2018 IL App (2d) 170485-U
No. 2-17-0485
Order filed December 20, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

IN RE COMMITMENT OF DAVID CANADAY,	)	Appeal from the Circuit Court of Lake County.
(PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	No. 04-MR-133
v.	)	
DAVID CANADAY,	)	Honorable Victoria A. Rossetti,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justice Burke and Justice Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: Respondent has failed to show that the public interest exception to mootness applies to this appeal.

¶ 2 Respondent, David Canaday, appealed the trial court's order denying his motion to reopen proofs and his motion to reconsider a finding of no probable cause on his petition for conditional release under section 60 of the Sexually Violent Persons Commitment Act (the Act). 725 ILCS 207/1, *et seq*. (West 2016). Respondent was conditionally discharged on June 25, 2018, effectively granting respondent the relief sought in his appeal. This court then directed the

parties to file supplemental briefs addressing whether the issues raised by respondent were moot. For the reasons that follow, we dismiss respondent's appeal.

¶ 3 I. BACKGROUND

¶ 4 Respondent was adjudged to be a sexually violent person as defined by the Act on October 20, 2005. He was thereafter committed to the custody of the Department of Human Services. On July 27, 2016, respondent filed a petition for conditional release pursuant to section 60 of the Act. Following a probable cause hearing on December 13, 2016, the trial court found that respondent had not made sufficient progress in treatment to warrant conditional release.

¶ 5 On January 13, 2017, respondent filed a post-judgment motion arguing that new, favorable evidence had been developed after the December 13, 2016, hearing denying his conditional release; respondent had passed a polygraph test in late December 2016. On May 1, 2017, respondent sought to re-open proofs due to what he characterized as the State's failure to tender treatment notes predating the December 13, 2016, hearing and failure to apprise respondent of the December polygraph test.

¶ 6 On June 26, 2017, the trial court denied respondent's motion to re-open proofs and respondent immediately filed a notice of appeal as to that order. On June 25, 2018, respondent was conditionally released.

¶ 7 II. ANALYSIS

¶ 8 Respondent concedes that the claims raised in his appeal are moot. However, he contends here that the public interest exception to the mootness doctrine permits this court to address two issues raised in his appeal. First, respondent argues that the trial court was required to reopen proofs and consider that he had passed a polygraph test following the probable cause hearing. Second, respondent contends that the State's failure to inform respondent of the

upcoming polygraph test violates the principles set forth in *Brady v. Maryland*, 373 U.S. 83 (1963).

¶ 9 "An appeal is considered moot where it presents no actual controversy or where the issues involved in the trial court no longer exist because intervening events have rendered it impossible for the reviewing court to grant effectual [relief] to the complaining party." *In re J.T.*, 221 Ill. 2d 338, 349–50 (2006). There are three established exceptions to the mootness doctrine: (1) the public-interest exception, (2) the capable-of-repetition exception, and (3) the collateral-consequences exception. *In re Donald L.*, 2014 IL App (2d) 130044, ¶ 19. The public-interest exception allows a court to consider an otherwise moot case when the following three elements are established: (1) the question presented is of a public nature; (2) there is a need for an authoritative determination for the future guidance of public officers; and (3) there is a likelihood of future recurrence of the question. *In re Alfred H.H.*, 233 Ill. 2d 345, 355 (2009). The public interest exception is narrowly construed and requires a clear showing of each criterion. *Alfred H.H.*, 233 Ill. 2d at 355-56. The public interest exception is invoked only on rare occasions when there is an extraordinary degree of public interest and concern. *Commonwealth Edison Co. v. Ill. Commerce Comm'n*, 2016 IL 118129, ¶ 13.

¶ 10 Respondent states in his supplemental brief that the issues presented here are a matter of first impression. Indeed, our research does not reveal another court of review in Illinois addressing *Brady* obligations of the State during the pendency of a section 60 petition under the Act. It is for precisely this reason that respondent's arguments here fail as a public-interest exception to the mootness doctrine. In deciding the need for an authoritative determination, this court looks to whether the law is in disarray or conflicting precedent exists. *Commonwealth Edison Co.*, 2016 IL 118129, ¶ 16. When a case presents an issue of first impression, no conflict

or disarray in the law exists. *Id*. Therefore, we conclude that the second criterion for application of the public interest exception, that an authoritative determination of the question is desirable for the future guidance of public officers, is not met in this case.

¶ 11 Respondent's arguments of first impression are further hindered by the life of the Act itself. The Sexually Violent Persons Commitment Act has been in existence since January 1, 1998. 725 ILCS 207/1 *et seq*. (West 2016). It would be speculative at best for respondent's arguments to be considered to have a likelihood of future recurrence as over twenty years have passed without the need of appellate court review on the issues raised here.

¶ 12 We need not examine respondent's argument concerning whether the issues raised are of a substantial public nature. As respondent's arguments fail to make a clear showing of either the second or third elements to establish the public interest exception, his appeal requires dismissal.

¶ 13 III. CONCLUSION

¶ 14 Due to respondent's conditional discharge on June 25, 2018, effectively granting respondent the relief sought in his appeal, the issues raised here are moot.

¶ 15 Appeal dismissed.