for aggressive sex when determining his risk of sexually reoffending. The State's experts opined that appellant must continue to work on recognizing the boundary line between consensual aggressive sex and rape, through continuing treatment at the STU. Given this expert testimony, there was substantial evidence supporting the judge's finding that appellant still has difficulty controlling his sexually violent behavior and would be highly likely to engage in acts of sexual violence in the foreseeable future, if not committed.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION