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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

<i>In re</i> COMMITMENT OF JAMES BARKSDALE)	
(The People of the State of Illinois,)	Appeal from the Circuit Court
Petitioner-Appellee,)	of Cook County.
v.)	No. 06 CR 80008
James Barksdale,)	The Honorable
Respondent-Appellant).)	Timothy J. Joyce,
)	Judge Presiding.
)	

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Palmer and Justice Reyes concurred in the judgment.

ORDER

¶ 1 *Held:* The State's petition seeking the involuntary commitment of respondent as a sexually violent person was filed pursuant to statutory authority and respondent's commitment did not violate substantive due process.

¶ 2 Respondent James Barksdale was convicted of rape, aggravated kidnapping, and deviate sexual assault in 1972, and was granted parole in February 2006. Shortly after respondent was granted parole, the State filed a petition seeking the involuntary commitment of respondent under the Sexually Violent Persons Commitment Act (the Act) (725 ILCS 207/1 *et seq.* (West 2004)). After a jury trial, respondent was found to be a sexually violent person

and was ordered to be detained at a Department of Human Services (DHS) treatment and detention facility. Respondent appeals, arguing that the commitment petition was filed without legal authority and that his commitment violated his substantive due process rights. For the reasons that follow, we affirm.

¶ 3

BACKGROUND

¶ 4

In 1972, respondent was convicted of rape, aggravated kidnapping, and deviate sexual assault and was sentenced to concurrent prison terms of 50 to 100 years for the rape, 50 to 100 years for the aggravated kidnapping, and 10 to 14 years for the deviate sexual assault. His convictions were affirmed on direct appeal. *People v. Barksdale*, 24 Ill. App. 3d 489 (1974). On February 16, 2006, respondent was granted parole. On March 13, 2006, the State filed a petition to commit respondent as a sexually violent person pursuant to the Act.

¶ 5

According to the petition, respondent had three convictions for sexually violent offenses. First, in 1958, respondent was convicted of two counts of rape and one count of aggravated assault with the intent to commit rape and was sentenced to 25 years in the IDOC for each count of rape. He was released on parole in 1965, but was returned to the IDOC shortly thereafter for a parole violation and was ultimately released in February 1970. Second, in 1972, respondent was convicted of the sexually violent offenses of rape and deviate sexual assault, committed on June 23, 1971, for which he was sentenced to 50 to 100 years in the IDOC. Third, also in 1972, respondent was convicted of the sexually violent offenses of rape and deviate sexual assault, committed on March 18, 1972, for which he was sentenced to 75 to 150 years in the Illinois Department of Corrections (IDOC). At the time he committed these crimes, respondent was out on bond for multiple sexually violent offenses.

¶ 6 The petition claimed that respondent had been diagnosed with three mental disorders, “Paraphilia, Not Otherwise Specified, Sexually Attracted to Non-consenting Persons, Non-exclusive Type”; “Antisocial Personality Disorder”; and “Narcissistic Personality Disorder”; which the petition claimed predisposed him to commit future acts of sexual violence. The petition also incorporated a Sexually Violent Persons Commitment Act evaluation completed by Dr. Jacqueline Buck, a licensed clinical psychologist.

¶ 7 On March 13, 2006, the trial court ordered respondent detained pending a probable cause hearing and on March 15, 2006, respondent waived the 72-hour probable cause hearing requirement. On October 5, 2006, the trial court found probable cause to believe respondent was a sexually violent person. The court entered an order continuing the detainment of respondent. Prior to respondent’s trial on the commitment petition, respondent filed two *pro se* petitions for writs of *habeas corpus*, both of which were denied by the trial court. The second petition was appealed to this court, and we affirmed the trial court’s dismissal of the petition but noted that respondent had not yet received a trial after having been detained for over five years and remanded for a prompt resolution of the underlying commitment petition. *In re Commitment of Barksdale*, 2011 IL App (1st) 102538-U.

¶ 8 On November 17, 2011, after a jury trial, respondent was found to be a sexually violent person and the court entered a disposition order remanding respondent to DHS for treatment in a secure facility. Respondent filed a *pro se* notice of appeal the same day. On December 9, 2011, the trial court entered an order dismissing respondent’s notice of appeal pursuant to Illinois Supreme Court Rule 309 (eff. Feb. 1, 1981), and respondent filed a *pro se* motion for a new trial, which was denied the same day. After denial of respondent’s motion for a new trial, respondent filed another *pro se* notice of appeal.

¶ 9 Respondent was appointed appellate counsel on January 9, 2012. On the same day, counsel filed a motion to dismiss respondent’s appeal pursuant to Rule 309. On January 20, 2012, respondent filed a motion to reconsider the denial of respondent’s motion for a new trial. The same day, the trial court granted respondent’s motion to dismiss his appeal and granted respondent’s counsel leave to file an amended motion for new trial after completing a review of the record.

¶ 10 On February 10, 2013, respondent mailed a *pro se* “Motion to Dismiss Counsel Due to His Ineffective Assistance of Counsel” as well as a *pro se* “Post-Trial Motion for Arrest of Judgment.”¹ On February 26, 2013, respondent’s counsel filed a motion to conduct an *in camera* inspection of the medical records of Dr. Buck, as well as a “Motion for New Trial, or in the Alternative, a Judgment that Respondent is Not a Sexually Violent Person, or to Vacate the Commitment Order and Enter an Order of Conditional Release.”

¶ 11 On May 6, 2013, the trial court entered an order indicating that the two motions filed by respondent’s counsel had been withdrawn by respondent, who was acting *pro se*, and denied respondent’s *pro se* “Post-Trial Motion for Arrest of Judgment.” Respondent filed a *pro se* notice of appeal the same day, and this *pro se* appeal follows.

¶ 12 ANALYSIS

¶ 13 On appeal, respondent raises two issues. First, he argues that his commitment violates his substantive due process rights, because the commitment resulted in his continued incarceration, despite the fact that he was paroled in 2006. Additionally, respondent argues that the commitment petition “was filed without jurisdiction or legal authority under Illinois law.”

¹ Stamps on the motions indicate that they were received on February 14, 2013, and filed on March 1, 2013.

¶ 14 As an initial matter, the State raises the question of whether we have jurisdiction to consider respondent's appeal. "A reviewing court must ascertain its jurisdiction before proceeding in a cause of action, regardless of whether either party has raised the issue." *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213 (2009). In the case at bar, the State questions whether respondent's dismissal of his appellate counsel and his withdrawal of counsel's amended posttrial motion affects the timeliness of his notice of appeal.

¶ 15 Under Illinois Supreme Court Rule 303(a)(1) (eff. May 30, 2008), a notice of appeal must be filed within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against the judgment or order. "The timely filing of a notice of appeal is both jurisdictional and mandatory." *Secura*, 232 Ill. 2d at 213. In the case at bar, respondent filed a *pro se* posttrial motion for new trial, which was denied on December 9, 2011. After denial of respondent's motion for a new trial, respondent filed a *pro se* notice of appeal. Respondent was appointed appellate counsel on January 9, 2012, and on the same day, counsel filed a motion to dismiss respondent's appeal, which was granted on January 20, 2012. In the same order, the trial court granted respondent's counsel leave to file an amended motion for new trial after completing a review of the record. However, respondent withdrew counsel's amended posttrial motion and instead dismissed his appellate counsel and filed a *pro se* "Post-Trial Motion for Arrest of Judgment." On May 6, 2013, the trial court denied respondent's *pro se* "Post-Trial Motion for Arrest of Judgment," and respondent filed a *pro se* notice of appeal the same day.

¶ 16 The State notes that the trial court's January 20, 2012, order stated that it granted respondent's *counsel* leave to file an amended motion for a new trial. However, respondent

withdrew counsel's amended motion and instead filed his own *pro se* motion. Thus, the State suggests that, "[a]ssuming that the order granting leave to file an amended motion encompassed only a motion filed by counsel, respondent's second *pro se* post-trial motion, filed February 10, 2013, was untimely, as it was filed more than a year after the November 17, 2011 judgment." Consequently, if the posttrial motion was untimely, so was respondent's May 6, 2013, notice of appeal, as it was not filed within 30 days of an order disposing of a "timely posttrial motion" as required by Rule 303(a). We do not find this argument persuasive.

¶ 17 When denying respondent's motion, the trial court noted: "What you've argued to me, Mr. Barksdale, and what you've presented to me doesn't change my ruling on your first Motion for a New Trial, and I don't know that you have a right to a second one, you probably don't, but *under the procedural circumstances I'm giving you this right.*" (Emphasis added.) Thus, the trial court expressly permitted respondent to file his motion, thereby making it timely. Consequently, since the posttrial motion was timely, so was the notice of appeal, filed the same day. Accordingly, we move to the merits of respondent's appeal.

¶ 18 Respondent's first argument is that his commitment violates his substantive due process rights, because the commitment resulted in his continued incarceration, despite the fact that he was paroled in 2006. The Act "allows the State to extend the incarceration of criminal defendants beyond the time they would otherwise be entitled to release if those defendants are found to be 'sexually violent.'" *In re Detention of Samuelson*, 189 Ill. 2d 548, 552 (2000). However, proceedings under the Act "are civil rather than criminal in nature" (*Samuelson*, 189 Ill. 2d at 559) and the civil proceeding is a separate action from the earlier criminal proceeding (see *People v. Hughes*, 2012 IL 112817, ¶ 50 (noting that the possibility

of involuntary commitment requires a separate civil proceeding); *In re Jonathon C.B.*, 2011 IL 107750, ¶ 119 (characterizing commitment under the Act as a “separate action” requiring proof of additional elements not common to all sex offenders)). Furthermore, “the law has no retroactive effect” since “[a] defendant cannot be involuntarily committed based on past conduct.” *Samuelson*, 189 Ill. 2d at 559. Instead, “[i]nvoluntary confinement is permissible only where the defendant presently suffers from a mental disorder and the disorder creates a substantial probability that he will engage in acts of sexual violence in the future.” *Samuelson*, 189 Ill. 2d at 559. Thus, despite the fact that respondent is not free to leave, his civil confinement is separate from his criminal incarceration and is based on his current conduct. See *Samuelson*, 189 Ill. 2d at 559 (finding that the Act is not subject to challenge on either double jeopardy or *ex post facto* grounds because it is civil in nature and has no retroactive effect).

¶ 19 Furthermore, the United States Supreme Court has stated that civil commitment statutes satisfy substantive due process requirements “provided the confinement takes place pursuant to proper procedures and evidentiary standards,” including “a finding of dangerousness either to one’s self or to others” and “proof of some additional factor, such as a ‘mental illness’ or ‘mental abnormality.’ ” *Kansas v. Hendricks*, 521 U.S. 346, 357-58 (1997). See also *Kansas v. Crane*, 534 U.S. 407, 409-10 (2002). Our supreme court has also specifically held that the Act does not violate substantive due process because it requires proof of the commission of a prior offense, includes specific definitions of “mental disorder,” and includes a defined burden regarding the likelihood of future offenses. *In re Detention of Varner*, 207 Ill. 2d 425, 432-33 (2003). Accordingly, we cannot find that respondent’s civil commitment violated his substantive due process rights.

¶ 20 Respondent also argues that the commitment petition “was filed without jurisdiction or legal authority.” The State first argues that respondent has forfeited this argument by failing to raise it before the trial court. Illinois law is clear that both an objection and a written posttrial motion raising an issue are necessary to preserve any error for appellate review. *Orzel v. Szewczyk*, 391 Ill. App. 3d 283, 287 (2009); see also *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (“Both a trial objection and a written post-trial motion raising the issue are required for alleged errors that could have been raised during trial.” (Emphases in original.)). In the case at bar, respondent did neither, and, indeed, appeared before the trial court a number of times, including at the probable cause hearing. See *In re Detention of Lieberman*, 356 Ill. App. 3d 373, 378 (2005) (“respondent submitted himself to the court’s jurisdiction when he participated in the proceedings, and cannot assert the court lacked jurisdiction when he willingly recognized the court’s authority”).

¶ 21 Furthermore, notwithstanding any forfeiture, respondent provides no basis for his claim that the commitment petition was filed “without jurisdiction or legal authority.” The Act provides that “[a] petition alleging that a person is a sexually violent person may be filed by” the Attorney General “before the date of the release or discharge of the person or within 30 days of placement onto parole or mandatory supervised release” for a sexually violent offense. 725 ILCS 207/15(a)(1) (West 2004). The petition “shall allege” that the person (1) has been convicted of a sexually violent offense, (2) has a mental disorder, and (3) is dangerous to others because the person’s mental disorder creates a substantial probability that he or she will engage in acts of sexual violence. 725 ILCS 207/15(b) (West 2004). Additionally, the petition “shall state with particularity essential facts to establish probable cause to believe the person is a sexually violent person.” 725 ILCS 207/15(c) (West 2004).

Finally, the petition “shall be filed” in the circuit court for the county in which the person was convicted of a sexually violent offense. 725 ILCS 204/15(d) (West 2004).

¶ 22 Respondent does not claim that the petition filed by the State fails to comply with any of the statutory requirements, and our review of the petition reveals that it alleges everything that it is required to allege, and was filed in the correct court and within the applicable time limits. Therefore, respondent’s argument that the petition was filed “without jurisdiction or legal authority” must fail.

¶ 23 CONCLUSION

¶ 24 Respondent’s civil commitment as a sexually violent person did not violate his substantive due process rights, and the commitment petition was filed pursuant to statutory authority.

¶ 25 Affirmed.