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SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-3197-21

IN THE MATTER OF THE
CIVIL COMMITMENT OF
T.H., SVP-368-04.

Submitted April 19, 2023 – Decided May 2, 2023

Before Judges Vernoia and Natali.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. SVP-368-04.

Joseph E. Krakora, Public Defender, attorney for appellant T.H. (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; Victoria R. Ply, Deputy Attorney General, on the brief).

PER CURIAM

Appellant T.H. appeals from a May 18, 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 -27.38.¹ We affirm.

I.

A judge committed T.H. to the STU in 2004 pursuant to the SVPA. In re Civil Commitment of T.H., No. A-4995-04 (App. Div. Oct. 10, 2006) (slip op. at 3). Judges have continued T.H.'s commitment since that time following annual review hearings. The events that culminated in his commitment, including the sexual assaults he committed against three male children, are recounted in our 2006 decision that affirmed his continued commitment and need not be repeated in detail here. Id. at 2-6.

Judge Carol Novey Catuogno conducted T.H.'s most recent review hearing on March 14, 2022. The State relied upon the reports of a psychiatrist, Roger Harris, M.D., and a psychologist, Laura Polhamus, Psy.D., along with certain of T.H.'s treatment records. T.H. submitted no evidence and requested the matter "be submitted to the Court on the papers without testimony."

¹ We use initials to refer to appellant because records pertaining to civil commitment proceedings under the SVPA are deemed confidential under N.J.S.A. 30:4-27.27(c) and are excluded from public access pursuant to R. 1:38-3(f)(2).

After considering the evidence, the judge determined the State clearly and convincingly established the need for T.H.'s continued civil commitment under the SVPA, specifically finding T.H. "would be highly likely within the foreseeable future to engage in acts of sexual violence." Judge Novey Catuogno explained her conclusion in a comprehensive oral decision and issued a conforming order.

The judge initially determined Dr. Harris and Dr. Polhamus were qualified as experts in their respective fields. The judge then recounted T.H.'s sexual offense history, which was consistently detailed in both expert reports. As Judge Novey Catuogno explained, "when [T.H.] was [fifteen] years old, he sexually assaulted an eight-year-old boy" and "was adjudicated delinquent on a count of aggravated sexual assault and . . . sentenced to a youth correctional facility for a period of four years." Five years later, at age twenty, "he sexually assaulted a four-year-old boy" by forcing the boy to "perform fellatio [on him] to the point of ejaculation." T.H. "pled guilty to . . . sexual assault and was sentenced to nine years with three years of parole ineligibility, part of the sentence to be served at the Adult Diagnostic Treatment Center [ADTC]."

Additionally, "[f]our months after being released from the ADTC," T.H. anally penetrated a five-year-old boy. T.H. was convicted for endangering the

welfare of a child and "sentenced to ten years in New Jersey State Prison with a five-year period of parole ineligibility." "[I]n addition to the sexual offenses for which [T.H.] was prosecuted," Judge Novey Catuogno recounted "undetected sexual offenses" perpetrated against four minor victims.

Based on that prior history and his self-reporting that he was aroused by children, both doctors diagnosed T.H. with pedophilic disorder. Notably, the doctors' diagnoses were not determined to be "exclusive," meaning T.H. was also aroused sexually by adults. In addition, both doctors diagnosed T.H. with antisocial personality and substance use disorders. They also scored T.H. on the Static-99R test and categorized him as a sex offender who would likely reoffend at a rate "well above average."

Both Drs. Harris and Polhamus also opined T.H.'s risk of sexual re-offense was high based on other risk factors. For example, Dr. Harris found T.H. exhibited "a deviant sexual arousal, antisocial attitudes and behaviors, sexual coping, poor cognitive problem solving, poor self regulation, lifestyle impulsivity and noncompliance with supervision." Dr. Polhamus identified similar risk factors and specifically described T.H. as at high risk of sexual recidivism "if not committed to a secure facility like the STU."

Both doctors also determined T.H. needed additional treatment to mitigate his risk of re-offense. On this point, T.H.'s treatment records reveal that he has had difficulty complying with his treatment plans and in October 2021 he was placed on Modified Activities Placement and removed from his therapeutic group due to an altercation with another resident.

Judge Novey Catuogno determined both doctors' opinions were well supported by the record, including T.H.'s treatment history and diagnostic testing, and credited both experts' diagnoses that T.H. has pedophilic disorder, which predisposes him to commit sexually violent acts. The judge also accepted the experts' conclusions based on identified dynamic risk factors that T.H. still had significant difficulty controlling his sexual offending behavior and was therefore highly likely to reoffend. Further, the judge concluded "there are no conditions of release which if imposed would sufficiently mitigate or reduce [T.H.]'s likelihood to commit future acts of sexual violence to below the level of highly likely." Finally, she explained she was not clearly convinced T.H. would abide by conditions of discharge in any event. This appeal followed.

II.

On appeal, T.H. argues the "trial court failed to consider whether T.H. was still a danger to the community given a significant change in his sexual

orientation and development" and the record does not clearly and convincingly support the judge's conclusion he presents a "present or ongoing danger to the community," which he contends is "minor male children." He argues he has undergone "significant changes" to his sexual orientation since his convictions such that his "sexual interest in male minors has waned," and his reported sexual fantasies "are predominantly about adult men and he masturbates to such fantasies." He asserts the expert reports relied upon by Judge Novey Catuogno gave "disproportionate weight to T.H.'s sexual history of events that occurred more than twenty years ago." T.H.'s arguments 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 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.

To involuntarily commit a person under the SVPA, the State must prove by clear and convincing evidence:

(1) that the individual has been convicted of a sexually violent offense; (2) that he suffers from a mental abnormality or personality disorder; and (3) that as a result of his psychiatric abnormality or disorder, "it is

highly likely that the individual will not control his or her sexually violent behavior and will reoffend."

[In re Civil Commitment of R.F., 217 N.J. 152, 173-74 (2014) (citations omitted) (quoting In re Commitment of W.Z., 173 N.J. 109, 130 (2002)).]

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." N.J.S.A. 30:4-27.26. The mental abnormality or personality disorder "must affect an individual's ability to control his or her sexually harmful conduct." W.Z., 173 N.J. at 127. A showing of an impaired ability to control sexually dangerous behavior will suffice to prove a mental abnormality. Id. at 129; R.F., 217 N.J. at 173-74.

Under the SVPA, "likely to engage in acts of sexual violence" means "the propensity of a person to commit acts of sexual violence is of such a degree as to pose a threat to the health and safety of others." N.J.S.A. 30:4-27.26. Our Supreme Court has interpreted this element "as requiring the State to show that a person is 'highly likely,' not just 'likely,' to sexually reoffend." R.F., 217 N.J. at 173. In other words, "the State must prove by clear and convincing evidence that the individual has serious difficulty controlling [their] harmful sexual behavior such that it is highly likely that the person will not control [their]

sexually violent behavior and will reoffend." W.Z., 173 N.J. at 133-34. To commit or continue to commit the individual, the court must address the offender's "present serious difficulty with control over dangerous sexual behavior." Id. at 132-33 (emphasis omitted).

In this appeal, our review of Judge Novey Catuogno'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 T.H.'s continued commitment at the STU, substantially for the reasons detailed in Judge Novey Catuogno's oral opinion. The judge was entitled to accept Drs. Harris's and Polhamus's uncontradicted expert reports as to T.H.'s high risk of re-offending.

Judge Novey Catuogno's finding that T.H. is highly likely to commit sexually violent acts unless confined for further treatment and supervision is fully supported by both experts' reports and T.H.'s treatment records. T.H. continues to suffer from pedophilic disorder and exhibit risk factors such as insufficient problem solving, preoccupation with sexual activity, which he uses as a coping mechanism, and emotional identification with young children, to whom he still feels attraction when he sees them on television.

The record also supports the judge's finding that T.H.'s risk to the community "ha[d] not been reduced or mitigated through treatment." T.H.'s treatment records reveal he has failed to employ recommended clinical interventions to moderate his conduct and behavior and remains in need of additional treatment to address his sexually deviant arousals and establish healthy interpersonal boundaries.

We also reject T.H.'s contention the court committed error by failing to consider his alleged change of sexual orientation and development when evaluating his potential danger to the community if released. As a preliminary matter, it does not appear from the record T.H. ever raised this issue before Judge Novey Catuogno. We typically decline to address "questions or issues not properly presented to the trial court when an opportunity for such a

presentation is available 'unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest.'" Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973) (quoting Reynolds Offset Co. v. Summer, 58 N.J. Super. 542, 548 (App. Div. 1959)). We are satisfied that neither exception applies here. Although we could decline to consider the argument on that basis alone, for purposes of completeness we consider and reject it on the merits.

Again, the record amply supports the judge's finding T.H. still experiences pedophilic arousal such that he remains highly likely to reoffend if released. As noted, both experts concluded T.H.'s behavior satisfied the criteria for pedophilic disorder and that their diagnosis was "not exclusive," such that they considered that T.H. was also sexually aroused by adults. We are satisfied T.H.'s treatment records and the experts' reports fully support Judge Novey Catuogno's conclusion that T.H. continues to be sexually aroused by children and remains a high risk to reoffend. Indeed, as Dr. Harris noted in his report, T.H.'s "strongest arousal is to young boys, then men and last [. . .] women."

In sum, we are satisfied the judge's conclusions are fully supported by the evidence presented at the commitment hearing and are consistent with the law governing SVPA proceedings. Judge Novey Catuogno properly determined the

State had proven by clear and convincing evidence each of the required elements for civil commitment under the SVPA.

To the extent we have not addressed any other argument raised by T.H. in this appeal, it is because we find any such argument to have insufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION