

# RECORD IMPOUNDED

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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

### SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-2154-21

IN THE MATTER OF THE  
CIVIL COMMITMENT OF J.W.,  
SVP-420-05.

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Submitted February 28, 2023 – Decided April 26, 2023

Before Judges Messano and Gilson.

On appeal from the Superior Court of New Jersey, Law  
Division, Atlantic County, Docket No. SVP-420-05.

Joseph E. Krakora, Public Defender, attorney for  
appellant J.W. (Andrew R. Burroughs, Designated  
Counsel, on the brief).

Matthew J. Platkin, Attorney General, attorney for  
respondent State of New Jersey (Melissa H. Raksa,  
Assistant Attorney General, of counsel; Stephen  
Slocum, Deputy Attorney General, on the brief).

#### PER CURIAM

Since 2006, J.W. has been civilly committed under the Sexually Violent  
Predator's Act (the Act), N.J.S.A. 30:4-27.24 to -27.38. He appeals from a  
February 16, 2022 order denying his challenge to his placement on the Modified

Activities Program (MAP) in 2021. J.W. is not appealing from a separate February 16, 2022 order continuing his civil commitment. Instead, he wants his 2021 MAP placement deleted from his records so that it cannot be considered at any future civil commitment review or be used to support his continued civil commitment. On this appeal, J.W. seeks a remand for a new hearing on his 2021 MAP placement with directions that the State must prove by clear and convincing evidence that the MAP placement was justified. Having reviewed the record and governing law, we affirm the order rejecting J.W.'s challenge to his MAP placement.

I.

J.W. has three prior convictions involving sexual assaults or endangering the welfare of a child. In 1991, a jury convicted J.W. of second-degree sexual assault and endangering the welfare of a ten-year-old girl, and he was sentenced to eight years in prison. In December 1998, J.W. pled guilty to third-degree endangering the welfare of a fifteen-year-old girl, and he was sentenced to five years in prison. In March 2003, he pled guilty to fourth-degree criminal sexual contact with a fourteen-year-old girl and third-degree endangering the welfare of a child. He was sentenced to four years to be served at the Adult Diagnostic and Treatment Center in accordance with N.J.S.A. 2C:47-3.

In 2006, following an evidentiary hearing, J.W. was found to be a sexually violent predator under the Act and he was civilly committed to the Special Treatment Unit (STU). We affirmed his civil commitment. In re Civil Commitment of J.C.W., No. A-6339-05 (App. Div. Sept. 17, 2007).

In October 2021, another resident of the STU reported that on October 2, 2021, J.W. inappropriately touched his leg while they were in a bathroom. J.W.'s treatment team placed him on MAP on October 5, 2021. Under his MAP placement, J.W.'s privileges were limited. J.W. was taken off MAP placement on December 6, 2021.

J.W. did not file a grievance concerning his MAP placement. He also did not file a formal motion challenging his MAP placement. Instead, just before his 2022 annual review, his counsel sent a letter to the judge who was scheduled to conduct that review. That letter stated, in relevant part:

[J.W.] will challenge his most recent MAP placement stemming from an incident that occurred on October 2, 2021. . . . Although [J.W.] has been removed from MAP stat[u]s, [he] will request that all references to this MAP placement and the allegations that led to it be deleted from his treatment record. [J.W.] will also request that the MAP placement not be used or considered to preclude his progress.

At the 2022 hearing, J.W. stipulated to his continued civil commitment for one more year. The hearing then focused on his challenge to his October

2021 MAP placement. J.W. testified in support of his challenge, and in opposition the State submitted two expert reports and J.W.'s treatment records.

The State's two expert reports were prepared by Dr. Dean DeCrisce, a psychiatrist, and Dr. Kelly Kovack, a psychologist. J.W. stipulated to the admission of those reports. In the reports, both doctors reviewed J.W.'s history of MAP placements and the October 2, 2021 incident.

In his testimony, J.W. denied any wrongdoing concerning the October 2, 2021 incident. He acknowledged that he and the other resident were previously in a sexual relationship. J.W., however, denied the sexual nature of the touching on October 2nd, but admitted he may have accidentally grazed the other resident's leg while passing him pieces of candy under the bathroom stall divider.

After considering J.W.'s testimony and the State's submissions, the trial court denied J.W.'s challenge to his MAP placement. The judge noted that J.W.'s treatment team had considered his version of events but there was no evidence undercutting the mental health professionals' clinical judgment for placing J.W. on MAP. On April 13, 2022, the trial court supplemented its decision with a written amplification in accordance with Rule 2:5-2(b). In that amplification,

the court noted that J.W. had presented no experts and, therefore, the court had no basis to find that it was an error to place J.W. on MAP.

## II.

On this appeal, J.W. argues that the trial court erred in imposing the burden of proof on him. He contends that the State had the burden to prove by clear and convincing evidence that his MAP placement was appropriate.

The Act provides for the custody, care, and treatment of civilly committed sexually violent predators. N.J.S.A. 30:4-27.26. The Department of Corrections is responsible for the operation of the STU, and the Department of Human Services, Division of Mental Health Services is responsible for providing or arranging for treatment of persons who have been civilly committed. N.J.S.A. 30:4-27.34(a) to (b).

The State "enjoy[s] wide latitude in developing treatment regimens" for sexual offenders. Kansas v. Hendrix, 521 U.S. 346, 368 n.4 (1997). "Decisions regarding the treatment program at the STU are based on judgments exercised by qualified professionals." M.X.L. v. N.J. Dep't of Human Servs./N.J. Dep't of Corr., 379 N.J. Super. 37, 48 (App. Div. 2005). "MAP is a component of the clinical treatment program at the STU that focuses on stabilizing disruptive or dangerous behaviors. A primary goal of the STU treatment program is to

prepare civilly committed sexual predators to safely return to the community." Id. at 45. "MAP is not a punishment to those involuntarily committed, but a necessary part of the entire treatment regimen to rehabilitate those committed to a return to the community." Id. at 48.

Initially, we note that J.W.'s appeal is limited. J.W. is currently not on MAP placement and, therefore, he is not seeking to be removed from that placement. Indeed, that issue would be moot. Instead, J.W. seeks to have the record of his 2021 MAP placement redacted from his record and not considered in future reviews or his treatment progress.

As the trial judge noted, J.W. did not file a grievance from his placement nor did he file a formal motion. Instead, he raised the challenge at his 2022 annual review. In M.X.L., we recognized that persons who are civilly committed can challenge a MAP placement. Id. at 49. Because there is a sufficient record, we will consider J.W.'s challenge to his MAP placement.

Through the unrebutted expert reports of two doctors, the State provided ample evidence that the October 2021 MAP placement was an appropriate treatment. Indeed, as noted by the trial court, J.W. submitted no expert report and no evidence that would call into question the conclusions of the State's experts.

J.W.'s principal argument on appeal is that the trial court used the wrong standard of review. He contends that the MAP placement was effectively a restriction under the Act and therefore the State needed to support that restriction with clear and convincing evidence. We reject that argument for two reasons. In M.X.L., we held that MAP placement was a treatment and not a punishment. Accordingly, the State is not required to prove by clear and convincing evidence that the treatment was appropriate. Instead, the State need demonstrate only that the placement was an appropriate treatment. See R.R. v. N.J. Dep't or Corr., 404 N.J. Super. 468, 480 (App. Div. 2009) ("The proper standard for determining whether a State has adequately protected the rights of an involuntarily committed individual requires that 'the courts make certain that professional judgment in fact was exercised.'" (quoting Youngberg v. Romeo, 457 U.S. 307, 321 (1982))); M.X.L., 379 N.J. Super. at 49 (explaining that MAP placement does not raise procedural due process concerns, but instead, whether placement "is adequate in the treatment context").

Second, even if we were to apply a clear and convincing standard, the State met that standard on this record. As already noted, the State submitted two expert reports that explained why the placement was appropriate. J.W. submitted no evidence to rebut those reports. Even considering J.W.'s claim that

the touching was not sexual in nature, that claim does not undercut the experts' judgment that a MAP placement was appropriate.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION