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2014 IL App (3d) 130665-U

Order filed November 18, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-13-0665
VONZELL V. WILLIAMS,)	Circuit No. 05-CF-763
Defendant-Appellant.)	Honorable Amy Bertani-Tomczak Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justice Wright concurred in the judgment.
Justice O'Brien dissented.

ORDER

- ¶ 1 *Held:* The trial court's revocation of the defendant's conditional release and recommitment to DHS was not supported by the evidence. Although the evidence established that the defendant had failed to fulfill the conditions of his release, no evidence of the defendant's current mental condition was presented.
- ¶ 2 The defendant, Vonzell V. Williams, appeals from the revocation of his conditional release. On appeal, the defendant argues that: (1) the trial court did not follow the procedures set forth in section 5-2-4 of the Unified Code of Corrections (Code) (730 ILCS 5/5-2-4(i) (West

2004)); (2) the trial court erroneously allowed Dr. Zuzana Hussain to provide hearsay testimony regarding the defendant's alleged violations of his conditional release; and (3) the State did not prove by clear and convincing evidence that the defendant had not fulfilled the terms of his conditional release and that commitment to a more restrictive setting was appropriate. We affirm in part, reverse in part, and remand with directions.

¶ 3

FACTS

¶ 4

On April 28, 2005, the defendant was charged with residential burglary (720 ILCS 5/19-3(a) (West 2004)). On March 2, 2006, after a stipulated bench trial, the defendant was found not guilty by reason of insanity and ordered into the custody of the Department of Human Services (DHS) for evaluation. On June 5, 2006, the trial court conducted a hearing on the DHS evaluation. At the conclusion of the hearing, the trial court found that the defendant was in need of inpatient mental health treatment and remanded the defendant to the custody of DHS for treatment.

¶ 5

On April 1, 2010, the trial court entered an order granting the defendant group home privileges. The order imposed several conditions on the defendant, including: (1) random drug screens; (2) mentally ill substance abuse treatment; (3) regular psychiatric evaluations; and (4) compliance with the rules and recommendations of the treatment center.

¶ 6

On November 18, 2011, the State filed a petition to revoke the defendant's conditional release. The petition was supported by a DHS 90-day report. The DHS report stated the following: (1) that the defendant had not been compliant in taking his psychiatric medications; (2) his September 21 and November 10, 2011, drug screens tested positive for marijuana; (3) the defendant refused a November 9, 2011, drug screen; and (4) a police search of the defendant's room uncovered a large bag of marijuana.

¶ 7 On the same date, the trial court conducted a hearing on the State's petition. The State said it had received a 90-day report from DHS that requested the filing of a petition to revoke the defendant's conditional release. The State asked the court to "enter an interim order that the defendant be replaced into in-patient treatment pending hearing on the ultimate petition to revoke the conditional release." The State argued that the statute allowed an interim committal after a *prima facie* showing that a person was in violation of their conditional release. Defense counsel made a general objection, and the trial court stated that it had "read everything," saw the defendant's positive drug tests, and granted the State's petition on an "interim basis." The defendant was removed from the Ecker Center for Mental Health and returned to in-patient treatment.

¶ 8 On August 23, 2012, the trial court conducted a second hearing on the State's petition to revoke the defendant's conditional release. The State called Hussain to testify as an expert witness. During Hussain's qualification, defense counsel objected to the admission of Hussain's curriculum vitae, arguing that opinion testimony was not relevant to the issue of the defendant's alleged violation of his conditional release. The trial court overruled the objection.

¶ 9 Hussain testified that she had known the defendant for nine months. Hussain began treating the defendant after his conditional release had been revoked and he was removed from the Ecker Center for Mental Health. Defense counsel objected to the relevance of Hussain's testimony, arguing that the hearing was called on the State's November 18, 2011, petition to revoke conditional release. The court responded that its most recent report said the defendant was not on conditional release. The State agreed and said "this is just what they did on their own, but a hearing is required pursuant to the defendant's rights to affirm their actions. *** It's not a petition to revoke [the defendant's] conditional release. They've done it, but the Court

needs to affirm that judgment." The trial court overruled defense counsel's objection.

¶ 10 Hussain testified that the defendant was admitted to the Elgin Mental Health Center on November 18, 2011. Defense counsel objected, arguing that the subject of the hearing was the State's petition to revoke conditional release, which was derived from violations occurring on or before November 16, 2011. The court overruled the objection, and Hussain testified that the defendant was transferred from the Ecker Center for Mental Health to the Elgin Mental Health Center because of a "dirty drop," marijuana and alcohol abuse, failure to take his medication, anger and aggression, and the defendant's failure to follow the treatment center's policies.

¶ 11 On November 21, 2011, Hussain evaluated the defendant. The defendant told Hussain "he had a dirty drop, and he's not mentally ill." Hussain diagnosed the defendant with schizoaffective disorder, bipolar type, and a history of substance abuse. Hussain was the defendant's treating physician until he was sent to Chester Mental Health Center on December 30, 2011. The defendant's transfer followed a December 29, 2011, incident where the defendant attempted to force his way into a room where his treatment team was meeting. The defendant was eventually restrained and, later that day, the treatment team decided to transfer the defendant to a maximum security facility.

¶ 12 The trial court found that the defendant was removed from the group home because he had a positive drug drop and stopped taking his medication. At that time, the defendant's conditional release was revoked, and he was sent to the Elgin Mental Health Center. The court agreed with Hussain's assessment and revoked the defendant's conditional release.

¶ 13 Thereafter, the defendant filed a motion to reconsider, arguing that the State had failed to meet its burden, and revocation of the defendant's conditional release was unwarranted. The trial court denied the motion. The defendant appeals.

¶ 14

ANALYSIS

¶ 15

On appeal, the defendant makes three arguments: (1) the trial court did not adhere to the procedural requirements of section 5-2-4(i) of the Code; (2) the trial court erred in allowing Hussain to provide hearsay testimony; and (3) the State did not prove by clear and convincing evidence that the defendant had violated the conditions of his release and commitment to a more restrictive setting was appropriate.

¶ 16

I. Conditional Release Revocation Procedure

¶ 17

The treatment of an individual acquitted by reason of insanity is governed by section 5-2-4 of the Code. 730 ILCS 5/5-2-4 (West 2004). Following acquittal, an insanity acquittee is subject to evaluation by DHS and, if DHS reports that the individual is in need of mental health services on an inpatient basis, the court shall order the individual to the custody of DHS. 730 ILCS 5/5-2-4(a) (West 2004). After admission, if the court determines that the individual no longer needs inpatient care, but is still in need of mental health services, the court shall grant the individual a conditional release. 730 ILCS 5/5-2-4(h) (West 2004). However, an insanity acquittee's conditional release is subject to revocation if: (1) the court determines, after hearing evidence, that the defendant has not fulfilled the conditions of release; and (2) the court determines that the conditional release should be terminated and the defendant recommitted. 730 ILCS 5/5-2-4(i) (West 2004); *People v. Jurisec*, 199 Ill. 2d 108 (2002).

¶ 18

A. Preliminary Hearing

¶ 19

The defendant argues that the trial court did not follow the bifurcated structure of the revocation proceedings established by section 5-2-4(i) of the Code. At the first stage of revocation proceedings, the court must conduct a hearing to determine if the defendant has not fulfilled the conditions of release. 730 ILCS 5/5-2-4 (West 2004); *Jurisec*, 199 Ill. 2d 108. At

the hearing, the State has the burden of proof, and the court's findings must be established by clear and convincing evidence. *Id.*

¶ 20 From our review, the November 18, 2011, proceedings fulfilled the initial hearing requirement. Prior to the hearing, the State filed a petition to revoke the defendant's conditional discharge in reliance on a DHS report that described the defendant's failure to fulfill the conditions of his release. At the hearing, the State asked the court to enter an interim revocation order, and the defendant made a general objection, but did not specifically refute the findings in the DHS report. Thereafter, the trial court stated that it had considered the report and granted the State's petition to revoke the defendant's conditional discharge on an "interim basis." Although the statute does not describe an interim revocation, commitment after the filing of a petition to revoke is permitted. 730 ILCS 5/5-2-4(i) (West 2004). Implicit in the court's ruling was that the defendant had failed to satisfy the conditions of his release. Accordingly, we conclude that the initial hearing requirement was satisfied.

¶ 21 B. Revocation Determination

¶ 22 The defendant also argues that the State did not show by clear and convincing evidence that revocation of his conditional release and commitment to a more restrictive setting was appropriate.

¶ 23 Revocation of a defendant's conditional release does not automatically follow a finding that the defendant has failed to fulfill a condition of release. *Jurisec*, 199 Ill. 2d 108. After the court finds that the insanity acquittee has failed to fulfill the terms of his conditional release,

"the court must conduct a hearing to reconsider the grant of conditional release and determine whether, in light of expert testimony on defendant's current mental status, there is clear and convincing evidence that defendant's involuntary readmission to

[DHS] is required or whether the conditional release should be continued, with or without modification of the conditions of the original release." *Id.* at 124.

¶ 24 Here, during the August 23, 2012, hearing, Hussain testified that she had treated the defendant after his November 2011 admission to the Elgin Mental Health Center. However, Hussain had not seen the defendant since his December 2011 transfer to Chester Mental Health Center. As a result, Hussain could not and did not testify to the defendant's mental health at the time of the hearing. Without evidence of the defendant's current mental state, the trial court could not recommit the defendant to DHS custody. Therefore, we reverse the trial court's commitment order and remand the cause for a hearing to determine if the defendant's mental condition requires involuntary commitment or continuation of conditional release with or without modification. On remand, the court's finding should be based on medical opinion testimony as to the defendant's mental condition at the time of the hearing.

¶ 25 II. Hearsay Testimony

¶ 26 The defendant also argues that the trial court erred by allowing Hussain to present hearsay testimony at the second stage as to the defendant's actions that occurred prior to her first meeting with the defendant. While we agree that Hussain's testimony regarding events that occurred prior to the date she began treating the defendant was hearsay, we decline to determine if it was erroneously admitted. Our remand for a *de novo* second-stage revocation hearing has mooted this issue.

¶ 27 CONCLUSION

¶ 28 The judgment of the circuit court of Will County is affirmed in part and reversed in part, and the cause is remanded with direction.

¶ 29 Affirmed in part and reversed in part; cause remanded.

¶ 30 JUSTICE O'BRIEN, dissenting.

¶ 31 I respectfully dissent from the majority because the court appearance on November 18, 2011, did not satisfy the requirements of section 5-2-4(i) to determine whether the defendant had violated the conditions of his release. 730 ILCS 5/5-2-4-1(i) (West 2010). The petition to revoke conditional discharge was filed by the State's Attorney and attached to it was a report from DHS outlining behavior attributable to the defendant that, if proven, would demonstrate that the defendant had not fulfilled the requirements of the order for conditional discharge. The defendant was not present at that court appearance and no testimony was taken. The judge simply read the allegations in the petition and entered an order remanding the defendant to DHS custody pending the hearing process outlined in section 5-2-4(i).

¶ 32 The majority states that this court appearance satisfies the requirement of section 5-2-4 that provides: "If within the period of the defendant's conditional release ***, the Court determines, *after hearing evidence* (emphasis added), that the defendant has not fulfilled the conditions of release, the Court shall order a hearing." 730 ILCS 5/5-2-4(i) (West 2010). I do not agree. The court's order that day did nothing more than remand the defendant to the custody of DHS pending the determination of the hearing on the petition to revoke conditional discharge and the subsequent hearing on the conditions. There was no evidence presented that day. There was no stipulation by the defense to the contents of the DHS report and therefore that court appearance cannot be said to satisfy the first-stage hearing requirements. The court proceeding on November 18, 2011, was not the first stage hearing to determine whether the defendant had failed to fulfill the conditions of the conditional release, but was rather a court appearance for presentation of the petition to revoke at which time the trial judge entered an interim order

remanding the defendant to DHS custody pending the outcome of the hearing on the petition to revoke conditional discharge.

¶ 33 Thus, as agreed to by the parties, the hearing on August 23, 2012, was the first hearing in a bifurcated hearing process to determine, as a threshold matter, whether the defendant had failed to fulfill any of the conditions of his conditional release. As such, the State had the burden to show that the defendant had violated the conditions of his release. I would find that the State failed to meet this burden as the testimony of Hussain was admitted in error. Hussain did not meet the defendant until after the petition to revoke condition had been filed. She had no personal knowledge of the events that were alleged in the petition and as such her testimony regarding the actions of the defendant that resulted in the filing of the petition amounted to inadmissible hearsay.

¶ 34 For those reasons, I would reverse the order of the trial court.