

2018 IL App (2d) 170530-U  
No. 2-17-0530  
Order filed June 5, 2018

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> COMMITMENT OF	)	Appeal from the Circuit Court
ROBERT D. BROWN,	)	of Lake County.
	)	
	)	
	)	No. 02-MR-65
	)	
(The People of the State of Illinois, Petitioner-	)	Honorable
Appellee, v. Robert D. Brown, Respondent-	)	Christopher R. Stride,
Appellant).	)	Judge, Presiding.

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JUSTICE ZENOFF delivered the judgment of the court.  
Justices McLaren and Birkett concurred in the judgment.

**ORDER**

¶ 1 *Held:* The Appellate Court affirmed the trial court's finding that there is no probable cause to warrant an evidentiary hearing on respondent's status as a sexually violent person where the respondent failed to present any plausible evidence that he did not continue to be a sexually violent person.

¶ 2 Respondent, Robert D. Brown, appeals from an order of the circuit court of Lake County finding no probable cause to warrant an evidentiary hearing to determine whether he is still a sexually violent person (SVP) pursuant to the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/1 *et seq.* (West 2016)). We affirm.

¶ 3 In 1982, respondent was convicted of rape (Ill. Rev. Stat. 1979, ch. 38, par. 11-1(a)) and sentenced to 12 years' imprisonment. In 1991, respondent was convicted of aggravated criminal sexual assault (720 ILCS 5/11-1.30 (West 1990)) and was sentenced to 23 years' imprisonment. Within 90 days of respondent's scheduled parole, the State filed a petition to commit respondent to the Department of Human Services (DHS) under the Act. In April 2010, respondent was found to be an SVP following a jury trial. On November 9, 2010, the trial court determined that conditional release was inappropriate and committed respondent to DHS.

¶ 4 In March 2017, Dr. Richard Travis conducted an annual reexamination of respondent pursuant to section 55 of the Act (725 ILCS 207/55 (West 2016)) to determine whether (1) respondent's condition had changed since the most recent periodic examination such that he is no longer an SVP, and (2) respondent made sufficient progress in treatment to be conditionally released. Respondent was notified of the reexamination, but he declined to meet with Dr. Travis. Dr. Travis based his report on his review of previous reexamination reports and DHS treatment records. Those records revealed that respondent had refused any sex offender treatment since his commitment. In his March 2017 report, Dr. Travis diagnosed respondent with (1) "other specified paraphilic disorder, sexual coercion of nonconsenting females, nonexclusive type," (2) antisocial personality disorder, remitting, and (3) alcohol and marijuana use disorder, in sustained remission due to his controlled environment. According to Dr. Travis's March 7, 2017, written report, the diagnosis of paraphilic disorder qualifies as a mental disorder under the Act. Additionally, Dr. Travis concluded that respondent continued to suffer from mental disorders that predispose him to sexual violence and that respondent's condition had not changed since his most recent periodic reexamination.

¶ 5 On March 15, 2017, the State filed a motion for a finding of no probable cause to warrant an evidentiary hearing to determine whether respondent was still an SVP. On April 6, 2017, respondent, through appointed counsel, filed an answer to the State’s motion denying that he continued to be an SVP.<sup>1</sup> On June 7, 2017, the court entered a written order finding that there was no probable cause to warrant an evidentiary hearing and continuing respondent’s commitment until further order of court. Although the parties represent that the court conducted a hearing consisting of a review of Dr. Travis’s report and arguments of counsel, the record contains no transcript of that hearing.<sup>2</sup> The last transcript in the record pertaining to the instant matter is dated March 15, 2017, where the proceeding consisted of the appointment of counsel for respondent. Respondent filed a timely appeal from the order denying his motion to reconsider the June 7, 2017, order.

¶ 6 On appeal, respondent contends that (1) the State failed to show a lack of probable cause to deny him an evidentiary hearing, (2) the trial court erred in finding that Dr. Travis’s 2017 evaluation was sufficient, and (3) the trial court erred when it found Dr. Travis’s evaluation to contain a valid diagnosis though respondent displays no current symptoms.

¶ 7 The Act authorizes the involuntary commitment of SVPs. 725 ILCS 207/40(a) (West 2016). An SVP is an individual who has been convicted of a sexually violent offense and who is dangerous because the person suffers from a mental disorder that makes it substantially probable that he or she will engage in acts of sexual violence. 725 ILCS 207/5(f) (West 2016). A “mental disorder” is a “congenital or acquired condition affecting the emotional or volitional capacity

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<sup>1</sup> Respondent’s previously filed *pro se* petition for discharge was stricken when his counsel declined to adopt it.

<sup>2</sup> Bizarrely, the State cites a report of proceedings from July 16, 2015.

that predisposes a person to engage in acts of sexual violence.” 725 ILCS 207/5(b) (West 2016). A person who is committed as an SVP may remain committed indefinitely until he or she is no longer an SVP. 725 ILCS 207/35(f) (West 2016).

¶ 8 A committed individual undergoes a periodic examination at least annually to determine whether he or she has made sufficient progress to be conditionally released or discharged. 725 ILCS 207/55 (West 2016). At the time of such examination, the SVP is given written notice that he or she has the right to petition for discharge. 725 ILCS 207/65(b)(1) (West 2016). If the SVP does not affirmatively waive that right, the court must set a probable cause hearing to determine whether facts exist that warrant an evidentiary hearing on whether the person is still an SVP. 725 ILCS 207/65(b)(1) (West 2016). If the SVP does not file a petition for discharge, but nonetheless does not waive his or her right to do so, the probable cause hearing consists only of a review of the reexamination reports and the parties’ arguments. 725 ILCS 207/65(b)(1) (West 2016).

¶ 9 To support a finding of probable cause to warrant an evidentiary hearing, the SVP bears the burden to show plausible evidence that demonstrates a change in circumstances that led to the SVP finding. *In re Commitment of Wilcoxon*, 2016 IL App (3d) 140359, ¶ 36. A respondent is entitled to an evidentiary hearing only if there is probable cause to believe that he or she (1) no longer suffers from a mental disorder, or (2) is no longer dangerous to others because the mental disorder no longer creates a substantial probability that the person will engage in acts of sexual violence. *In re Commitment of Kirst*, 2015 IL App (2d) 140532, ¶ 54. If the court finds probable cause to believe that the committed person is no longer an SVP, it must set a hearing on the issue and the State has the burden of proving by clear and convincing evidence that the person is still an SVP. 725 ILCS 207/65(b)(2) (West 2016).

¶ 10 Preliminarily, two issues arise before we can address the merits. First, the parties dispute the standard of review. Second, respondent constructed all of his arguments based on the erroneous premise that the State bore the burden of proof at the probable cause hearing.

¶ 11 Respondent argues that the standard of review is abuse of discretion. The State asserts that the correct standard of review is *de novo*. In *Kirst*, this court held that the existence of probable cause is a question of law and becomes a question of fact only if the operative facts are in dispute. *Kirst*, 2015 IL App (2d) 140532, ¶ 49. Where no testimony was taken and the trial court reviewed only documentary evidence, the proper standard of review is *de novo*. *Kirst*, 2015 IL App (2d) 140532, ¶ 49. In the present case, because respondent did not file a petition for discharge or waive his right to do so, the court was statutorily limited to reviewing the documentary evidence. See 725 ILCS 207/65(b)(1) (West 2016). Accordingly, our review is *de novo*.

¶ 12 As noted, it is respondent's burden to show plausible evidence that he no longer suffers from a mental disorder or that he is no longer dangerous to others because his mental disorder no longer creates a substantial probability that he will engage in acts of sexual violence. Dr. Travis opined that respondent still suffers from a mental disorder which predisposes him to sexual violence. Respondent questions Dr. Travis's conclusions and methodology, but he presents no plausible evidence that he is no longer an SVP. Respondent must produce plausible evidence that demonstrates a change in circumstances that led to his SVP finding. *Wilcoxon*, 2016 IL App (3d) 140359, ¶ 36. Because respondent has refused to participate in treatment since his commitment, Dr. Travis identified no changes since his last reexamination. Because respondent shifts the burden of proof to the State, his arguments are inapt. The closest respondent comes to presenting plausible evidence of a change in circumstances is to argue that there can be no current diagnosis

of a mental disorder, as there is no evidence of current symptoms. Dr. Travis diagnosed respondent with a mental disorder involving coercion of nonconsenting females, and respondent is housed in an all-male facility. His lack of infractions is therefore not plausible evidence of a change in circumstances. Also, because respondent has refused any sex offender treatment, he cannot offer plausible evidence of progress in treatment toward conditional release. Accordingly, we determine that respondent has failed to sustain his burden of proof to establish probable cause for an evidentiary hearing.

¶ 13

### III. CONCLUSION

¶ 14 For the reasons stated, we affirm the judgment of the circuit court of Lake County.

¶ 15 Affirmed.