



¶ 3 On March 23, 1993, the respondent pled guilty to two counts of aggravated criminal sexual assault and one count of aggravated criminal sexual abuse (the victims were under the age of 13) and was sentenced to a total of 15 years' imprisonment. The respondent was released from the Illinois Department of Corrections (DOC) on December 7, 1999, following the completion of his term of imprisonment. Upon release, he was required to serve a term of mandatory supervised release (MSR). During his MSR term, his parole agent discovered that he was dating several women with children. On November 10, 2000, his parole agent visited his residence and discovered alcohol, four sexually explicit and pornographic photographs of an adult female, a child's purse, and several stuffed animals. Because the respondent's sex-offender-treatment therapist and parole agent determined that he was on the verge of committing another sexual offense against a child, he was returned to the DOC and his parole was revoked.

¶ 4 The respondent's anticipated date of release from the DOC was October 23, 2001.

¶ 5 On September 26, 2001, he was evaluated by Jacqueline Buck, Ph.D., a psychologist employed by the DOC, to determine whether he met the criteria for further commitment under the Act (725 ILCS 207/15 to 65 (West Supp. 2001)). Dr. Buck concluded that the respondent suffered from the following mental disorders: pedophilia, sexually attracted to females, nonexclusive type; alcohol dependence, without psychological dependence, in a controlled environment; and personality disorder, not otherwise specified, with antisocial personality traits. Dr. Buck further concluded that it was substantially probable that the respondent would engage in future acts of sexual violence if released into the community.

¶ 6 Thereafter, on October 17, 2001, the State filed a petition pursuant to the Act to have the respondent declared a sexually violent person and committed to a secure facility. The State noted that the respondent had previous convictions for aggravated criminal sexual assault and aggravated criminal sexual abuse committed against victims under the age of 13.

Additionally, the respondent had been previously adjudicated delinquent for committing the offense of aggravated criminal sexual abuse when he was a juvenile (the victim was approximately three years old). In the petition, the State set forth Dr. Buck's conclusions regarding the respondent's mental condition and his likelihood of committing future acts of sexual violence. The State noted that the respondent's anticipated release date into MSR was October 23, 2001, and requested that he instead be transferred (on his release date) to a secure facility for institutional care. The State alleged that the respondent's mental disorders made it substantially probable that he would engage in further acts of sexual violence.

¶ 7 On October 30, 2001, following a hearing, the trial court found that there was probable cause to conduct further proceedings on the State's petition and ordered that the respondent be detained at a facility approved by the DHS until trial. On March 10, 2011, the parties agreed to waive a jury trial and to rest on the reports submitted by their respective experts. The State submitted reports from two expert witnesses: Dr. Jacqueline Buck and Dr. Barry Leavitt.

¶ 8 Dr. Buck conducted one three-hour meeting with the respondent in September 2001 and reviewed his master file as well as numerous other documents. Dr. Buck noted that the respondent had previous convictions for aggravated criminal sexual assault and aggravated criminal sexual abuse. The respondent was willing to discuss this prior history in their interview; however, Dr. Buck opined that he minimized his behavior and involvement in these sexual offenses by not divulging the full range of facts surrounding the offenses and by distorting the sexual offense behaviors that he admitted committing. In reviewing the respondent's file, Dr. Buck noted that he did not take advantage of treatment opportunities while incarcerated. Following his release from prison, he attended required sex offender treatment in the community, but his participation was minimal. He continued to deny his sexual offending and did not complete the assigned homework. Following his return to the

DOC, he attended the pretreatment phase of a sex offender treatment program offered at Graham Correctional Center. However, his records indicate that during this treatment, he continued to deny his sexual offenses and minimized the harm that he inflicted on his victims. Dr. Buck noted that the respondent had a long history of sexual offending, beginning at the age of 13. He was required to attend sex offender treatment as a result of the juvenile conviction; however, he reoffended within five years. Dr. Buck noted that alcohol played a role in the respondent's pattern of offending because he used the alcohol to hinder the parents from being alert and protecting their children.

¶ 9 Applying the criteria of the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR), Dr. Buck diagnosed the respondent as suffering from the following mental disorders: pedophilia, sexually attracted to females, nonexclusive type; alcohol dependence, without psychological dependence, in a controlled environment; and personality disorder, not otherwise specified, with antisocial personality traits. She employed several actuarial risk assessment tools to assess the likelihood that the respondent would engage in future acts of sexual violence. Specifically, she used: (1) the Minnesota Sex Offender Screening Tool-Revised (MnSOST-R); (2) the Violence Risk Assessment Guide (VRAG); and (3) the Sex Offender Risk Appraisal Guide (SORAG). The respondent scored in the high-risk category under the MnSOST-R, the high-risk category under the VRAG, and the extremely high-risk category under the SORAG.

¶ 10 Based upon all of these considerations, Dr. Buck concluded that a substantial probability existed that the respondent would engage in continued acts of sexual violence should he be released. Therefore, Dr. Buck recommended that the respondent be referred for civil commitment as a sexually violent person.

¶ 11 The State also submitted a report from Dr. Barry Leavitt, a licensed clinical psychologist. Dr. Leavitt performed a clinical interview of the respondent in December 2001

and engaged in a thorough review of his clinical records. Dr. Leavitt noted that during the clinical interview, the respondent was guarded and suspicious in his responses and many of his responses contradicted previous replies from past evaluations. Although the respondent had a sex offense history dating back over 15 years to his early adolescence, his sex offender treatment was limited. The respondent had never successfully completed a sex offender treatment program.

¶ 12 Dr. Leavitt noted that the respondent attended required sex offender treatment while on parole. However, the respondent's progress was limited, and he was viewed as being evasive, dishonest, uncooperative, and in denial of his sexual offenses. Further, he was viewed as displaying many personality traits and behaviors indicative of a fixated pedophilic disorder, and he appeared disinterested and unmotivated in refraining from his cycle of sexual offending. Following his December 2000 return to prison, he was admitted into a pretreatment phase of the residential sex offender treatment program where his progress was described as being minimal, with indications of marked guardedness, denial, and continued resistance to acknowledging the full extent of his sexual deviance.

¶ 13 During his interview with Dr. Leavitt, the respondent admitted that he had a previous pattern of consuming excessive amounts of alcohol, which dated back to his late adolescence.

¶ 14 He reportedly experienced episodes involving hangovers, blackouts, fights, and accidents associated with drinking. He also acknowledged that alcohol use was involved in his sexual offending. He completed an alcohol and substance abuse assessment in December 2001, and it was recommended that he participate in an alcohol and drug substance abuse treatment group. However, the respondent failed to participate in any type of alcohol or drug treatment following the assessment.

¶ 15 Dr. Leavitt administered the Minnesota Multiphasic Personality Inventory-II and the Millon Clinical Multiaxial Inventory-III to determine the respondent's psychological profile.

Based on his review of the respondent's files, the psychological and substance abuse evaluations, psychological testing, and the clinical interview, Dr. Leavitt concluded that the respondent suffered from the following mental disorders: pedophilia, sexually attracted to females, nonexclusive type; alcohol dependence, mild with physiological dependence, in a controlled environment; cannabis abuse, in a controlled environment; and personality disorder, not otherwise specified, with antisocial personality traits.

¶ 16 Dr. Leavitt employed the following actuarial risk assessment tools to assess the likelihood that the respondent would engage in future acts of sexual violence: the Static-99; the Static-99R; the MnSOST-R; and the Static-2002. The respondent scored in the moderate-high risk category under the Static-99 and the Static-99R, the high-risk category under the MnSOST-R, and the moderate-high risk category under the Static-2002.

¶ 17 Dr. Leavitt concluded that the respondent was a substantial and continuing risk for sexual reoffending. Accordingly, he concluded that a substantial probability existed that the respondent would engage in future acts of sexual violence without intervention, and he recommended that the respondent be found to be a sexually violent person.

¶ 18 The respondent submitted an expert report prepared by Dr. Erwin Baukus, a licensed clinical psychologist. Dr. Baukus examined and evaluated the respondent in 2002. He diagnosed the respondent as suffering from the following mental disorders: pedophilia, sexually attracted to females nonexclusive type; and adult antisocial behavior.

¶ 19 However, Dr. Baukus disagreed with Dr. Buck's and Dr. Leavitt's conclusion that it was substantially probable that the respondent would engage in future acts of sexual violence. He opined that Dr. Buck's and Dr. Leavitt's use of the "tests and actuarially derived prediction systems were misused and over-interpreted making predictions that were unsupported by the data." Although he agreed that the respondent met the DSM-IV-TR criteria for the classification of pedophilia, he opined that the scientific evidence did not

support the conclusion that a pedophilia classification indicated that the respondent was predisposed to engage in future acts of sexual violence. He concluded that the "actuarially derived predictions made by both of the State's experts go far beyond their data and the limits of what the prediction systems used can do." He noted that the State's predictions were based upon data from white sexual offenders in countries with different languages, cultures, laws, and jurisdictions. According to Dr. Baukus, the prediction systems have not been cross-validated for nonwhite Illinois offenders. He further noted that the actuarial predictions were derived to attempt prediction of *any* sexual recidivism. Therefore, he determined that the accuracy of these prediction systems for nonwhite Illinois offenders and for sexually *violent* recidivism (as opposed to sexual recidivism) was unknown. Accordingly, Dr. Baukus concluded that no scientific basis existed to make the prediction that the respondent was substantially likely to engage in future acts of sexual violence.

¶ 20 Based upon this evidence, the trial court entered an order on June 29, 2011, adjudicating the respondent a sexually violent person and committing him to the custody of the DHS for control, care, and treatment in a secure facility. The court concluded that the State had proved that the respondent was a sexually violent person beyond a reasonable doubt. The respondent appeals.

¶ 21 The respondent first argues that the State's petition for sexually violent person commitment was untimely filed and therefore defective under section 15 of the Act (725 ILCS 207/15 (West Supp. 2001)). Specifically, the respondent argues that the State's petition should be dismissed as untimely because the DOC miscalculated his anticipated release date as October 23, 2001. Instead, he argues that his anticipated release date should have been September 23, 2001, several weeks prior to the commitment petition being filed. Because the State's commitment petition was served after September 23, it was untimely. The State counters that the commitment petition was filed October 17, 2001, 6 days before the

respondent's contemplated entry into MSR, squarely within the 120-day window set forth in section 15(b-5)(1) of the Act (725 ILCS 207/15(b-5)(1) (West Supp. 2001)). Alternatively, the State argues that assuming the respondent's correct release date was September 23, 2001, the petition was timely filed because it was filed 24 days following the respondent's actual release date, a time period which also falls within the window set forth in section 15(b-5)(1) of the Act.

¶ 22 On June 20, 2002, the respondent raised this argument in the trial court by filing a motion to dismiss the State's petition. In support of the motion, the respondent attached an October 9, 2001, internal e-mail communication from the record office supervisor at the correctional facility which stated as follows:

"Just wanted to let you know that the above named inmate [(the respondent)] received two month restoration but since he is a Technical Violator it will appear that one month got restored. This new projected release date is [October] 23, 2001. This time adjustment is not yet entered into OTS. Wanted to wait until I heard from you. This restoration was submitted by staff without checking the status of his referral. I know this is going to create a problem. Sorry."

¶ 23 The respondent also submitted two DOC sentence calculation worksheets dated December 7, 2000, and October 10, 2001. The December 2000 worksheet calculated his projected release date as November 23, 2001. The October 2001 worksheet calculated his projected release date as October 23, 2001.

¶ 24 On April 7, 2003, the trial court held a hearing on the respondent's motion to dismiss the State's petition as untimely. The respondent argued that had he been released on the correct date (September 23), Dr. Buck's evaluation would not have occurred and a commitment petition would not have been filed by the State. The court concluded as follows with regard to the release date:

"Well, without some further information as to how you calculate that his release date should have been earlier and he was unlawfully held, to show me that his release date which was utilized was improper, the motion will be denied. Based upon someone else's interpretation communicating in an e-mail, not the official calculations or the official documents from [DOC], I don't think I have sufficient basis to rule he was improperly held."

¶ 25 On July 13, 2007, the respondent filed a motion requesting the trial court reconsider its ruling on the timeliness of the commitment petition. On July 19, 2007, the court denied the respondent's motion. On April 21, 2009, the respondent filed a motion for issuance of subpoena *duces tecum*, requesting the court authorize him to obtain the DOC's calculations of his projected release date. On May 7, 2009, the court entered an order authorizing the issuance of the subpoena. Thereafter, on March 1, 2010, the respondent filed a motion to certify the following question for interlocutory appeal: "can a miscalculation of early release credits and a subsequent filing of a Petition be deemed time barred thus preventing further litigation and allowing for an immediate release of the alleged sexually violent person?" However, the respondent failed to present any new information to support his claim that the date had been miscalculated. On March 25, 2010, the trial court denied the respondent's motion, concluding that the issue had previously been resolved and it did not meet the interlocutory appeal requirements.

¶ 26 Section 15(b-5)(1) of the Act (725 ILCS 207/15(b-5)(1) (West Supp. 2001)) sets forth the following time period for filing a sexually violent person petition:

"(b-5) The petition must be filed:

(1) No more than 90 days before discharge or entry into mandatory supervised release from a Department of Corrections correctional facility for a sentence that was imposed upon a conviction for a sexually violent offense,

or for a sentence that is being served concurrently or consecutively with a sexually violent offense, and no more than 30 days after the person's entry into parole or mandatory supervised release[.]"

¶ 27 Here, the respondent's anticipated entry date into MSR was calculated by the DOC as October 23, 2001. The State filed its petition for sexually violent person commitment on October 17, 2001, six days *before* the respondent's contemplated entry into MSR. Therefore, the State properly followed statutory procedures by filing the petition within the 120-day window set forth in the Act.

¶ 28 The respondent argues that the DOC mistakenly calculated his MSR entry date as October 23, 2001. Instead, the respondent insists that the correct anticipated MSR entry date was September 23, 2001. Therefore, he argues that the State's October 17 commitment petition was not timely filed because his sentence was fully served as of that date. Assuming *arguendo* that the respondent's anticipated entry date into MSR was September 23, 2001, the State's commitment petition was timely filed under section 15(b-5)(1) of the Act, which allows the commitment petition to be filed no more than 30 days after the person's entry into parole or MSR. The State's petition was filed 24 days following the anticipated MSR entry date the respondent argues should apply. Accordingly, the State's commitment petition was timely filed within the time period set forth by the Act regardless of whether the respondent's anticipated MSR entry date was October 23, 2001, or September 23, 2001.

¶ 29 The respondent next argues that the trial court abused its discretion by ordering him confined for institutional care in a secure facility. He asserts that the court should have given greater weight to Dr. Baukus's finding that there was *no* scientific basis to conclude that his mental disorders made it substantially probable that he would engage in future acts of sexual violence. He also argues that Dr. Baukus's findings should be given more weight because he spent more time with the respondent.

¶ 30 We review the circuit court's decision to commit the respondent to institutional care in a secure facility under an abuse-of-discretion standard. *In re Detention of Lieberman*, 379 Ill. App. 3d 585, 609 (2007). "An abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." *Id.*

¶ 31 Section 40(b)(2) of the Act (725 ILCS 207/40(b)(2) (West Supp. 2001)) requires the commitment order to specify whether the person found to be sexually violent should be committed to institutional care in a secure facility or conditionally released. In making this determination, the court should consider: (1) the nature and circumstances of the behavior that was the basis for the State's petition; (2) the person's mental history and present mental condition; (3) where the person will live; (4) how the person will support himself; and (5) what arrangements are available to ensure that the person has access to and will participate in necessary treatment. 725 ILCS 207/40(b)(2) (West Supp. 2001).

¶ 32 Here, the record shows that the trial court reviewed and considered the evidence on the relevant factors prior to entering the commitment order. Dr. Buck, Dr. Leavitt, and Dr. Baukus diagnosed the respondent with the following mental disorder: pedophilia, sexually attracted to females, nonexclusive type. Dr. Buck and Dr. Leavitt expressed their professional opinion that the respondent suffered from mental disorders that made it substantially probable that he would engage in future acts of sexual violence. The record revealed that the respondent had been committing sexually violent offenses since his early adolescence. Further, the record establishes that the respondent has refused to acknowledge his past sexual offending during sex offender treatment and failed to complete treatment for his mental disorders. Specifically, the respondent failed to take advantage of treatment opportunities while incarcerated and failed to actively participate in community treatment programs when required to attend. Although it is true that there was disagreement among

the experts regarding the substantial probability of the respondent engaging in future acts of sexual violence, the record establishes that the trial court was presented with and considered all of the evidence. Accordingly, we conclude that the trial court did not abuse its discretion in ordering the respondent to be committed to DHS for control, care, and treatment in a secure facility.

¶ 33 Affirmed.