

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2012 IL App (4th) 110742-U

Filed 6/22/12

NO. 4-11-0742

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Sangamon County
DEREK POTTS,)	No. 04CF1019
Defendant-Appellant.)	
)	Honorable
)	Peter C. Cavanagh,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Turner and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court's denial of defendant's petition for unsupervised on-grounds and supervised off-grounds privileges was not against the manifest weight of the evidence.

¶ 2 In July 2011, the trial court denied a petition for unsupervised on-grounds and supervised off-grounds privileges filed by defendant, Derek Potts. Defendant appeals, arguing (1) the court's ruling was against the manifest weight of the evidence because the State proffered no expert opinion to negate the recommendations of defendant's treating physicians, and (2) the court erred in denying his petition for supervised off-ground privileges as defendant met his burden by showing sufficient safeguards against elopement. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On February 26, 2010, this court issued an order affirming the trial court's denial

of a February 2009 petition by defendant for unsupervised on-ground and supervised off-grounds privileges. See *People v. Potts*, No. 4-09-0329 (Feb. 26, 2010) (unpublished order under Supreme Court Rule 23). In that order, this court extensively covered the crimes in question and defendant's symptoms and treatment prior to the trial court's February 2009 order. For the sake of judicial economy and because the parties are familiar with the facts in this case, we will not restate those facts.

¶ 5 In April 2011, defendant filed a petition for privileges pursuant to section 5-2-4 of the Unified Code of Corrections (Code) (730 ILCS 5/5-2-4 (West 2008)), asking the trial court to grant supervised off-grounds privileges and unsupervised on-grounds privileges. The petition alleged defendant had been utilizing supervised grounds privileges appropriately and responsibly since July 24, 2007, had maintained psychiatric and behavioral stability, was compliant with prescribed psychotropic medications, and had remained symptom free. According to the petition, the requested privileges "are a necessary and standard progression of treatment and privileges for persons with defendant's mental illness."

¶ 6 On July 18, 2011, the trial court held a hearing on defendant's motion for privileges. Dr. Jagannath Patil, a psychiatrist at the Alton Mental Health Center (Alton), recommended defendant be given supervised off-grounds privileges. According to Dr. Patil, these greater privileges would help defendant move forward with his treatment and give his treatment team the opportunity to assess and evaluate how defendant handles increased privileges and interactions in social settings.

¶ 7 Dr. Patil testified defendant had been diagnosed with schizoaffective disorder bipolar type. In the past, defendant had delusions and command hallucinations, hallucinations

that command a person to commit specific acts. Dr. Patil stated defendant followed a command hallucination when he went to the capitol building and shot a guard in September 2004. The bipolar component of defendant's disorder included symptoms of mania, depression, and impulsivity. Defendant's mental illness cannot be cured.

¶ 8 In February 2007, defendant was transferred from the Chester Mental Health Center, a maximum security facility, to Alton, a medium security facility. Dr. Patil had been defendant's treating psychiatrist since May 2010 and had also treated him from February 2009 until June 2009. According to Dr. Patil, defendant had complied with his treatment plan since his transfer to Alton and had made significant progress in accordance with his treatment plan. Defendant had consistently taken his medication with no refusals and had participated in counseling. Dr. Patil described defendant's thinking as very clear.

¶ 9 As a result of defendant's compliance, he had earned and maintained a supervised grounds pass since July 24, 2007. This pass allowed him to walk on the facility grounds during designated periods of time under the direct supervision of forensically trained staff. Defendant handled this privilege well and never attempted to walk away from the staff.

¶ 10 According to Dr. Patil, he met with defendant "several times" and reviewed his treatment plan monthly and annually. Dr. Patil testified defendant's alcohol and drug dependence was in remission in the controlled hospital environment. According to Dr. Patil, defendant's chance of relapse with regard to drugs and alcohol was minimal as long as he stayed on his psychotropic medication and remained involved with medical treatment. Dr. Patil did not believe the requested off-ground supervised privilege would cause defendant any sort of relapse with regard to drugs or alcohol.

¶ 11 Dr. Patil testified defendant's mental illness is in a state of remission and had been so as long as Dr. Patil had known defendant. However, he acknowledged mental illness is incurable and defendant would need medication for the rest of his life. Defendant also acknowledged this fact. If defendant stopped taking his medication, his mental health would deteriorate within two to four weeks. Dr. Patil testified defendant had knowledge and insight with regard to his mental illness and medicinal needs. According to Dr. Patil, off-ground supervised privileges would motivate defendant to stay on his medication.

¶ 12 According to Dr. Patil, defendant's behavior was appropriate, he was participating in all the programs on the unit, and he was interacting with staff. He had never been subjected to restraints or emergency medication. Dr. Patil testified he believed defendant appreciated the criminality of his prior conduct and the harm he caused the community.

¶ 13 When asked how the off-site supervised privileges would be implemented if approved by the trial court, Dr. Patil testified, "To begin with, we will implement—I mean, slowly he will be taken by two staff along, within a ten-mile radius to places where there are not many people, so—and this we will do three to four times before we can implement with a larger group." The activities would include going with staff to social places like "bars, offices or some of the restaurants" in the area of the facility. The privilege could be taken away if defendant had any problem.

¶ 14 According to Dr. Patil, defendant's risk of escape would be minimal. He cited the fact defendant had never tried to elope from the facility or from staff. Further, Dr. Patil testified defendant had exercised his unsupervised building privileges appropriately. Under the contingency plan, if defendant tried to escape, the local and Illinois State Police would be

notified immediately.

¶ 15 Dr. Patil testified defendant posed a minimal risk to the public if he was granted supervised off-ground privileges as long as he was medicated. Dr. Patil described defendant as a model patient, and he believed defendant would eventually be discharged from Alton if his progress continued. Dr. Patil made no recommendation with regard to unsupervised on-ground privileges.

¶ 16 According to Dr. Patil, defendant was currently taking 400 milligrams of Clozapine per day for his mental illness. He had previously taken Risperidone and Quetiapine, but these medications did not work. Dr. Patil testified defendant would become delusional again, his symptoms would return, and he would become dangerous within two to four weeks if he stopped taking his medicine.

¶ 17 Dr. Patil indicated defendant had been a patient at the Choate Mental Health Center in 1999 and was discharged with medication in early 2000. For approximately three years after his discharge, defendant took his medicine before deciding he no longer needed to take it. Defendant's crimes resulting in his current confinement followed this decision. Dr. Patil acknowledged recidivism is common among mental patients. Dr. Patil testified defendant had experienced no change in his condition since he was in court in 2009 on his petition for privileges.

¶ 18 Ronald Floyd, the chief social worker and the forensic coordinator at Alton, testified defendant would initially be taken off the hospital grounds by two activity therapy staff members to locations within a six-mile radius of the hospital assuming the trial court granted the petition for privileges. The two staff members would be forensically trained with knowledge of

how to supervise defendant and what to do if he eloped, became unstable, or an accident or illness occurred. If defendant did well approximately three times with that level of security, he would be allowed to go with a larger group of up to five patients. The larger group would still be supervised by two staff members. These staff members would not be security guards and would be unarmed. If defendant began to exhibit any symptoms of decompensation or aggressive behavior, the staff members would immediately bring him back to the hospital. Defendant would not be taken off-grounds again until the treatment team reviewed the situation and implemented a corrective action plan. Floyd, like Dr. Patil, testified he was not recommending unsupervised on-grounds privileges for defendant.

¶ 19 Dr. Ronald Sellers, a clinical psychologist at Alton, testified he met with defendant twice for evaluations, once in 2008 and once on November 23, 2010. The latter evaluation was for purposes of the privilege request at issue in this case. At that evaluation, defendant's mental status appeared very appropriate. Dr. Sellers testified his observations of defendant on November 23, 2010, were consistent with his previous observations of defendant in 2008.

¶ 20 Dr. Sellers testified defendant's medication was a significant factor in defendant's consistency. He testified he supported defendant's request for privileges. According to Dr. Sellers, defendant understood the seriousness of an escape attempt and the consequences that would follow an attempt. However, he testified it would be potentially easier for defendant to escape when he was off-site than from the hospital. If defendant eloped without his medication, his potential for violence would be elevated.

¶ 21 The trial court noted the mental health treatment providers believed defendant

posed minimal risk if he continued taking his psychotropic medication and continued treatment. However, the court found defendant still presented a risk based on the evidence presented. The court stated "not enough has changed at this point to grant the relief that has been requested."

¶ 22 This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 A. Jurisdiction

¶ 25 In arguing this court does not have jurisdiction, the State first points to defendant's failure to comply with Illinois Supreme Court Rule 341(h)(4) (eff. July 1, 2008) because the jurisdictional section of defendant's brief "cites only 'Rule 302' without explaining what facts purportedly bring this case within that rule." See Ill. S. Ct. R. 302 (eff. October 4, 2011). The jurisdictional statement in defendant's brief is clearly incorrect as Rule 302 concerns direct appeals to the supreme court. Citing *Dillard v. Kean*, 183 Ill. App. 3d 28, 31, 538 N.E.2d 914, 916 (1989), the State argues defendant's failure to file an adequate statement of jurisdiction can constitute cause for dismissing the appeal. We decline the State's invitation on that point. However, we encourage defendant's appellate counsel to include a proper jurisdictional statement in the future.

¶ 26 The State next argues this court does not have jurisdiction because the trial court's denial of defendant's petition for privileges was not a final order. The State argues the trial court's denial of privileges is interlocutory to the central question of whether defendant should be discharged or conditionally released.

¶ 27 As far back as 1984, appellate courts have been reviewing trial court decisions in cases such as this one. The Second District Appellate Court in *People v. Reed*, 126 Ill. App. 3d

1020, 1021, 467 N.E.2d 1158, 1159 (1984), found it had jurisdiction over a trial court's denial of off-ground privileges for the not-guilty-by-reason-of-insanity defendant in that case. In *Reed*, the State raised the issue whether the order was final and appealable because "it did not terminate the rights of the parties with regard to the subject matter of the controversy, that is, whether defendant is still required to be involuntarily committed so as to receive mental health services." *Reed*, 126 Ill. App. 3d at 1021-22, 467 N.E.2d at 1159. The defendant responded by arguing the trial court's order was final and appealable because "the only manner in which defendant's rights could be vindicated or protected was by the appeal process." *Reed*, 126 Ill. App. 3d at 1022, 467 N.E.2d at 1159. The Second District agreed with the defendant and found the trial court's order at issue was final and appealable.

¶ 28 The State argues *Reed* was wrongly decided. However, after nearly 30 years, *Reed* remains good law on that point. As a result, we find we do have jurisdiction.

¶ 29 B. Is the Court's Decision Reviewable

¶ 30 The State next argues "the trial court's decision to withhold approval for requested privileges under section 5-2-4(b) may not be reviewed for error." According to the State, "section 5-2-4(b) is phrased to authorize a court to approve privileges, subject to such conditions that the court 'may include.'" See 730 ILCS 5/5-2-4(b) (West 2010). The State argues "[t]he permissive wording overwhelmingly implies that the trial court has no obligation to approve privileges at all." The State then cites our supreme court's decision in *People v. Stoffel*, 239 Ill. 2d 314, 324, 941 N.E.2d 147, 155 (2010), for the proposition "it cannot be error for a trial court to fail to do something it is not required to do."

¶ 31 We disagree with the State's argument this court may not review the trial court's

order denying defendant's privileges. In *Stoffel*, our supreme court made the simple point a trial court's failure to decide an issue it is not obligated to decide is not reviewable. This case is distinguishable from *Stoffel* because the State is not arguing the trial court could have simply ignored defendant's petition for privileges. Instead, the State only argues the trial court has no obligation *to approve* a request for privileges. However, a denial of privileges by the trial court is an action subject to review.

¶ 32 C. Denial of Petition for Privileges

¶ 33 As to the merits of this appeal, defendant first argues the trial court's ruling was against the manifest weight of the evidence because the State proffered no expert testimony to negate the recommendations of defendant's treating physicians. When a defendant files a petition for privileges, he bears the burden of proof and the burden of going forward with the evidence. A defendant must carry his burden by clear and convincing evidence. 730 ILCS 5/5-2-4(g) (West 2008)). Defendant argues he met this burden and the trial court's decision was against the manifest weight of the evidence because the State offered no contrary expert testimony.

According to defendant:

"For the court to deny these privileges is, quite simply, to punish the Defendant, and stand in the way of his treatment. Without the granting of these privileges, the patient is in a state of flux, with no opportunity for progress to be made. With no contradictory expert testimony offered by the State, the Trial Court's decision to halt medical treatment amounts to nothing more than punishment, not treatment, and as such, its decision is clearly against the manifest

weight of the evidence and should be reversed."

¶ 34 Defendant also argues the trial court erred in denying defendant's petition for supervised off-ground privileges as defendant met his burden of proof to show sufficient safeguards against elopement. Defendant pointed to Floyd's testimony defendant's chance of elopement was minimal if allowed to go off the hospital grounds because of the supervision defendant would receive. According to defendant, because the State did not offer any contradictory testimony with regard to the safeguards used during the off-grounds visits, the trial court's decision denying the privileges amounts to nothing more than punishment. As a result, defendant argues the trial court's decision is against the manifest weight of the evidence.

¶ 35 We disagree with both of defendant's arguments. Section 5-2-4(b) of the Code (730 ILCS 5/5-2-4(b) (West 2008)) grants trial courts " 'wide discretion in granting and tailoring passes.' " *People v. Wolst*, 347 Ill. App. 3d 782, 792, 808 N.E.2d 534, 542 (2004) (quoting *People v. Cross*, 301 Ill. App. 3d 901, 910, 704 N.E.2d 766, 772 (1998)). This means a trial court does not have to grant a privilege any time a defendant's treatment team believes the privilege should be granted. *Wolst*, 347 Ill. App. 3d at 792, 808 N.E.2d at 542-43.

¶ 36 A trial court's decision on a petition for privileges must be affirmed unless the court's decision was against the manifest weight of the evidence. *Wolst*, 347 Ill. App. 3d at 790, 808 N.E.2d at 541. For a ruling to be against the manifest weight of the evidence, the opposite result from that reached by the trier of fact must be clearly evident. *Wolst*, 347 Ill. App. 3d at 790, 808 N.E.2d at 541.

¶ 37 When a defendant is confined after a verdict of not guilty by reason of insanity, he is confined for purposes of treatment and protection, not punishment. *People v. Harrison*, 366

Ill. App. 3d 210, 216-17, 851 N.E.2d 152, 159 (2006). However, as we stated in defendant's prior appeal, even if a defendant is found not guilty by reason of insanity, the threat this type of individual poses to both himself and society cannot be ignored. He is not confined because of his guilt but for his and the public's safety. *Harrison*, 366 Ill. App. 3d at 218, 851 N.E.2d at 160.

¶ 38 While the testimony reflected defendant's mental illness is currently in remission, the testimony also reflected the following undisputed and important facts: (1) defendant's mental illness cannot be cured; (2) if defendant stopped taking his medication, the symptoms of his mental illness could reemerge within two to four weeks; (3) before killing Officer Wozniak, defendant had stopped taking his medication even though he had taken the medicine voluntarily for an extended period of time; and (4) the staff supervising defendant when taken off the hospital grounds would be unarmed. Further, although the experts testified defendant understood he needed to take his medication or the symptoms of his mental illness would return, defendant's chances of acquiring the correct medicine should he elope are not good.

¶ 39 While we appreciate the progress defendant has made and encourage him to continue with his treatment, we cannot say the trial court's decision denying the requested privileges is against the manifest weight of the evidence. As to the unsupervised on-site privileges, we note defendant's treating psychiatrist, Dr. Patil, testified he was not recommending this privilege. As to the supervised off-site privileges, the trial court's decision to deny these privileges is not against the manifest weight of the evidence as the record shows this privilege could potentially place both defendant and the public at large at risk.

¶ 40 III. CONCLUSION

¶ 41 For the reasons stated, we affirm the trial court's ruling.

¶ 42 Affirmed.