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2018 IL App (3d) 170602-U

Order filed June 22, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

<i>In re</i> COMMITMENT OF)	Appeal from the Circuit Court
)	of the 14th Judicial Circuit,
WILLIAM D. DOSS,)	Rock Island County, Illinois.
)	
(The People of the State of)	
)	
Petitioner-Appellee,)	Appeal No. 3-17-0602
)	Circuit No. 03-MR-347
v.)	
)	
William D. Doss,)	
)	
Respondent-Appellant).)	Honorable
)	Frank R. Fuhr,
)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Holdridge and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not err in finding no probable cause was shown to warrant an evidentiary hearing where respondent still had numerous risk factors for reoffending.

¶ 2 Respondent William D. Doss appeals from the trial court's order finding that probable cause did not exist to warrant an evidentiary hearing to determine if he was no longer a sexually

violent person. On appeal, respondent argues that the trial court erred in granting the State's motion for a finding of no probable cause. We affirm.

¶ 3

FACTS

¶ 4

In August 2004, respondent was adjudicated a sexually violent person under the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/1 *et seq.* (West 2004)) and committed to the Department of Human Services (DHS) for indefinite treatment. Following a dispositional hearing on January 26, 2005, the court entered an order committing respondent to a secure facility for institutional care and custody.

¶ 5

The State filed its most recent motion for court review of periodic examination and argument in support of a finding of no probable cause on May 15, 2017. An evaluation report by Dr. Richard Travis was attached to the motion. In his report, Travis concluded to a reasonable degree of psychological certainty that respondent suffered from two mental disorders: (1) other specified paraphilic disorder, sexually attracted to non-consenting adolescent females, nonexclusive type; and (2) delusional disorder, mixed type. He also concluded that, as a result of respondent's mental disorders, it was substantially probable that he would engage in further acts of sexual violence. Travis opined that respondent's condition and risk of reoffense had not changed since his prior evaluation and that he continued to be a sexually violent person in need of treatment in a secure facility.

¶ 6

In reaching his conclusions, Travis considered DHS treatment progress reports and respondent's criminal history. He noted that respondent's underlying sexual offense occurred between September 1990 and April 1991. During that time, respondent, who was 41 years old, repeatedly raped an 11-year-old girl and sexually abused a 13-year-old girl and a 14-year-old girl. In August 1991, he pleaded guilty to one count of aggravated criminal sexual assault and

two counts of aggravated criminal sexual abuse. Three years later, he was released on mandatory supervised release and, within months, digitally penetrated the vagina of a 12-year-old girl while he and his wife had sex in the girl's bed. He was charged with aggravated criminal sexual assault for committing that offense and pleaded guilty.

¶ 7 Travis further reported that respondent has not participated in any treatment since his admission to the DHS treatment facility in 2004. In the most recent review period, respondent received warnings and one minor rule violation for insolence. Respondent also suffers from delusions. During his reexamination interview with Travis, respondent stated that he believes he has a special relationship with famous people in positions of power and that he is pursuing a romantic relationship with one famous person. He also told Travis that he committed his prior sexual offenses because he loves women "too much."

¶ 8 Respondent scored a "0" on the Static-99R administered by Travis. The Static-99R is an actuarial measurement that helps predict the risk of sexually violent reoffense. Travis noted that respondent's score likely underestimated his risk of reoffense because the test included a three-point reduction for respondent's age at the time of reexamination. At that time, respondent was 68 years old.

¶ 9 As recommended, Travis also used the Stable 2007 to assess risk factors external to the Static-99R to guide his assessment of respondent. He noted that respondent presented several risk factors included in the Stable 2007 assessment tool, such as (1) intimacy deficits, (2) hostility toward women, (3) lack of empathy, (4) negative emotionality, (5) sex drive/sexual preoccupation, (6) deviant sexuality and (7) lack of cooperation with supervision. Travis reported that because respondent's score of "20" on the Stable 2007 far exceeded the average score of "7.06," his recidivism risk fell into the high risk/high needs category.

¶ 10 Respondent filed a brief in support of his argument for probable cause, arguing that the Static-99R is ineffective at measuring changes in the risk of reoffense. He attached two scientific articles referencing the professional shift away from the Static-99R and claimed that Travis’s conclusions that he remained a sexually violent person were based on criteria that recent studies have shown poorly predict the change in a sexually violent person. Respondent maintained that he had “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 an SVP.”

¶ 11 The trial court held a probable cause hearing. Following arguments by both parties, the court found no probable cause to warrant a discharge hearing and granted the State’s motion.

¶ 12 ANALYSIS

¶ 13 Respondent contends that the trial court erred in finding that there was no probable cause to warrant an evidentiary hearing to determine whether he remained a sexually violent person.

¶ 14 Once a sexually violent person is committed under the Act, the DHS is responsible for evaluating that person’s mental condition within 6 months after commitment and thereafter at least every 12 months to determine if the committed person has made sufficient progress to be conditionally released or discharged. 725 ILCS 207/55(a) (West 2016). At the time of reexamination, the committed person receives notice of the right to petition the circuit court for discharge. *Id.* § 65(b)(1). If the committed person does not affirmatively waive that right, like respondent in this case, the court must “set a probable cause hearing 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 a sexually violent person.” *Id.*

¶ 15 At a probable cause hearing, the court only reviews the reexamination reports and hears the parties' arguments. *Id.* If the court finds probable cause does exist, then it must set an evidentiary hearing on the issue. *Id.* § 65(b)(2). Since the trial court only considers the reexamination reports and other documentary evidence, our review of the court's finding of no probable cause is *de novo*. See *In re Commitment of Wilcoxon*, 2016 IL App (3d) 140359, ¶ 28; *In re Commitment of Kirst*, 2015 IL App (2d) 140532, ¶ 50.

¶ 16 The court's role in a probable cause hearing is to determine whether the respondent has established a plausible account on each of the required elements to demonstrate that there is a substantial basis for the discharge petition. *In re Detention of Stanbridge*, 2012 IL 112337, ¶ 62. A respondent is only entitled to an evidentiary discharge hearing if plausible evidence shows that the respondent (1) no longer suffers from a mental disorder, or (2) is no longer dangerous to others because his or her mental disorder no longer creates a substantial probability he or she will engage in acts of sexual violence. *Id.* ¶ 68 (citing 725 ILCS 207/5(f) , 15 (West 2016)). Under the Act, a substantial probability means "much more likely than not." *In re Commitment of Curtner*, 2012 IL App (4th) 110820, ¶ 37.

¶ 17 Respondent contends that he is entitled to an evidentiary hearing based on two scientific articles that question the viability of the Static-99R assessment tool. He claims that the articles provide plausible evidence that his mental disorder no longer creates a substantial probability he will engage in acts of sexual violence because they demonstrate that the test fails to account for changes that a sexually violent person experiences after being committed. However, these scientific articles do not provide evidence that respondent is no longer a sexually violent person. Moreover, Travis did not rely solely on respondent's Static-99R assessment in reaching his conclusion that respondent remained substantially probable to commit acts of sexual violence. In

addition to the Static-99R, Travis assessed respondent using an adjusted actuarial approach, which accounted for a wide range of additional factors. Those additional factors included an assessment of respondent's refusal to participate in treatment, his delusional beliefs that he communicates with famous people, his insistence that he has no mental disorder, and his statement that he committed past sexual offenses because he loves women. The adjusted approach illustrated that the Static-99R underestimated respondent's risk to reoffend. Thus, even without the Static-99R assessment, respondent failed to identify any factors demonstrating a substantial probability that he is no longer a sexually violent person.

¶ 18 By contrast, Travis documented that respondent fell within the high risk category for reoffending based on multiple factors. Travis's report diagnosed respondent with other specified paraphilic disorder and delusional disorder. His report also noted that respondent repeatedly raped an 11-year-old girl, committed aggravated sexual assault of a 12-year-old girl while he was on mandatory supervised release, and refused treatment during his commitment as a sexually violent person. This evidence established that respondent continues to suffer from mental disorders and that his mental disorders continue to create a substantial probability that he will engage in acts of sexual violence. See 725 ILCS 207/5(f), 15(b) (West 2016). The trial court did not err in granting the State's motion for a finding of no probable cause to warrant a discharge hearing.

¶ 19 CONCLUSION

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

¶ 21 Affirmed.