

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).

2018 IL App (3d) 170413-U

Order filed July 20, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

In re COMMITMENT OF)	Appeal from the Circuit Court
SCOTT HASKINS)	of the 14th Judicial Circuit,
)	Rock Island County, Illinois,
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-17-0413
)	Circuit No. 12-MR-465
v.)	
)	
Scott Haskins,)	Honorable
)	Frank R. Fuhr,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Lytton and Schmidt concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not err when it found that no probable cause existed to show that respondent's condition had changed such that respondent was no longer a sexually violent person.
- ¶ 2 Following a postcommitment reexamination pursuant to the Sexually Violent Persons Commitment Act (the Act) (725 ILCS 207/1 *et seq.* (West 2016)), the trial court conducted a probable cause hearing to determine whether probable cause existed to believe Scott Haskins

(respondent) was no longer a sexually violent person (SVP). Following the hearing, the trial court found that no probable cause existed to show that respondent was no longer an SVP. Respondent appeals the trial court's finding.

¶ 3

FACTS

¶ 4

On May 7, 2012, the State filed a petition for the SVP commitment of respondent pursuant to the Act. 725 ILCS 207/1 *et seq.* (West 2012). The State later amended the petition on May 12, 2014. On February 9, 2015, respondent stipulated to the contents of the State's amended petition, and the trial court entered an agreed order adjudicating respondent to be an SVP. Following a dispositional hearing on October 30, 2015, the trial court entered an order requiring respondent to be committed to the custody of the Illinois Department of Human Services. Respondent appealed the trial court's commitment order, and this court affirmed the trial court's order in *In re Commitment of Scott Haskins*, 2016 IL App (3d) 150767-U.

¶ 5

On October 29, 2016, Dr. Edward Smith conducted a psychological reexamination of respondent in accordance with section 55(b) of the Act, which included a clinical interview. 725 ILCS 207/55(b) (West 2016). As part of his report based on this reexamination, Dr. Smith indicated that respondent was read his "Notice Of Right To Petition For Discharge [form]," and chose to retain his right to petition the court for discharge pursuant to section 65(b)(1) of the Act. 725 ILCS 207/65(b)(1) (West 2016). In his reexamination report, Dr. Smith opined that respondent suffered from other specified paraphilic disorder and antisocial personality disorder. Dr. Smith indicated that respondent scored a five on the actuarial tool known as the Static-99R, placing respondent in the moderate/high risk category for being charged or convicted of another sexual offense. Respondent also scored a five on the actuarial tool known as the Static-2002R, placing him in the moderate risk category for being charged or convicted of another sexual

offense. Dr. Smith's report indicated that respondent also displayed eight additional factors which increased respondent's risk for reoffending that were not measured by the Static-99R and the Static-2002R instruments. Dr. Smith stated that "These risk assessment instruments and additional risk factors support that [respondent] is at a substantial probability to engage in acts of sexual violence." Ultimately, Dr. Smith concluded that:

“1. [Respondent] is not currently participating in sex offender specific treatment. He remains in the early phases of the treatment program. He has not progressed in treatment to the point where he can be safely managed in the community on Conditional Release.

2. [Respondent] should continue to be found [an SVP] under [the Act]. His condition has not changed since his most recent periodic re-examination.”

¶ 6 On November 10, 2016, the State filed a motion for periodic reexamination and a finding of no probable cause (the motion), which included a copy of Dr. Smith's reexamination report dated October 29, 2016. Citing the findings in Dr. Smith's reexamination report dated October 29, 2016, the motion alleged, *inter alia*, that "Respondent has not made sufficient progress in treatment to be safely managed in the community at this time."

¶ 7 On February 7, 2017, respondent filed a motion for appointment of an independent evaluator to conduct a reexamination of respondent. The trial court denied defendant's motion for appointment on March 20, 2017.

¶ 8 On June 9, 2017, respondent filed a brief in support of his contention that there had been "changed circumstances" pertaining to the methods used as a basis for his commitment as an SVP. Specifically, respondent argued Dr. Smith's opinion that respondent remained an SVP was "based on static criteria which recent scientific studies have shown poorly predict the change in an SVP." Defendant attached several published scientific articles as exhibits to his brief. The

authors of those articles generally cautioned that predicting the risk of sexual violence is a multidimensional construct, and for the most accurate predictive results, the actuarial tools known as the Static-99, Static 99-R, and Static-2002R should not be the only tools relied upon by evaluators. Respondent argued he met the very low burden of establishing probable cause that he no longer meets the elements required for commitment under the Act.

¶ 9 On June 12, 2017, the trial court conducted a probable cause hearing on the State's motion. At the hearing, the State argued that it was improper for the trial court to consider the scientific articles attached to respondent's brief for purposes of the probable cause hearing. The State also argued that respondent failed to show circumstances had changed as necessary to warrant a finding of probable cause, and a subsequent evidentiary hearing. In response, counsel for respondent argued that respondent could not properly meet his burden and apprise the court of changed circumstances in the committed person, professional knowledge, methods, or legal definitions unless the court considered the attached articles because the court had previously denied respondent's motion for appointment of an expert. Over the State's objection, the trial court considered the scientific articles attached to defendant's brief. After considering the scientific articles provided by defendant, the trial court found that there had not been any change in circumstances such that respondent was no longer an SVP. The trial court reasoned that even if the articles highlighted a debate among experts concerning the usage of actuarial tools to predict future behavior, "nothing about this specific case of [respondent] indicates any change in his condition." Thus, the trial court found that no probable cause existed showing that respondent was no longer an SVP. Respondent filed a timely notice of appeal on June 23, 2017.

¶ 10

ANALYSIS

¶ 11

On appeal, respondent contends the trial court erroneously found that respondent did not meet his burden of proof to show probable cause that respondent was no longer an SVP based on a change in circumstances. In support of his contention, respondent contends that he presented sufficient evidence at the probable cause hearing to show that respondent was no longer an SVP due to changes in professional knowledge or methods used to evaluate persons for continued commitment under the Act. The State contends that respondent did not present sufficient evidence at the probable cause hearing to show that there was probable cause to believe respondent was no longer an SVP. This court reviews *de novo* the trial court's finding that no probable cause existed to believe respondent was no longer an SVP. *In re Commitment of Wilcoxon*, 2016 IL App (3d) 140359, ¶¶ 26-28.

¶ 12

A short discussion of the procedural posture of this case is necessary for a complete understanding of the issue presented by respondent. Following commitment under the Act, the Illinois Department of Human Services:

“shall submit a written report to the court on his or her mental condition at least once every 12 months after an initial commitment under Section 40 for the purpose of determining whether: (1) the person has made sufficient progress in treatment to be conditionally released and (2) the person's condition has so changed since the most recent periodic reexamination (or initial commitment, if there has not yet been a periodic reexamination) that he or she is no longer a sexually violent person.” 725 ILCS 207/55(a) (West 2016).

At the time of each periodic examination pursuant to section 55 of the Act, the committed person is given written notice of his or her right to petition for discharge. 725 ILCS 207/65(b)(1) (West

2016). If the committed person petitions for discharge or fails to affirmatively waive their right to petition for discharge, the matter proceeds to a probable cause hearing wherein the court is to “determine whether facts exist to believe that since the most recent periodic reexamination *** the condition of the committed person has so changed that he or she is no longer [an SVP].” *Id.* If the committed person does not file a petition for discharge and instead chooses not to waive their right to petition for discharge under section 65 of the Act, “then the probable cause hearing consists only of a review of the reexamination reports and arguments on behalf of the parties.” *Id.*

¶ 13 Our supreme court in *Stanbridge* stated that a probable cause hearing on a petition for discharge is “preliminary in nature,” and is intended to be “a summary proceeding to determine essential or basic facts as to probability.” *In re Detention of Stanbridge*, 2012 IL 112337, ¶ 59 (citing *In re Detention of Hardin*, 238 Ill. 2d 33, 52 (2010)). The *Stanbridge* court indicated that at the probable cause hearing, the court must receive a “plausible account on each of the required elements to assure the court that there is a substantial basis for the petition.” *Id.* at ¶ 62 (citing *In re Detention of Hardin*, 238 Ill. 2d at 48). In other words, during the probable cause hearing, respondent bears the burden of producing plausible evidence demonstrating a change in the circumstances that led to his commitment as an SVP. This burden of production is “very low.” *In re Commitment of Wilcoxon*, 2016 IL App (3d) 140359, ¶ 30. A change in circumstances: “could include a change in the committed person, a change in the professional knowledge and methods used to evaluate a person’s mental disorder or risk of reoffending, or even a change in the legal definitions of a mental disorder or [an SVP], such that a trier of fact could conclude that the person no longer meets the requisite elements.” *Stanbridge*, 2012 IL 112337, ¶ 72.

¶ 14 In this case, respondent received a written notice of his right to petition for discharge at the time of his reexamination pursuant to section 65(b)(1) of the Act. 725 ILCS 207/65(b)(1) (West 2016). Respondent did not submit a petition for discharge, but did not waive his right to do so either. Thus, section 65(b)(1) of the Act limits the information the trial court could consider to the “review of the reexamination reports and arguments on behalf of the parties.” 725 ILCS 207/65(b)(1) (West 2016).

¶ 15 The trial court considered Dr. Smith’s reexamination report dated October 29, 2016. The reexamination report indicated that respondent was not currently participating in sex offender specific treatment and that respondent’s condition had not changed. Over the State’s objection, the trial court also considered the scientific articles attached to defendant’s brief. Based on the plain language of the Act, the trial court should not have considered these articles. Accordingly, our *de novo* review will not consider the content of the articles. The trial court found there was “nothing about this specific case of [respondent] indicates any change in his condition” based on the evidence presented. Our *de novo* review leads us to the same conclusion as the trial court. Consequently, we find that the trial court properly found that no probable cause existed to show that the circumstances had changed such that respondent was no longer an SVP.

¶ 16 CONCLUSION

¶ 17 The judgment of the circuit court of Rock Island County is affirmed.

¶ 18 Affirmed.