2018 IL App (1st) 161933-U

FIFTH DIVISION
March 30, 2018

No. 1-16-1933

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).

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

	)	Appeal from the
IN RE THE COMMITMENT OF:	)	Circuit Court of
	)	Cook County
WILLIE HENDERSON,	)	
	)	
(The People of the State of Illinois,	)	No. 00 CR 80002
	)	
Petitioner-Appellee,	)	
	)	Honorable
v.	)	Alfredo Maldonado,
	)	Judge Presiding.
Willie Henderson,	)	
	)	
Respondent-Appellant).	)	
	)	

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Lampkin and Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: Affirming the judgment of the circuit court of Cook County where the State presented clear and convincing evidence that respondent, a sexually violent person, violated his conditional release plan.

¶ 2 Respondent Willie Henderson was civilly committed as a “sexually violent person” under

the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/1 *et seq.* (West 2014)) and subsequently institutionalized in a secure facility. The trial court later conditionally released respondent only to thereafter revoke the release on the State's petition, concluding that (1) he violated paragraph six of his conditional release plan which required him to fully participate in treatment and (2) the "safety of others," a standard identified in the statute (725 ILCS 270/40(b)(4) (West 2014)), requiring such revocation. On appeal from the revocation order, respondent contends that the State failed to prove by clear and convincing evidence that he violated the terms of his conditional release, requiring reversal. He alternatively contends that the language of both the conditional release plan and section 40(b)(4) of the Act is unconstitutionally vague. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 In November 1990, respondent was found guilty of the aggravated criminal sexual assault of his third-cousin, which is a "sexually violent offense" within the meaning of the Act (725 ILCS 207/5(e) (West 2014)). He was sentenced to six years in the Illinois Department of Corrections (IDOC). In January 1994, he was released from the IDOC and placed on mandatory supervised release (MSR). While on MSR, he was arrested in May 1995 for home invasion and aggravated battery. Respondent was convicted of these charges in November 1995, and was sentenced to a total of 10 years in the IDOC. The projected date for respondent to enter into MSR was February 9, 2000.

¶ 5 Just as his release date approached, the State filed its petition seeking to involuntarily commit him to the Illinois Department of Human Services (the Department) on the grounds that he was a "sexually violent person" as that term is defined in the Act. In its petition, the State

alleged that respondent suffered from a number of mental disorders (including paraphilia, bipolar disorder, and drug and alcohol abuse) and was "highly likely" to commit sexually violent crimes in the future. The petition further indicated that the facts surrounding his 1986 sexual conviction for the aggravated criminal sexual abuse involved his eleven-year-old niece. It also detailed another alleged incident of sexual abuse against a preadolescent family member that did not result in a conviction.

¶ 6 After numerous interlocutory appeals, all of which were decided in favor of the State, the State's petition was granted. Respondent then admitted the allegations contained in the petition, the circuit court found respondent to be a sexually violent person, and he was committed in accordance with the Act. Thus, beginning in 2004, respondent was detained by the Department in a secure facility.

¶ 7 In May 2012, respondent filed a petition for conditional release. In the petition, respondent alleged, "[t]hat he has made significant progress in his treatment" so as to be conditionally released. Upon review, the circuit court granted respondent's petition. A plan for respondent's conditional release was drafted and provided 55 enumerated specific conditions of respondent's release. Pertinent to this appeal, respondent agreed to paragraph six, which required he:

> "Attend and *fully participate* in assessment, treatment and behavioral monitoring including, but not limited to, medical, psychological or psychiatric treatment specific to sexual offending, drug addiction, or alcoholism, to the extent appropriate based upon the recommendation and findings made in the [Department] evaluation or based upon any subsequent recommendations by [the Department] or as determined by the CMT [(Case Management Team)]; *comply with all the rules of the treatment provider*. Treatment may

include sex offender treatment groups, individual counseling, drug and alcohol counseling or any other therapy as determined by the CMT. Treatment may also include a course of prescription medicine. Assessment and treatment may include polygraph examinations, plethysmograph testing and Abel screening." (Emphasis added.)

¶ 8 Respondent agreed to the conditions as stated in the plan by signing a "certificate of compliance with conditions of release" and initialing next to each of the conditions. He further acknowledged that "by placing my initials next to each condition of the release set forth herein, [I] am indicating that I understand the condition and agree that I will abide by its contents." In addition, respondent indicated that it was his "understanding and agreement to comply with all such conditions of release" and that he "underst[ood] that my failure to abide by the conditions of my release may be grounds for revocation of release and my return to the DHS secure treatment facility." The plan was further certified by Nathan Rosato (Rosato), a Liberty Healthcare representative, who indicated he "reviewed each and every condition of release contained herein with [respondent] and that [he] witnessed him initial each condition and sign [the] same."

¶ 9 From July 2013 until March 2014, respondent remained on his conditional release plan. On March 26, 2014, the State filed an amended petition[1] to revoke his conditional release, alleging he violated the plan when, relevant to this appeal, he: (1) did not fully participate in treatment by (a) failing to disclose deviant fantasies, *i.e.* failing to bring his weekly sexuality logs to treatment for two consecutive weeks and lying on a polygraph examination that he had not "masturbated to ejaculation to any deviant sexual fantasy since [his] release this July" and (b) fixating on a female neighbor who respondent believed to be a prostitute and who he continued

[1] The initially filed petition is not contained in the record on appeal.

to contact despite a treatment plan to avoid her. The petition indicated that, with regard to the female neighbor, "respondent's current behavior was similar to past offending behavior and could be indicative of the respondent entering a dangerous cycle." The State alleged that, based on the foregoing along with the opinion of Dr. Steven Gaskell (Dr. Gaskell) an evaluator for the Department who opined that respondent is not a candidate for conditional release, the safety of others required that respondent's conditional release be revoked.[2]

¶ 10 In February 2016, an evidentiary hearing was conducted on the petition. The State presented Rhonda Meacham (Meacham), a clinical therapist, Rosato, a social worker, and Dr. Gaskell as witnesses. Meacham testified that she provided individual and group therapy to respondent in 2013. In August 2013, Meacham requested respondent provide her with weekly sexuality logs and respondent was given guidance on how to complete them. Thereafter, respondent failed to provide her with his sexuality logs for two consecutive weeks. Respondent was provided with a letter of admonishment regarding his failure to provide Meacham with the sexuality logs.

¶ 11 Meacham also testified that during an individual therapy session on August 20, 2013, respondent disclosed that a female neighbor knocked on his door and that respondent perceived her to be a drug abuser and vulnerable, thus someone respondent thought "would have been easily taken advantage of." He again disclosed his issues with the female neighbor in a group therapy session. At that session, the case management team developed a plan for how he should respond should she come back to his door again, which included that he would not answer the door, that he would inform her through the door that he could not have visitors, and that he

[2] The State included additional alleged violations in its petition, but we decline to include them here as the circuit court found the State did not meet its burden of proof as to those violations and they are not at issue on appeal.

would immediately contact one of his conditional release agents. Meacham further testified that respondent disclosed that the day after this plan was implemented he discussed his female neighbor with a third party. Specifically, respondent informed her that he had a conversation with an exterminator in their building wherein he requested that the exterminator tell the female neighbor not to come back to his apartment. The exterminator also suggested to respondent that the female neighbor was a prostitute. Meacham informed respondent that he had been given instructions not to contact the female neighbor and not to engage "in conversations of any type of sexual nature with anybody in his building. And we would not have wanted him to communicate to her [through a] third party."

¶ 12 Meacham further testified that on September 5, 2013, respondent discussed his female neighbor with an individual in the therapy waiting room prior to his appointment. Respondent admitted to Meacham that he had made sexual comments about the female neighbor in the waiting room, but "indicated that he didn't understand he was doing anything wrong." Meacham testified that she was concerned about his fixation on the female neighbor, particularly how "[t]he content of his conversation in terms of the depersonalizing and objectification of her is concerning definitely in respect to his history of offending."

¶ 13 Meacham also testified regarding the use of polygraphs in the conditional release program. According to Meacham, her clients typically have a long history of deception, so they need an objective measure to use to confirm the individual's self-reporting and to make adjustments to treatment and supervision when necessary. Polygraphs are typically administered to clients every six months. Respondent was administered a polygraph examination on October 4, 2013. The record indicates that respondent failed to respond truthfully regarding his deviant sexual behavior during that examination.

¶ 14 Rosato testified he was a conditional release agent for Liberty Healthcare from August 2012 through February 2014. He first met respondent when respondent was in the treatment facility prior to his release in June 2013. At that meeting, Rosato went over each of the conditions of release with respondent. According to Rosato, respondent was classified as "high risk" and therefore Rosato was to have contact with him, at least twice a week. After receiving information regarding respondent's interest in the female neighbor, Rosato doubled his contact with respondent.

¶ 15 Next, the State presented the testimony of Dr. Gaskell, who the parties stipulated was an expert in the field of evaluating sex offenders, specifically under the Act. Dr. Gaskell testified he first evaluated respondent in 2010, and thereafter completed five more evaluations of respondent all pursuant to the Act. While Dr. Gaskell recommended that respondent was an appropriate candidate for conditional release in February 2013, he later changed his opinion in the fall of 2013 due to respondent's problematic behaviors while on conditional release. Dr. Gaskell testified that when he evaluated respondent in the fall of 2013, respondent was blaming his therapist. Respondent also failed to turn in his sexuality logs and fully participate in treatment. Dr. Gaskell also testified regarding respondent's October 2013 polygraph examination results. According to Dr. Gaskell, the polygraph demonstrated respondent had been deceptive.

¶ 16 Dr. Gaskell opined that respondent is not an appropriate candidate for conditional release. According to Dr. Gaskell, respondent "back slid," was not following his specific treatment plans, and did not accept accountability for his current behavior. Dr. Gaskell also based his opinion on the fact that respondent was either lying or not discussing his sexual deviance prior to his conditional release. Dr. Gaskell further opined within a reasonable degree of psychological

certainty that respondent cannot live safely in the community until he is able to work on his "stable dynamic factors and the acute factors that got him in trouble while on conditional release and continue to trouble him today."

¶ 17 On cross-examination, Dr. Gaskell testified that, to the best of his knowledge, respondent did not harm anyone in the community when respondent was on conditional release.

¶ 18 The circuit court found that the State established by clear and convincing evidence that respondent failed to fully participate in his treatment under paragraph six of his conditional release plan and revoked respondent's conditional release. The circuit court explained that while respondent was "doing, on one level, what he was supposed to be doing by explaining his thoughts ***. But on the other side, *** Mr. Henderson was also holding back in some instances and not being completely transparent." The circuit court further found that "the fact that Mr. Henderson did not fully comply with his treatment plan, wasn't truly transparent, does create a danger to the community and the safety of others." The circuit court thus revoked respondent's conditional release and recommitted respondent to the Department. This appeal followed.

¶ 19 ANALYSIS

¶ 20 Respondent maintains that the State failed to prove by clear and convincing evidence that his conditional release should be revoked. He further argues that the language in paragraph six of his conditional release plan is unconstitutionally vague as it failed to provide any guidance as to what he must do to "fully participate" in treatment. He also contends that the "safety of others" language in section 40(b)(4) of the Act (725 ILCS 207/40(b)(4) (West 2014)) is unconstitutionally vague as applied to him.

¶ 21 We first turn to address respondent's argument regarding the sufficiency of the evidence. Respondent maintains that the State failed to prove by clear and convincing evidence that his

conditional release should be revoked. In the three-paragraph argument in his brief, respondent states that he "did not commit any inappropriate conduct, use drugs or alcohol or do much of anything for that matter" and generally asserts that the evidence presented was insufficient. We find defendant's conclusory argument to be grievously insufficient. In fact, the only legal authority cited in his brief contains the black letter law propositions regarding the State's burden of proof and our standard of review. Thus, respondent presents no legal authority in support of his position in violation of Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2017).

¶ 22 Despite respondent's inadequate brief, we will review the sufficiency of the evidence to support the circuit court's determination to revoke respondent's conditional release. During a proceeding to revoke a conditional release, the State must prove "by clear and convincing evidence that any rule or condition of release has been violated, or that the safety of others requires that the conditional release be revoked." 725 ILCS 207/40(b)(4) (West 2014). "Clear and convincing evidence is defined as the quantum of proof that leaves no reasonable doubt in the mind of the fact finder as to the veracity of the proposition in question." (Internal quotation marks omitted.) *In re Commitment of Rendon*, 2014 IL App (1st) 123090, ¶ 32 (*quoting In re Gloria C.*, 401 Ill. App. 3d 271, 282 (2010)). A circuit court's ruling on a petition to revoke a conditional release will not be disturbed unless it is against the manifest weight of the evidence. *Id.* A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or where the conclusion is "unreasonable, arbitrary, and not based upon the evidence presented." *In re Commitment of Trulock*, 2012 IL App (3d) 110550, ¶ 43.

¶ 23 To be conditionally released, a sexually violent person must reach a certain point in treatment so that he or she can be safely managed in the community at large. Although released, the sexually violent person is still in the custody and control of the Department and subject to the

conditions set by the court and rules of the Department. See 725 ILCS 207/40(b)(4), (b)(5) (West 2014). In relevant part, these conditions require a respondent to attend and fully participate in assessment, treatment, and behavior monitoring, including, but not limited to, medical, psychological or psychiatric treatment specific to sex offending or drug abuse to the extent appropriate and based on subsequent Department recommendations. 725 ILCS 207/40(b)(5)(F) (West 2014). While on conditional release, a respondent must comply with "all other special conditions that the Department may impose" restricting him from "high-risk situations" and limiting "access or potential victims." 725 ILCS 207/40(b)(5)(BB) (West 2014). "If the Department alleges that a released person has violated any condition or rule, or that the safety of others requires that conditional release be revoked, he or she may be taken into custody under the rules of the Department." 725 ILCS 207/40(b)(4) (West 2014).

¶ 24 In this case, the State put forth clear and convincing evidence that respondent violated paragraph six of his conditional release plan, which required him to "fully participate" in his treatment and "comply with all the rules of the treatment provider." The evidence demonstrated that as part of his treatment, respondent was required to submit to Meacham weekly sexuality logs. Respondent failed to do so. Accordingly, he did not comply with paragraph six of the conditional release plan. In addition, supported by the results of the polygraph examination, the evidence established that respondent failed to disclose deviant fantasies. Meacham testified that honest participation in treatment was an imperative part of his treatment plan, thus lying in a polygraph examination disclosed that he had not been self-reporting as required. Moreover, the evidence demonstrated that respondent further violated the conditional release plan when he openly disregarded the treatment plan developed in response to his fixation with his female neighbor. Despite being instructed not to contact or speak to her, the very next day respondent

attempted to initiate contact with her through a third-party. He further disregarded that plan when he spoke about the female neighbor to another individual while in Meacham's waiting room. Through the testimony and evidence presented at trial, we agree with the circuit court that the State established by clear and convincing evidence that respondent failed to fully participate in treatment, in that he failed to "comply with all the rules of the treatment provider." Accordingly, the circuit court's determination to revoke respondent's conditional release was not against the manifest weight of the evidence.

¶ 25 Having found that the evidence was sufficient to support the circuit court's finding that respondent violated a condition of his conditional release plan we need not address his argument concerning the sufficiency of the court's alternative finding, *i.e.* that respondent was a danger to the community and the safety of others. We similarly need not consider his arguments that the "safety of others" standard is unconstitutional. See *In re Detention of Swope*, 213 Ill. 2d 210, 218 (2004) (recognizing that a reviewing court should avoid constitutional questions if a case can be resolved on other grounds); *Rendon*, 2014 IL App (1st) 123090, ¶ 27 (same).

¶ 26 Respondent further argues that paragraph six of the conditional release plan is unconstitutionally vague and unenforceable because the plan contains no guidance as to what a violation of this provision would be and what "fully" means in the context of the case. We initially observe that respondent's brief is woefully inadequate on this point and we do not have the benefit of his reply brief, as none was filed. First, respondent fails to provide us with a citation to the appropriate standard of review in violation of Illinois Supreme Court Rule 341(h)(3) (eff. July 1, 2017). Although respondent indicates that "[q]uestions of law are reviewed under a *de novo* standard," which is generally the proper standard of review for constitutional questions, he cites to *Zebra Technologies Corporation v. Topinka*, 344 Ill. App. 3d

474, 480 (2003), which, upon our review, is completely irrelevant to the issues raised in the case at bar. We further observe that respondent failed to cite to any case law discussing a vagueness challenge in violation of Rule 341(h)(7). In fact, in respondent's entire six-paragraph argument, he cites only one case, *United States v. Baker*, 755 F.3d 515 (7th Cir. 2014), that not only holds no precedential value before this court, but is also factually irrelevant. Despite these failings, we find there is no reason not to relax the rules of forfeiture and address the merits of respondent's constitutional claim.

¶ 27 Regardless, respondent's arguments are without merit. Paragraph six of the conditional release plan is derived from section 40(b)(5)(F) of the Act (725 ILCS 207/40(b)(5)(F) (West 2014)). Our supreme court has already upheld the Act against numerous constitutional challenges. See *In re Detention of Samuelson*, 189 Ill. 2d 548, 558-64 (2000). The Act specifically provides that respondent's conditional release should be revoked if he "violated any condition or rule" of his release, which is what occurred in this instance. 725 ILCS 207/40(b)(4) (West 2014).

¶ 28 Here, respondent affirmatively indicated that he understood all of the 55 enumerated conditions set forth in his conditional release plan and signed a certification stating that "by placing my initials next to each condition of release set forth herein, [I] am indicating that I understand the condition and agree that I will abide by its contents." Moreover, respondent indicated he "underst[ood] that my failure to abide by the conditions of my release may be grounds for revocation of release and my return to the DHS secure treatment facility." Rosato also certified that he "reviewed each and every condition" of the release with respondent and witnessed him initial each of the 55 conditions. It is apparent that respondent knew he was required to fully participate and comply with the conditions of his plan. Meacham provided

respondent with clear directions on what his responsibilities were, *i.e.* submitting sexuality logs and complying with the plans created in treatment. Respondent knowingly defied these requirements. "Due process requires that a statute give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." (Internal quotation marks omitted.) *People v. Einoder*, 209 Ill. 2d 443, 450 (2004). We conclude the directives provided to respondent were clear and that any person of ordinary intelligence would know that the acts performed by respondent would violate the "fully participate" and "comply with all the rules of the treatment provider" language of the conditional release plan.

¶ 29 CONCLUSION

¶ 30 For the reasons stated above, the judgment of the circuit court of Cook County is affirmed.

¶ 31 Affirmed.