

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3092-21

IN THE MATTER OF THE
CIVIL COMMITMENT
OF F.S., SVP-393-05.

Submitted March 13, 2023 – Decided March 20, 2023

Before Judges Haas and Fisher.

On appeal from the Superior Court of New Jersey, Law Division, Camden County, Docket No. SVP-393-05.

Joseph E. Krakora, Public Defender, attorney for appellant F.S. (Phuong V. Dao, 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

Appellant F.S. appeals from a May 10, 2022 Law Division order, which found him to be a sexually violent predator and continued his involuntary

commitment in the Special Treatment Unit (STU) pursuant to the Sexually Violent Predator Act (SVPA), N.J.S.A. 30:4-27.24 to -27.38. We affirm.

A judge committed F.S. to the STU in 2005 pursuant to the SVPA. In re Civil Commitment of F.Z.S., No. A-0336-18 (App. Div. Oct. 31, 2019) (slip op. at 2). Judges have continued F.S.'s commitment since that time following annual review hearings. Ibid. The events that culminated in his commitment, including the sexual assaults he committed against two female children, are recounted in our most recent decision that affirmed his continued commitment and need not be repeated here. Id. at 2-4.

Judge Thomas J. Shusted, Jr. conducted F.S.'s most recent review hearing on May 10, 2022. The State relied upon the testimony of a psychiatrist and a psychologist. Defendant testified on his own behalf, but did not present any expert witnesses.

The court accepted Dean M. De Crisce, M.D. as an expert in psychiatry. De Crisce testified that F.S. refused to cooperate in the evaluation and, therefore, De Crisce based his opinion on a review of F.S.'s records and prior testing and evaluation. De Crisce diagnosed F.S. with Pedophilic Disorder, attracted to girls, non-exclusive type, Unspecified Personality Disorder with paranoid and antisocial traits, and Alcohol Use Disorder.

De Crisce testified these conditions do not spontaneously remit and that F.S. required treatment to learn to control his sexually violent tendencies. However, F.S. has refused all sex offender and substance use treatment since his commitment began in 2005. While F.S. was now seventy-three years old, De Crisce explained that his age was not a significant mitigating risk factor for offenders, like F.S., who sexually assault children. De Crisce opined that F.S. "suffers from mental abnormalities and a personality disorder that affect his cognitive, volitional, and emotional capacity such that he is highly likely to sexually reoffend if not kept under the care, control[,] and treatment of a secure facility such as the STU."

Judge Shusted accepted Laura Polhamus, Psy.D., as an expert in psychology.¹ Polhamus was a member of the Treatment Progress Review Committee that evaluated F.S.'s progress in treatment. Like De Crisce, Polhamus diagnosed F.S. with Pedophilic Disorder, sexually attracted to females, non-exclusive type, not limited to incest, Alcohol Use Disorder, Severe, and Other Specified Personality Disorder, Antisocial and Paranoid

¹ F.S. did not object to the judge's acceptance of De Crisce and Polhamus as qualified experts in their respective fields and did not object to the admission of their expert reports in evidence.

Features. Polhamus opinion that F.S. "continue[d] to be considered at high risk to sexually recidivate if not confined to a secure facility like the STU."

F.S. testified that he would comply with all of the court's orders if he were released. He also stated he had not committed any offenses while committed at the STU.

Following the hearing, Judge Shusted rendered a comprehensive oral opinion and concluded that F.S. should remain committed at the STU. In so ruling, the judge found by clear and convincing evidence that F.S. had been convicted of a sexually violent offense and suffered from mental abnormalities and personality disorders that predisposed him to engage in acts of sexual violence. Judge Shusted also found that the uncontradicted expert testimony demonstrated that if he were released, F.S. "would have serious difficulty controlling his sexually violent behavior to such a degree that he would be highly likely and in the reasonable foreseeable future to engage in sexual violence."

On appeal, F.S. argues that "the ev[id]ence does not show by a clear and convincing standard that F.S. requires ongoing civil commitment" and, for the first time, that "the trial court failed to carry out its role as a gatekeeper because

it accepted the net opinio[n]s of Drs. De Crisce and Polhamus." These contentions lack merit.

The governing law is clear. An involuntary civil commitment under the SVPA can follow an offender's service of a custodial sentence, or other criminal disposition, when he or she "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.

As defined by the statute, a "mental abnormality" consists of "a mental condition that affects a person's emotional, cognitive or volitional capacity in a manner that predisposes that person to commit acts of sexual violence." Ibid. The mental abnormality or personality disorder "must affect an individual's ability to control his or her sexually harmful conduct." In re Commitment of W.Z., 173 N.J. 109, 127 (2002). A showing of an impaired ability to control sexually dangerous behavior will suffice to prove a mental abnormality. Id. at 129; In re Civil Commitment of R.F., 217 N.J. 152, 173-74 (2014).

At a commitment hearing, the State has the burden of proving under the SVPA that the offender poses a threat:

to the health and safety of others because of the likelihood of his or her engaging in sexually violent

acts [T]he State must prove that threat 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.

[W.Z., 173 N.J. at 132.]

The court must address the offender's "present serious difficulty with control over dangerous sexual behavior." Id. at 132-33 (emphasis omitted). To commit the individual to the STU, the State must establish, by clear and convincing evidence, that it is highly likely that the individual will reoffend. Id. at 133-34; see also R.F., 217 N.J. at 173.

In this appeal, our review of Judge Shusted's decision is "extremely narrow." R.F., 217 N.J. at 174 (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)). On appeal, we will not disturb the judge's decision unless there was a clear abuse of discretion, and "it is our responsibility to canvass the record, inclusive of the expert testimony, to determine whether the findings made by the . . . judge were clearly erroneous." In re Civil Commitment of W.X.C., 407 N.J. Super. 619, 630 (App. Div. 2009), aff'd, 204 N.J. 179 (2010).

Applying these well-established standards, we affirm the order for F.S.'s continued commitment at the STU, substantially for the reasons detailed in Judge Shusted's oral opinion. The judge was entitled to accept De Crisce's and Polhamus's uncontradicted expert testimony as to F.S.'s high risk of re-offending if he were released. F.S. has not cooperated with the treatment required to address the disorders that led him to commit the sexually violent offenses that required his commitment under the SVPA.

We also reject F.S.'s contention that because he has not committed a sexually violent offense since his commitment to the STU in 2005 and is now over seventy-three years old, he is no longer in need of commitment. F.S.'s argument ignores the fact that he has been committed to the STU during this entire period. He has had no access to his victim pool, minor girls. He remains an untreated sex offender, who still does not acknowledge any need to change his behaviors, and who has made no progress toward developing relapse prevention strategies.

Finally, F.S. did not object to the admission of either of the State's experts' testimony or to their written reports. Ordinarily, we "decline to consider issues not presented to the trial court unless they 'go to the jurisdiction of the trial court or concern matters of great public interest[.]'" neither of which applies here.

Kvaerner Process, Inc. v. Barham-McBride Joint Venture, 368 N.J. Super. 190, 196 (App. Div. 2004) (quoting Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973)).

In any event, we discern no basis for F.S.'s complaint that De Crisce and Polhamus rendered net opinions. Both experts fully explained the grounds for their conclusions and were subject to cross-examination concerning them. Both experts were well qualified, their testimony and written reports addressed all of the relevant issues, and their conclusions were firmly supported by the facts in the record. See Townsend v. Pierre, 221 N.J. 36, 55 (2015) (The net opinion rules directs that experts "be able to identify the factual bases for their conclusions, explain their methodology, and demonstrate that both the factual bases and the methodology are reliable.") (quoting Landrigan v. Celotex Corp., 127 N.J. 404, 417 (1992)).

Affirmed.

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



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