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2018 IL App (3d) 170736-U

Order filed December 21, 2018

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2018

THE PEOPLE OF THE STATE OF ILLINOIS, )	Appeal from the Circuit Court
)	of the 9th Judicial Circuit,
Plaintiff-Appellee, )	Knox County, Illinois.
)	
v. )	Appeal No. 3-17-0736
)	Circuit No. 12-CF-434
JOSEPH D. TROESCH, )	
)	The Honorable
Defendant-Appellant. )	Scott Shipplett,
)	Judge, Presiding.

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JUSTICE LYTTON delivered the judgment of the court.  
Justices McDade and Schmidt concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Trial court's denial of defendant's application for recovery under the Sexually Dangerous Persons (SDP) Act was not against the manifest weight of the evidence where the only expert testimony provided at the recovery hearing supported conclusion that defendant remained an SDP.

¶ 2 Defendant Joseph D. Troesch was originally found to be an SDP and committed to the custody of the Department of Corrections in February 2014. In May 2015, defendant filed an Application for Discharge or Conditional Release. A qualified evaluator was appointed to examine defendant. The evaluator drafted a written report and testified at defendant's recovery

hearing, finding that defendant remained an SDP. The trial court entered an order denying defendant's recovery application. We affirm.

¶ 3

### FACTS

¶ 4

In 2000, defendant was charged with six counts of criminal sexual abuse for having sexual intercourse with three different 14-year-old females over a period of several months. Defendant pled guilty to four counts of criminal sexual abuse. He served approximately one year in jail and was required to register as a sex offender. In August 2000, defendant was convicted for unlawful failure to register as a sex offender. In September 2003, defendant was convicted of failure to register a change of address.

¶ 5

On October 14, 2004, defendant was charged with predatory criminal sexual assault of a child. The child was defendant's six-year-old niece. She reported that defendant showed her pornographic photographs and videos on his computer, showed his penis to her on multiple occasions, masturbated in front of her, and touched her vagina with his finger. Upon defendant's arrest, police searched defendant's two computers and found 320 images of child pornography. Defendant pled guilty to predatory criminal sexual assault of a child, and the trial court sentenced him to six years in prison.

¶ 6

In 2009, defendant was released from prison. He was ordered to attend sex offender therapy as a condition of his probation. Defendant was removed from therapy when he failed to pay for it. This resulted in a violation of defendant's probation. Defendant returned to prison from August 2010 to August 2012.

¶ 7

In September 2012, defendant was charged with unlawful failure to register computer information in violation of section 3(a) of the Sex Offender Registration Act (730 ILCS 150/3(a) (West 2012)). On December 12, 2012, the State filed a petition to proceed under the SDP Act

(725 ILCS 205/1.01 *et seq.* (West 2012)) in lieu of prosecution. The court appointed Dr. Angeline Stanislaus and Dr. Jagannathan Srinivasaraghavan to evaluate defendant.

¶ 8 The matter proceeded to a bench trial on February 11, 2014. Srinivasaraghavan testified that he met with defendant and evaluated him. Following the evaluation, Srinivasaraghavan diagnosed defendant with pedophilia, or pedophilic disorder, which he described as follows: “This is over the past six months period somebody has the current urges, fantasies of having sex with a prepubescent child, usually less than 13 years old and the person who is doing this is at least 18 years of age, at least five years older than the child, and this causes significant distress or discomfort for the person and this is not due to any other medical condition whatever.” Srinivasaraghavan testified that pedophilic disorder is a mental disorder that existed in defendant since at least 2004.

¶ 9 In making his diagnosis, Srinivasaraghavan considered defendant’s 2004 sexual assault of his niece, as well as the child pornography found on defendant’s computers. Srinivasaraghavan opined that defendant “is pretty much preoccupied with sexual issues and urgencies.” Srinivasaraghavan concluded that defendant was an SDP and that “[g]iven the pattern of [defendant’s] behaviors, there is a very, very high probability that he would reoffend.”

¶ 10 Stanislaus testified that as part of her evaluation of defendant, she administered the Static-99, an actuarial risk instrument used to predict future sexual recidivism. Defendant scored a seven on the test, which Stanislaus testified “places him in the high risk category for sexual reoffense.” Defendant’s high risk of sexual reoffense was also suggested by a number of dynamic factors, such as his tendency to blame others and his repeated violations of parole or conditional discharge.

¶ 11 Stanislaus diagnosed defendant with pedophilia and paraphilia. In diagnosing pedophilia, Stanislaus relied on defendant’s 2004 criminal conviction and the large number of child pornography images on his computers. Her paraphilia diagnosis stemmed from defendant’s multiple sexual acts with 14-year-olds. Stanislaus opined that both diagnoses existed in defendant for more than a year. She concluded that defendant was an SDP.

¶ 12 The trial court found that the State met its burden of proving defendant was an SDP and committed him to the custody of the Director of the Illinois Department of Corrections for care and treatment. Defendant appealed the court’s order, arguing, in part, that the State failed to prove beyond a reasonable doubt that he was an SDP. In March 2015, we affirmed the trial court’s order. *People v. Troesch*, 2015 IL App (3d) 140240-U (unpublished order under Rule 23). We rejected defendant’s contention that the State failed to prove that his pedophilic disorder existed in the year immediately prior to the filing of the SDP petition because his criminal conviction occurred 10 years earlier and there was no evidence that he engaged in any inappropriate or illegal sexual activity since that time. *Id.* ¶¶ 39, 41. We explained that while “[t]he doctors testified that the 2004 conviction was the earliest manifestation and primary indicator of defendant’s pedophilia or pedophilic disorder”, both doctors “met with and evaluated defendant prior to trial, and each testified to facts that would indicate the pedophilia or pedophilic disorder was ongoing.” *Id.* ¶ 41.

¶ 13 On May 26, 2015, defendant filed an Application for Discharge or Conditional Release under section 9 of the SDP Act (725 ILCS 205/9 (West 2014)). Dr. Kristopher Clouch was appointed to evaluate defendant. On November 10, 2015, Clouch submitted a 30-page report of his evaluation of defendant to the court, pursuant to section 9(a) of the SDP Act (725 ILCS 205/9(a) (West 2016)).

¶ 14 In his report, Clouch diagnosed defendant with pedophilic disorder, stating that the criteria, as set forth in the Diagnostic and Statistical Manual, Fifth Edition (DSM-5), for that diagnosis are as follows:

“A. Over a period of at least 6 months, recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a prepubescent child or children (generally age 13 years or younger).

B. The individual has acted on these sexual urges, or the sexual urges or fantasies cause marked distress or interpersonal difficulty[.]

C. The individual is at least age 16 years and at least 5 years older than the child or children in Criterion A.”

Clouch found that defendant “meets the criteria for this diagnosis in that he has evidenced recurrent sexual behaviors with one child and was found to be in possession of more than 300 images of child pornography.”

¶ 15 After interviewing defendant and reviewing his treatment records, Clouch found: “At this time, [defendant] has not made sufficient progress in treatment and has not reduced his risk to reoffend in the future. He currently lacks the insight to recognize that he has several issues that he must still work on prior to being considered for conditional release. [Defendant] fails to acknowledge his deviance and accept full responsibility for his offenses.” Clouch concluded “to a reasonable degree of psychological certainty, that **Mr. Troesch remains a Sexually Dangerous Person.**” (Emphasis in original.)

¶ 16 Defendant’s recovery hearing was held on May 24, 2017. At the hearing, Clouch testified that he interviewed defendant for over two hours and reviewed defendant’s prior commitment evaluations, police reports and treatment records. In defendant’s most recent

semiannual evaluation, defendant's primary therapist rated defendant's progress in 28 areas. The therapist determined that defendant met expectations in four areas, "minimally" needed improvement in four areas, needed "some" improvement in seven areas, needed "considerable improvement" in nine areas, and was "unsatisfactory" in four areas. Clouch stated that the four areas in which defendant was rated "unsatisfactory" are "four of the very most important areas when looking at an individual's ability to reduce their risk to re-offend in the future."

¶ 17 In determining defendant's risk to reoffend, Clouch used the Static-99R, which he described as "the most widely used \*\*\* actuarial measure in the world at this time." Defendant's score of six placed him in the "well above average" risk category, making him 3.77 times more likely to reoffend than "the typical sex offender." Clouch also administered the Stable-2007, which "addresses 13 dynamic risk factors that have been found to be related to sexual recidivism." Defendant's score of 14 placed him in the "high risk" category. Clouch explained that defendant's collective scores on the Static-99R and the Stable-2007 placed him at a "very high risk for sexual recidivism as well as in need of the greatest level of supervision and intervention or treatment."

¶ 18 Clouch identified four dynamic risk factors that increased defendant's risk to reoffend: sexual preoccupation, sexual preference for children, lifestyle impulsivity, and resistance to rules and supervision. Clouch determined that defendant has a sexual preference for children based on his "repetitive sexual behaviors with his six-year-old niece" and "the child pornography that was found" on his computers.

¶ 19 Clouch concluded that it remains substantially probable that defendant will re-offend in the future if not confined. Clouch opined that defendant's current progress and treatment have not sufficiently reduced his risk to reoffend because defendant continues to minimize his

criminal behavior, refuses to take responsibility for his actions, and cognitively distorts his criminal acts. Clouch ultimately concluded that defendant “remains a sexually dangerous person and has not recovered at this time.”

¶ 20 On cross-examination, Clouch testified that he believes defendant’s abuse of his niece lasted approximately six months, from March or April 2004 until September or October 2004. He explained that in diagnosing an individual with pedophilic disorder, he considers “that as an individual has repeated sexual behaviors with a child and has shown sexual fantasies associated with \*\*\* those behaviors, that those fantasies and behaviors do continue \*\*\* and will remain with the individual for the remainder of their life and will be something that the individual has to work through and address prior to reducing their risk to re-offend.”

¶ 21 Defendant was the only other witness to testify at the hearing. He testified that his sister and niece moved from out of state to the city where he was living in June or July 2004. He testified that he had no “person-to-person contact” with his niece prior to June or July of 2004.

¶ 22 At the conclusion of the hearing, the trial court ruled that the State met its burden of proving that defendant continues to suffer from a mental disorder, which makes it substantially probable that he will engage in future acts of sexual violence unless confined. Defendant filed a motion to reconsider, which the court denied.

¶ 23 ANALYSIS

¶ 24 Defendant argues that the trial court erred in denying his recovery application because the State did not prove by clear and convincing evidence that he suffers from pedophilic disorder.

¶ 25 The SDP Act allows the State to file a petition for the commitment of a criminal defendant instead of prosecution if the State believes the defendant is a sexually dangerous person as defined in the SDP Act. *People v. Grant*, 2016 IL App (5th) 130416, ¶ 7. A person is

sexually dangerous if: (1) he suffered from a mental disorder for at least one year prior to filing the petition; (2) the mental disorder is associated with criminal propensities to the commission of sexual offenses; (3) he demonstrated that propensity toward acts of sexual assault or acts of sexual molestation of children; and (4) there is an explicit finding that it is substantially probable that the person would engage in the commission of sex offenses in the future if not confined. 725 ILCS 205/1.01 (West 2016); *People v. Masterson*, 207 Ill. 2d 305, 330 (2003). At a commitment hearing, the State must prove the defendant is sexually dangerous beyond a reasonable doubt. 725 ILCS 205/3.01 (West 2016).

¶ 26 Any time after a defendant is committed under the SDP Act, he may file a recovery application alleging that he is no longer sexually dangerous and requesting a discharge or conditional release. 725 ILCS 205/9(a) (West 2016). At proceedings on a recovery application, the State must prove by clear and convincing evidence that the defendant remains sexually dangerous. 725 ILCS 205/9(b) (West 2016). At issue in the recovery proceeding is the defendant's current psychological condition and whether he is presently a sexually dangerous person within the meaning of the Act. *Grant*, 2016 IL App (5th) 130416, ¶ 8.

¶ 27 The decision of the trial court in an SDP recovery proceeding is reviewed under the manifest weight of the evidence standard. *People v. Donath*, 2013 IL App (3d) 120251, ¶ 38. A court's finding that a defendant remains an SDP will be disturbed on review only where the opposite conclusion is clearly apparent. *Id.*

¶ 28 The trier of fact is in the best position to weigh the evidence and assess the credibility of the testimony presented. *In re Commitment of Fields*, 2012 IL App (1st) 112191, ¶ 62. It is for the trier of fact to determine the credibility of the State's witnesses in considering whether the



State presented sufficient evidence to show that the defendant suffered from a mental disorder. *Id.* ¶ 65.

¶ 29 Defendant contends that the State did not prove by clear and convincing evidence that he is an SDP because Clouch failed to establish that he met the first criteria for pedophilic disorder, which is the presence of pedophilic fantasies or urges for six month or longer. We disagree.

¶ 30 At the recovery hearing, Clouch testified that he believed that defendant's abuse of his niece occurred over a six-month period in 2004, from March or April until September or October. While defendant testified that he did not have "person-to-person" contact with his niece until June or July 2004, the trial court was free to reject that testimony. See *id.* ¶ 62 (trier of fact weighs testimony and assesses credibility of witnesses).

¶ 31 Moreover, even if defendant's abuse of his niece lasted less than six months, Clouch's diagnosis of pedophilic disorder was supported by defendant's possession of over 300 pornographic images of children. Finally, as explained by Clouch at the recovery hearing, when an individual engages in sexual behaviors with a child, those behaviors "will remain with the individual for the remainder of their life and will be something that the individual has to work through and address prior to reducing their risk to re-offend." Thus, Clouch's conclusion that defendant suffered from pedophilic fantasies or urges that lasted six months or longer was supported by the evidence.

¶ 32 Clouch provided sufficient, uncontroverted testimony that respondent suffered from pedophilic disorder. Clouch's conclusion was consistent with that of Stanislaus and Srinivasaraghavan, who testified at defendant's original SDP proceeding. They explained that

