2018 IL App (3d) 170414-U

Order filed September 20, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 14th Judicial Circuit, Rock Island County, Illinois.
Petitioner-Appellee,	)	
v.	)	Appeal No. 3-17-0414 Circuit No. 01-MR-75
GREGORY A. WHITE,	)	
Respondent-Appellant.	)	Honorable Frank R. Fuhr, Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices O'Brien and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly found no probable cause to warrant an evidentiary hearing regarding whether respondent continued to be a sexually violent person.

¶ 2 Respondent, Gregory White, appeals from an order of the circuit court of Rock Island County granting the State's motion for a finding of no probable cause to believe that he is no longer a sexually violent person under the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/1 to 99 (West 2016)). We affirm.

¶ 3 FACTS

¶ 4 Respondent has two prior convictions for aggravated criminal sexual assault. In 1989, respondent, then 17 years old, pleaded guilty to fondling the vagina of a 12-year-old girl. In 1999, respondent entered an *Alford* plea to an offense he committed in 1994. In that case, respondent, then 25 years old, had sexual intercourse with a 14-year-old girl following a night of drinking alcohol and using drugs.

¶ 5 In February 2001, as respondent was about to be released from prison following his 1999 conviction, the State filed a petition to involuntarily commit him as a sexually violent person under the Act. Following a trial on the State's petition, a jury found respondent to be a sexually violent person. The trial court later committed him to the custody of the Department of Human Services.

¶ 6 Following his commitment, respondent unsuccessfully pursued a direct appeal. See *People v. White*, No. 3-01-0854 (unpublished order under Supreme Court Rule 23). Thereafter, respondent underwent periodic reexaminations as required by section 55 of the Act (725 ILCS 207/55 (West 2016)).

¶ 7 In June 2016, the State filed a motion for a finding of no probable cause to believe respondent was no longer a sexually violent person. In its motion, the State noted that defendant refused to participate in his May 2016 reexamination and, that since his initial commitment in 2001, respondent "has consistently refused to participate in any sex offender specific treatment." The State asked the court to continue respondent's secure commitment pursuant to the Act. Attached to its motion was the May 2016 reexamination report prepared by psychologist Edward Smith. The report indicated that Dr. Smith conducted a file review of respondent's history which included, for example, respondent's educational, employment, mental health, criminal and substance abuse histories. In determining respondent's likelihood of reoffending, Smith

conducted an actuarial approach using the STATIC-99R and considered other empirical risk factors outside the STATIC-99R. Smith reported that respondent received a score of 7 on the STATIC-99R which placed him in the high risk category for sexually reoffending. In addition, Smith found respondent possessed 10 additional risk factors not measured by the STATIC-99R that "suggest he is at a substantial probability to engage in acts of sexual violence." These additional risk factors include intimate relationship conflicts, deviant sexual interest, antisocial personality disorder, general self-regulation problems, impulsiveness, recklessness, hostility, intoxicated during offense, separation from parents, neglect/physical/emotional and substance abuse. Smith found respondent exhibited no protective factors, *i.e.*, factors that lower one's risk of sexual recidivism. Specifically, Smith noted that respondent never completed sex offender treatment and did not have a serious or debilitating medical condition. While Smith found respondent's age "likely warranted" some age-based risk reduction, he noted that such risk reduction was reflected in the STATIC-99R and "does not reduce his risk below the threshold of substantially probable." Dr. Smith concluded that respondent "has not progressed to the point where he can be safely managed in the community" and because of that, he "should continue to be found a Sexually Violent Person under the *** Act."

¶ 8 On June 9, 2017, respondent filed a "Brief in Support of Argument for Probable Cause." He argued that changes in the methods used to evaluate respondents for commitment under the Act have changed to the extent that risk assessment tools, like the STATIC-99R used by Smith, are unreliable predictors of recidivism. He asserted that an evidentiary hearing should be granted because he "met the 'very low' burden of showing that a change in professional understanding of risk assessment tools provides a 'plausible account' that respondent is no longer [a sexually violent person]." Respondent attached two scientific articles in support of his contention.

¶ 9 At the June 12, 2017, probable cause hearing, the State maintained that respondent "has not made any progress in treatment." While it objected to the articles respondent attached to his brief, the State argued that even if the trial court considered them, Dr. Smith considered empirically based factors other than those found in the STATIC-99R which increased respondent's risk of recidivism. In sum, the State asserted that respondent "failed to show that his condition has changed in any manner that would warrant an evidentiary hearing." For his part, respondent asserted that he need only present a plausible account that he is no longer a sexually violent person and that he his burden by showing a change in the scientific literature which supports a finding of probable cause that he is no longer a sexually violent person. Over the State's objection, the court considered the articles presented by respondent. Nonetheless, the court granted the State's motion, finding no facts supported a finding of probable cause to believe respondent is no longer a sexually violent person.

¶ 10 Respondent appeals.

¶ 11 ANALYSIS

¶ 12 On appeal, respondent argues that the trial court erred in finding no probable cause to warrant an evidentiary hearing where changes in professional knowledge and the methods used to evaluate respondents for continued commitment under the Act demonstrate that he should no longer be considered a sexually violent person.

¶ 13 We review *de novo* the issue of whether there is probable cause to believe respondent is no longer a sexually violent person so as to warrant an evidentiary hearing. *In re Commitment of Wilcoxen*, 2016 IL App (3d) 140359, ¶ 28. We may affirm a trial court's judgment on any ground supported by the record. *In re Detention of Stanbridge*, 2012 IL 112337, ¶ 74.

¶ 14 Following commitment under the Act, the Department of Human Services must evaluate the individual's mental condition within 6 months of his initial commitment and at least once every 12 months thereafter. 725 ILCS 207/55(a) (West 2016). The purpose of these evaluations is to determine whether: (1) the committed individual has made sufficient progress in treatment to be conditionally released and (2) the individual's condition has so changed since the most recent periodic evaluation that he or she is no longer a sexually violent person. *Id.*

¶ 15 At the time of each periodic examination, a written notice of the right to petition the court for discharge is given to the committed individual. *Id.* § 65(b)(1). If the individual neither petitions the court for discharge nor affirmatively waives the right to do so, the court must set a probable cause hearing to determine whether facts exist to warrant a further hearing regarding whether the person is no longer a sexual violent person. *Id.* Where a probable cause hearing is set because the committed individual neither petitions the court for discharge nor affirmatively waives the right to do so, as is the case here, "the hearing consists only of a review of the reexamination reports and arguments on behalf of the parties." *Id.* At that time, the trial court must "determine whether facts exist to believe that since the most recent periodic examination ***, the condition of the committed person has so changed that he *** is no longer a sexually violent person." *Id.* A "sexually violent person" is one "who has been convicted of a sexually violent offense *** and who is dangerous because he or she suffers from a mental disorder that makes it substantially probable that the person will engage in acts of sexual violence." *Id.* § 5.

¶ 16 At the probable cause hearing, the committed individual must present plausible evidence that he (1) no longer has a mental disorder or (2) 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. *In re Commitment of Wilcoxen*, 2016 IL App (3d) 140359, ¶ 35. "Under the relevant

statutory scheme, 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 a sexually violent person, such that a trier of fact could conclude that the person no longer meets the requisite elements." *In re Detention of Stanbridge*, 2012 IL 112337, ¶ 72.

¶ 17 In this case, respondent concedes that he did not present any evidence to show "he no longer has a mental disorder." Instead, he asserts that he "present[ed] evidence that professional knowledge or methods used to evaluate [him] for commitment under the Act have changed to the extent that these risk assessment tools are considered by some scientists to be unreliable predictors of recidivism." He maintains the articles he presented indicate 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." We disagree.

¶ 18 Contrary to respondent's contention, the articles he submitted do not support his contention that he should no longer be considered a sexually violent person or even that there has been a change in professional knowledge and methods used to evaluate a person's mental disorder or risk of reoffending. Rather, these articles acknowledge that actuarial methods, such as the STATIC-99R used by Dr. Smith here, are useful tools in understanding recidivism. The articles merely caution that clinicians should understand the limitations of these actuarial risk tools and that the use of clinical judgment and "additional latent variable models" could help to mitigate their limitations. See Sreenivasan. S., PhD, Weinberger, L.E., PhD, Frances, A., MD & Cusworth-Walker, S., PhD, *Alice in Actuarial-Land:Through the Looking Glass of Changing Static-99 Norms*, 38 J. Am. Acad. Psychiatry & L. 400, 401 (2010); Brouillett-Alarie, S., Babchishin, K. M., Hanson, R. K. & Helmus, L. M (2015), *Latent Constructs of the Static-99R*

and Statice-2002R: A Three-Factor Solution, available at http://journals.sagepub.com/doi/10.1177/1073191114568114.

¶ 19 Even assuming, *arguendo*, that the articles presented by respondent indicate a recent trend in the professional community to move away from the actuarial risk tools historically used to assess an offender's risk of sexual recidivism, we note that Dr. Smith's conclusions were not based solely on the findings of the STATIC-99R. Notably, Smith found that respondent suffered from 10 additional empirically based factors not included in the STATIC-99R which increase his risk of recidivism. Smith also considered potential protective factors that reduce an offender's recidivism risk, but ultimately concluded that those factors did not apply since (1) respondent failed to successfully complete sex offender treatment at any time during his commitment, (2) respondent did not suffer from a serious or debilitating medical condition and (3) the Static-99R accurately accounted for any reduction in risk due to respondent's age.

¶ 20 In sum, at the probable cause hearing, respondent failed to present any "plausible evidence" to show that he is no longer a danger to the community. The only evidence presented at the hearing indicated that respondent—who refused to participate in his May 2016 reexamination and has never completed any sex offender treatment since his commitment in 2001—continued to meet the statutorily defined criteria to remain committed as a sexually violent person.

¶ 21 CONCLUSION

¶ 22 For the foregoing reasons, we affirm the judgment of the circuit court of Rock Island County.

¶ 23 Affirmed.