

2016 IL App (1st) 152581-U
No. 1-15-2581
November 1, 2016

SECOND DIVISION

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
Plaintiff-Appellee,)	Of Cook County.
v.)	No. 93 CR 24478
MIA (MAIKOBI) BURKS,)	The Honorable
Defendant-Appellant.)	Lawrence Edward Flood,
	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Justices Pierce and Mason concurred in the judgment.

ORDER

¶ 1 *Held:* A personality disorder may count as a mental illness for purposes of the Unified Code of Corrections' provisions concerning involuntary commitment of persons found not guilty by reason of insanity. The record supported the trial court's findings that the defendant had a mental illness and that because of the mental illness the court should reasonably expect the defendant to physically harm herself or others if the court conditionally released her from custody.

¶ 2 Mia Burks appeals from the trial court's order denying her petition for conditional release from the custody of the Department of Human Services (DHS). She argues that she no longer qualifies for involuntary admission within the meaning of section 5-2-4 of the Unified

Code of Corrections (730 ILCS 5/5-2-4 (West 2014)) because she suffers from only a personality disorder, not a mental illness, and because the court could not reasonably expect her to physically harm herself or others if it grants her petition for conditional release. We find that the record sufficiently supports the trial court's findings that Mia suffers from a mental illness and that the illness renders her reasonably likely to physically harm herself or others. Accordingly, we affirm the trial court's order denying Mia's petition for conditional release.

¶ 3

BACKGROUND

¶ 4

Maikobi Burks was born in 1976 with male genitals. In accord with Maikobi's gender identity and naming preference, we will refer to her as "Mia" and use the pronouns "she" and "her" to refer to Mia. Other persons (especially her father) regarded her as male, and as of September 2016, she had not completed the treatments for her transformation from male to female. Reports of her psychiatric treatment provide the relevant background, and the quotations in the following paragraphs come from those reports.

¶ 5

When Mia was 16, living with her parents and her older sister, she began earning money as a female impersonator and as an escort. She withdrew \$550 from her parents' bank account and ran away from home. The behavior led to psychiatric hospitalization lasting from February 17, 1993, to April 2, 1993. Doctors diagnosed her condition as bipolar disorder, manic type, and prescribed appropriate medication. Mia took the medication for only a few months. Her father, who thought the medication a waste of money, demanded that she stop taking the medication. Mia's father "was both physically and psychologically

abusive to [her] on many occasions. The abuse consisted of kicking, punching, striking with objects, as well as burning [her] hand on the stove over a minor violation."

¶ 6 In September 1993, about a month after Mia stopped taking the prescribed medication, Mia's aunt died. Mia attended the funeral with her 24 year-old boyfriend. Mia knew her family disapproved of her boyfriend. Mia and her boyfriend used both cocaine and alcohol on the day of the funeral. Mia wore women's clothes to the funeral. When Mia's father arrived at the funeral, he "flew into a rage and took [Mia] home." Later that day Mia's mother called the boyfriend to discuss his relationship with Mia. With Mia listening, the boyfriend did not say, as Mia hoped, that he loved Mia and accepted her as a woman. Instead, the boyfriend told Mia's mother he was "mentoring a very disturbed young man."

¶ 7 The next day, Mia's mother discovered that Mia had maxed out a credit card her parents had given her. Mia's mother called the bank and learned that Mia had "a large sum of money" in her account. She confronted Mia and "became upset when she learned that [Mia] had been working as a female impersonator and escort."

¶ 8 Mia's father came home during the confrontation. He said he would "beat [Mia's] ass" and called Mia to the bedroom. Mia went to the bedroom, "since running from [her] father usually resulted in worse punishment." On the way, she "grabbed the loaded gun which was kept on the dining room table." When Mia's father started to approach her in a threatening manner, Mia shot him 20 times. Mia's sister came to the room, screaming. Mia picked up a second gun and shot her sister 4 times. Mia then went to the living room where her mother sat, screaming. Mia shot her three times, then turned the gun to point at her own head and pulled the trigger. No bullet came from the empty gun. Mia went to a neighbor's home and

called the police. She initially denied any involvement in the homicides, but her story soon fell apart. She admitted that she killed her parents and her sister.

¶ 9 Mia stayed in jail awaiting trial for two years. Under the care of the jail's psychiatrist, she again regularly took medication for her bipolar disorder. She got into several fights with other inmates. In 1995, a jury found Mia not guilty by reason of insanity for the three homicides.

¶ 10 The trial court committed Mia to the custody of the predecessor of DHS, who placed Mia at Elgin Mental Health Center (EMHC). In 1995 and 1996, she continued to suffer "mood swings which included violent verbal assaults and occasional physical assaults" on other patients. She regained self control without physical restraint on most of these occasions, but the staff felt compelled to use restraints three times. Her last violent physical assault took place in June 1996.

¶ 11 She continued to struggle with the need to conform her conduct to EMHC's rules. EMHC personnel frequently noted that Mia dressed provocatively, in violation of the rules, and occasionally engaged in other behaviors to provoke patients and the staff. She falsely accused several staff members of transgressions, creating difficult problems for the staff members so accused. She also threatened to get staff members in trouble if they set limits on her. When a staff member, applying the rules, limited Mia's food order, Mia "made serious allegations of staff misconduct which could have resulted in termination if substantiated but instead the staff member was cleared and [Mia] admitted [she] had made up the allegation to get the staff member into trouble."

¶ 12 By 1997, when doctors at EMHC officially added gender identity disorder to Mia's diagnoses of bipolarity and personality disorder, the doctors found she exercised "increasing control over [her] emotional lability." Despite the ongoing occasional rule violations and manipulative behavior, the staff recommended unsupervised grounds passes for Mia. In June 1997, the trial court granted the request. The treatment team reported that Mia often served as a "positive force in the milieu," by helping break up fights, and by taking leadership roles representing patients in hospital committees. In 2000, she enrolled in junior college telecourses. She continued to overreact to constraints and engage in provocative behavior in violation of EMHC rules, but she no longer resorted to physical attacks.

¶ 13 By 2003, Mia had successfully completed several telecourses and a program to help patients with problems related to substance abuse. The staff recommended further increasing Mia's privileges. Her psychiatrist reported:

"[Mia] had court approved pass privileges since May of 2004. [She] has used the unsupervised on grounds passes privileges to attend the main workshop ***. [She] also has taken unescorted walks through the grounds without incident. Using [her] supervised off grounds pass privileges, [she] has successfully completed the community reintegration program in November of 2004. [She] has taken supervised community trips using public transportation to such places as the Elgin Community College *** without incident.

[Mia] was doing so well that [she] became a leader and an advocate for [her] fellow patients. *** [She] was considered a model for forensic patients.

*** A packet was written for transfer to a non-secure setting and for unsupervised off grounds pass privileges. With the latter [she] planned to attend classes at Elgin Community College and finish [her] Associate's degree. [She] had the approval of the hospital as well as Forensic Clinical Services.

[Mia] was successfully moving toward discharge. [She] was eight days from the court date for these increased privileges when it was discovered that [she] had borrowed another patient's credit card to order some expensive clothing and other items."

¶ 14 A separate report clarified that Mia used another patient's debit card "and spent about \$8,500.00 to buy personal clothing items in a one year period (7/04-8/05) with purchases of \$4,700.00 alone on 7/5/2005. Reportedly the [victim] gave [Mia] permission to spend about \$2000.00 and has a history of giving 'financial help' to his peers." The victim "filed a criminal complaint with the Kane County Police Department alleging fraud and deceptive actions by [Mia]."

¶ 15 The psychiatrist's report continued:

"Borrowing from another patient is against hospital policy. However, the staff was more alarmed by the fact that [she] had made excessive purchases of clothing on credit cards, which [she] had done at the time of the crime, about which [her] parents had argued with [her]. It was a re-enactment. It is not unusual for patients who are moving toward discharge to experience periods like this, particularly if the patient has unresolved guilt and questions about his worthiness to be given a second chance. [Her] court date was cancelled."

¶ 16 Mia's behavior at EMHC improved again, and in 2007 the staff recommended conditional release. The psychiatrist explained:

"[F]or the past four years [Mia's] mood has been well controlled on medication. With the help of therapy and groups [she] has developed better coping skills. [She] now has empathy for others and is able to relate to people on a more mature level. [She] is able to take responsibility for [her] actions as an adult. [She] is now ready to continue [her] psychiatric treatment in the community."

¶ 17 The trial court appointed an independent psychiatrist to examine Mia and comment on the staff's recommendation. Dr. Fidel Echevarria examined Mia and read all of her treatment records. Dr. Echevarria said:

"[I]n my opinion [Mia] is not yet eligible for a conditional release. *** [T]his request is *** premature and the pursuit of additional privileges such as unsupervised off-ground passes and transfe[r] to the non-secure William White Unit within Elgin Mental Health Center appear a more appropriate albeit conservative accommodation. In summary, [her] as yet unproven ability to appropriately handle unsupervised off-ground privileges and/or transfer to a non-secure residential unit *** [and] how flexible [Mia] is able to be in dealing with changes in [her] environment or relationships including [her] case manager and psychiatrist are all important questions yet unanswered."

¶ 18 The trial court entered an order dated August 27, 2007, authorizing DHS "to issue pass privileges allowing [Mia] to be off facility grounds without supervision at the discretion of the Department of Human Services, for purposes of education and employment." That is, the

court rejected the staff recommendation of conditional release but accepted Dr. Echevarria's recommendation of moderately increased privileges, including unsupervised off-grounds passes. Mia found a job outside of EMHC. By March 2008, she had "received a promotion and was in line for a[n] assistant manager position." However, in March 2008, EMHC found out that Mia had bought a car, in violation of EMHC rules. EMHC suspended Mia's pass privileges. Mia, perforce, resigned from her job.

¶ 19 EMHC reinstated some of Mia's pass privileges early in 2009. She subsequently violated rules concerning financial transactions, although in this case "[i]t appeared [Mia] purchased items for another patient." Mia spent considerably more than the agreed limit. In a report dated May 2009, Mia's psychiatrist summarized the rule violation and said:

"[Mia] continues to have a variety of crises which consume the attention of [her] treatment team. These crises often appear to divert attention from successfully transitioning [Mia] into a non-secure setting."

¶ 20 In June 2009, with the support of EMHC staff, Mia petitioned for transfer to a non-secure setting at EMHC. Dr. Echevarria agreed with the staff that Mia did not pose an undue risk of escape and a transfer to a non-secure setting would ensure her continued progress in treatment. Before the court could rule on the petition, other patients reported that in August 2009, Mia "was found trying to transfer a large sum of money from another patient's account." EMHC again suspended Mia's passes.

¶ 21 On September 19, 2009, Mia stole a unit key from a security box and used it to leave EMHC. Police found Mia at the Metra station in Elgin and returned her to EMHC. DHS transferred Mia out of Elgin to a more secure setting. She returned to EMHC in February

transpired during the crime itself." But in "a structured, controlled setting with a lot of safeguards put in place to ensure that she does not become a risk to others," Mia's condition could continue to improve.

¶ 26 Dr. Echevarria concurred with Dr. Hussain's opinion that Mia continued to suffer from a personality disorder, which included features of narcissism, antisocial borderline personality, and substance dependence, and she continued to need inpatient care. Dr. Echevarria concluded that Mia is "reasonably expected to inflict serious physical harm upon others" if the court grants her petition for conditional release.

¶ 27 Mia presented the expert testimony of Dr. Willie Mae Jackson, who reviewed Mia's treatment records and interviewed her for two and a half hours. Dr. Jackson agreed with the other doctors that Mia suffered from bipolar disorder, in full remission, and she exhibited antisocial traits related to a personality disorder. In Dr. Jackson's opinion, conditionally releasing Mia would create only a low level risk of Mia inflicting physical harm on herself or others. Dr. Jackson believed Mia's personality traits meant that if she obtained conditional release, she would present a moderate risk of antisocial behavior. Dr. Jackson believed that Mia's abuse of credit cards and "scamming other residents," along with her violations of EMHC rules, resulted from Mia's antisocial personality traits and narcissism.

¶ 28 The trial court found that Mia failed to present clear and convincing evidence that she no longer needed inpatient care and no longer presented a danger of inflicting physical harm on herself or others. Therefore, the trial court denied Mia's petition for conditional release. Mia now appeals.

¶ 29

ANALYSIS

¶ 30

A jury found Mia not guilty of murder by reason of insanity, and the jury's finding resulted in her residency as an inpatient at EMHC in the custody of DHS. When such an inpatient, after a finding of not guilty by reason of insanity, seeks conditional release from the custody of DHS, the patient bears the burden of proving, by clear and convincing evidence, that she is no longer subject to involuntary admission or in need of mental health services on an inpatient basis. 730 ILCS 5/5-2-4(g), (e), (a-1)(B) (West 2014). The State may subject a patient to involuntary admission if she suffers from a mental illness and "due to mental illness is reasonably expected to inflict serious physical harm upon h[er]self or another." 730 ILCS 5/5-2-4(a-1)(B) (West 2014). "The trial court's decision is given great deference and, providing it is not against the manifest weight of the evidence, will not be set aside at the appellate level, even if the reviewing court, after applying the clear and convincing standard, would have ruled differently." *People v. Youngerman*, 361 Ill. App. 3d 888, 895 (2005).

¶ 31

Mia attacks the trial court's findings on three bases. First, she argues that, with her bipolarity in full remission, she suffers from only a personality disorder, and not from a mental illness. Second, she contends that any remote chance of physical harm results from the personality disorder, and not from any mental illness. Third, she argues that no credible evidence supports the conclusion that the court should reasonably expect her to inflict physical harm on anyone if the court grants her petition for conditional discharge.

¶ 32 Personality Disorder as a Mental Illness

¶ 33 Section 6-2 of the Criminal Code establishes that, for purposes of an insanity defense, "The terms 'mental disease or mental defect' do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct." 720 ILCS 5/6-2(b) (West 2014). In accord with the statute, our supreme court held that "a personality disorder alone cannot constitute a mental defect" for purposes of the insanity defense. *People v. Williams*, 38 Ill. 2d 115, 123 (1967). However, our supreme court subsequently clarified that personality disorders may qualify as grounds for involuntary commitments. *People v. Lang*, 113 Ill. 2d 407 (1986).

¶ 34 In *Lang*, the trial court found Lang unfit to stand trial on criminal charges, and subject to involuntary commitment. After several years of involuntary commitment while he remained unfit to stand trial, Lang sought release. Several psychiatrists testified that Lang suffered from a personality disorder that made him dangerous. The trial court continued the involuntary commitment. On appeal, Lang argued that the State did not prove him subject to involuntary commitment because the evidence did not support a finding that he suffered from a mental illness. The *Lang* court said:

"In the past we think that too much emphasis has been placed on the existence or nonexistence of a recognizable psychiatric disease in determining whether a person is 'mentally ill' for purposes of civil commitment. Diagnostic classifications in the mental-health field are constantly undergoing revision (citation), and thus it would be unwise to equate the legal term 'mentally ill' in [the civil commitment statute] with the laundry list of diagnoses or psychiatric

classifications in vogue at a given moment. Otherwise, the definition of 'mental illness' could ebb and flow depending on the then-current consensus of mental-health professionals. *** [E]ven among mental-health professionals there can be substantial disagreement over whether a person exhibits the traits of a specific mental illness. Finally, we note that '[d]espite many recent advances in medical knowledge, it remains a stubborn fact that there are many forms of mental illness which are not understood***.' (*O'Connor v. Donaldson* (1975), 422 U.S. 563, 584, 45 L.Ed.2d 396, 412, 95 S.Ct. 2486, 2498 (Burger, C.J., concurring). [Citation.]) For the foregoing reasons, we think that a finding of 'mentally ill' should not be dependent upon diagnostic categories or nomenclature, but on the extent to which a person's functioning is impaired by his mental illness. A 'mentally ill' person for purposes of [civil commitment] is an individual with an organic, mental or emotional disorder which substantially impairs the person's thought, perception of reality, emotional process, judgment, behavior, or ability to cope with the ordinary demands of life." *Lang*, 113 Ill. 2d at 452-53.

¶ 35 We find the reasoning of *Lang* fully applicable here. Because Mia's personality disorder substantially impairs her "emotional process, judgment, behavior, [and] ability to cope with the ordinary demands of life," (*Lang*, 113 Ill. 2d at 453), it qualifies as a basis for continuing Mia's involuntary commitment under section 5-2-4 of the Unified Code of Corrections, if, because of the personality disorder, the court should "reasonably expect[t] [her] to inflict serious physical harm upon h[er]self or another." 730 ILCS 5/5-2-4(a-1)(B) (West 2014).

¶ 36

Risk of Harm

¶ 37

Dr. Hussain and Dr. Echevarria testified that the court should reasonably expect Mia to physically harm herself or others if the court grants her petition for conditional release. Dr. Jackson foresaw only a low risk of physical harm. Mia argues that we should discount the opinions of Dr. Hussain and Dr. Echevarria because Mia has had no violent incidents since 1996, and no credible evidence supports the conclusion that she would act violently if released.

¶ 38

Dr. Hussain emphasized that Mia had learned to control her behavior in the structured environment of EMHC. He testified that he expected that Mia would refrain from violence in that setting. The record of Mia's past behavior shows that several times, around the times when greater freedoms loomed, she violated EMHC rules and engaged in antisocial conduct that resulted in the loss of privileges. She used credit cards that belonged to other patients, sometimes charging exorbitant sums of money. The actions especially concerned the staff because she used credit cards from her family improperly in 1993, and her mother's reaction to the spending formed an important part of the circumstances leading to the homicides. Mia provoked her father by dressing in women's clothes at her aunt's funeral, by bringing her boyfriend to the funeral, by overspending, and by working as a female impersonator and escort. When her father threatened to beat her, she shot him repeatedly. The crimes from so long ago remain a concern because Mia's personality disorder still causes her to provoke others – by using their credit cards, scamming them, dressing in provocative clothing, and by otherwise violating EMHC rules. The evidence in the record supports the trial court's finding that if it granted Mia's petition, the court could reasonably expect Mia to act in

antisocial ways that will provoke others. In an unstructured setting, the persons provoked may threaten Mia physically. In response to a physical threat, Mia may well react violently. We cannot say that the trial court's finding, that Mia's personality disorder leads to a reasonable expectation that she will physically harm herself or others, is contrary to the manifest weight of the evidence.

¶ 39

CONCLUSION

¶ 40

Because Mia's personality disorder is an "organic, mental or emotional disorder which substantially impairs [her] *** emotional process, judgment, behavior, or ability to cope with the ordinary demands of life" (*Lang*, 113 Ill. 2d at 453), it qualifies as a mental illness within the meaning of section 5-2-4 of the Unified Code of Corrections. The evidence sufficiently supports the trial court's finding that because of Mia's mental illness, the trial court could reasonably expect her to physically harm herself or other persons if the court granted her petition for conditional release. Accordingly, we affirm the trial court's judgment.

¶ 41

Affirmed.