2018 IL App (4th) 170253-U

NO. 4-17-0253

FILED
January 9, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff - Appellee	)	Circuit Court of
v.	)	Champaign County
MARK LEE HANCOCK,	)	No. 00CF1597
Defendant - Appellant.	)	
	)	Honorable
	)	John R. Kennedy,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Harris and Justice DeArmond concurred in the judgment.

ORDER

¶ 1 *Held:* Pursuant to *Anders v. California*, 386 U.S. 738 (1967), the appellate court granted counsel's motion to withdraw as counsel because no meritorious issues could be raised on appeal.

¶ 2 Respondent, Mark Lee Hancock, is in civil confinement as a sexually dangerous person at the Big Muddy River Correctional Center (Big Muddy). See 725 ILCS 205/8 (West 2016). In January 2016, Hancock filed a recovery application pursuant to section 9(a) of the Sexually Dangerous Persons Act. 725 ILCS 205/9(a) (West 2016). At the February 2016 jury trial, the State introduced the testimony of several expert witnesses who testified that Hancock remained a sexually dangerous person. After the trial, the jury found that Hancock remained a sexually dangerous person.

¶ 3 In March 2017, Hancock filed a notice of appeal and the trial court appointed counsel to represent him on his appeal. In July 2017, appellate counsel filed a brief requesting to

withdraw because no meritorious issue could be raised on appeal. Counsel identified potential arguments for appeal but ultimately concluded that those potential arguments were frivolous. We agree. We grant counsel's motion to withdraw as counsel and affirm the trial court's judgment.

¶ 4 I. BACKGROUND

¶ 5 Since 2001, Hancock has been in civil confinement as a sexually dangerous person. See 725 ILCS 205/8 (West 2016). In January 2016, while confined at Big Muddy, Hancock filed a recovery application. See 725 ILCS 205/9(a) (West 2016).

¶ 6 A. The February 2016 Jury Trial

¶ 7 In February 2016, respondent's recovery application proceeded to a jury trial. The parties stipulated that respondent had a criminal history, including an assault with intent to rape in 1976, exposure of sexual or genital parts to a child in 1984, and aggravated sexual battery in 1984.

¶ 8 1. *The State's Evidence*

¶ 9 The State introduced the expert testimony of Beth Morrison, who was a former counselor at Big Muddy. Morrison testified that Hancock did not make noteworthy progress in her therapy group, he had no useful strategy to manage his sexual behaviors, there were no conditions under which he could be safely released into the community, and there was a substantial probability that he would engage in sex offenses in the future.

¶ 10 The State, over an objection to her qualifications, introduced the expert testimony of Jessica Stover. Stover, who is a social worker assigned to the sexually dangerous persons program at Big Muddy, testified that there was no set of circumstances under which Hancock could be safely released into the community.

¶ 11 Dr. Kristopher Clounch testified that he met with Hancock and reviewed his criminal and sexual history. Clounch concluded that Hancock could not manage his sexual behavior, would likely commit a future offense if not confined, and could not be safely released into the community under any condition.

¶ 12 The State, over an objection to her qualifications, introduced the expert testimony of Heather Young. Young, a treatment provider for sexually dangerous persons at Big Muddy, concluded that Hancock did not make any progress in his anger-management course and could not manage his sexual behavior.

¶ 13 2. *Hancock's Evidence*

¶ 14 At the close of the State's case, Hancock made a motion for a directed verdict. The trial court denied this motion. After the trial court denied this motion, Hancock elected not to testify at his trial. Hancock introduced into evidence documents from his various therapy groups at Big Muddy. After introducing this evidence, Hancock made a second motion for a directed verdict. The court denied this motion.

¶ 15 3. *The Jury's Verdict and Post-Verdict Filings*

¶ 16 After deliberating for approximately one hour, the jury found that Hancock remained a sexually dangerous person.

¶ 17 After the jury's verdict, Hancock filed a timely posttrial motion requesting that the trial court set aside the jury's verdict, or in the alternative, grant a new trial. In support of his motion, Hancock claimed that the court erred by (1) finding Stover qualified to testify as an expert in sex-offender treatment, (2) finding Young qualified to testify as an expert in sex-offender treatment, and (3) denying his motions for a directed verdict. Hancock also argued that the verdict was against the manifest weight of the evidence. The court denied Hancock's motion.

¶ 18 B. *Anders* Brief

¶ 19 In March 2017, Hancock filed a notice of appeal. The trial court appointed counsel to represent Hancock on appeal. In July 2017, appellate counsel filed a brief requesting to withdraw, citing *Anders v. California*, 386 U.S. 738 (1967). Counsel identified potential arguments for appeal but ultimately concluded that those potential arguments were frivolous. Hancock declined to file any supplemental briefs identifying potential issues.

¶ 20 II. ANALYSIS

¶ 21 In his brief, appellate counsel addressed the following potential issues on appeal: (1) whether the trial court erred by finding Stover and Young qualified to testify as experts in sex-offender treatment, (2) whether the court erred by denying Hancock's motions for a directed verdict, (3) whether the jury's verdict was erroneous, and (4) whether the court erred by denying Hancock's request for a judgment notwithstanding the verdict, or in the alternative, a new trial. Counsel concludes that these potential arguments are frivolous and requests to withdraw as appellate counsel. We agree and grant counsel's request to withdraw.

¶ 22 A. Standard of Review

¶ 23 The matter before us is counsel's motion to withdraw as counsel rather than the merits of Hancock's case. *In re Brazelton*, 237 Ill. App. 3d 269, 270, 604 N.E.2d 376, 376 (1992). In *Anders*, the United States Supreme Court set forth the procedure for appellate counsel to withdraw when he concludes an appeal is frivolous. *Id.* at 270, 604 N.E.2d at 377; *Anders*, 386 U.S. at 744. Under *Anders*, counsel's request to withdraw must be accompanied by a brief referring to anything in the record that could conceivably support an appeal. *Brazelton*, 237 Ill. App. 3d at 270, 604 N.E.2d at 377. A copy of this motion and brief must be furnished to the client, who then must be given time to raise any potential arguments. *Id.* at 270-71, 604 N.E.2d at

377.

¶ 24 After identifying potential issues for an appeal, counsel must form arguments in support of these potential issues. *Id.* at 271, 604 N.E.2d at 377. Counsel must then demonstrate why these arguments are actually frivolous. *Id.* The appellate court will then review the record to determine whether the potential arguments are truly frivolous. *Id.* We hold ultimate responsibility to determine whether an argument is frivolous. *People v. Teran*, 376 Ill. App. 3d 1, 5, 876 N.E.2d 734, 738 (2007).

¶ 25 B. Stover's and Young's Qualifications

¶ 26 Appellate counsel believes that any argument regarding Stover's and Young's qualifications as expert witnesses would be frivolous. We agree.

¶ 27 The decision whether to admit expert testimony is within the sound discretion of the trial court. *Thompson v. Gordon*, 221 Ill. 2d 414, 428, 851 N.E.2d 1231, 1240 (2006). A reviewing court will find an abuse of discretion only when no reasonable person would take the position adopted by the trial court. *Somers v. Quinn*, 373 Ill. App. 3d 87, 95-96, 867 N.E.2d 539, 547 (2007). Expert testimony is admissible if the proffered expert is qualified by knowledge, skill, experience, training, or education and the testimony will assist the jury in understanding the evidence. *Davis v. Kraff*, 405 Ill. App. 3d 20, 38, 937 N.E.2d 306, 322 (2010).

¶ 28 Stover testified that she had a bachelor's and master's degree in social work and, among other professional licenses, was a licensed sex-offender treatment provider. The trial court did not abuse its discretion in deeming Stover an expert witness. As such, we agree that any argument regarding her qualifications would be frivolous.

¶ 29 Likewise, Young testified that she had a bachelor's degree in psychology and master's degree in professional counseling. She also holds a license for professional counseling

in Missouri and an associate sex-offender provider license in Illinois. The trial court did not abuse its discretion in deeming Young an expert witness. Therefore, we agree that any argument regarding her qualifications would be frivolous.

¶ 30 C. Denial of the Motions for a Directed Verdict

¶ 31 Hancock filed a motion for a directed verdict at the conclusion of the State's case. Hancock filed a second motion for a directed verdict after he presented his evidence. Appellate counsel believes that arguing that the trial court erred in denying these motions would be frivolous. We agree.

¶ 32 Directed verdicts are to be entered only when the evidence, viewed in the light most favorable to the nonmoving party, is so overwhelming to the moving party that a contrary verdict cannot be reached. *Brannen v. Seifert*, 2013 IL App (1st) 122067 ¶ 59, 1 N.E.3d 1096; *Pedrick v. Peoria & Eastern R.R. Co.*, 37 Ill. 2d 494, 510, 229 N.E.2d 504, 513-14 (1967). When reviewing the denial of a directed verdict, a reviewing court will not attempt to reweigh the evidence or the credibility of the witnesses. *Brannen*, 2013 IL App (1st) 122067, ¶ 59, 1 N.E.3d 1096. We review *de novo* a trial court's denial of a directed verdict. *Id.*

¶ 33 In this case, when viewing the evidence in the light most favorable to the State, the State offered expert testimony showing that Hancock was a sexually dangerous person who could not be safely released from confinement under any condition. Thus, the trial court did not err by denying Hancock's motions for a directed verdict. We therefore agree that any argument on this issue would be frivolous.

¶ 34 D. The Jury's Verdict

¶ 35 Appellate counsel believes it would be frivolous to argue that the jury's verdict was erroneous. We agree.

¶ 36 In a recovery proceeding, the State has the burden to prove, beyond a reasonable doubt, that the respondent remains sexually dangerous. *People v. Trainer*, 196 Ill. 2d 318, 335, 752 N.E.2d 1055, 1065 (2001). When reviewing a jury's finding that an individual remains a sexually dangerous person, the appellate court must consider all the evidence in the light most favorable to the State and determine whether any rational trier of fact could have found the essential elements of the statute beyond a reasonable doubt. *People v. Bailey*, 405 Ill. App. 3d 154, 171, 937 N.E.2d 731, 745 (2010). The reviewing court will not substitute its judgment for that of the jury on factual issues unless the evidence is so improbable as to raise a reasonable doubt that the individual is a sexually dangerous person. *Id.*; *People v. Dinwiddie*, 306 Ill. App. 3d 294, 298-99, 715 N.E.2d 647, 651 (1999).

¶ 37 In this case, multiple expert witnesses testified that Hancock could not control his sexual behavior, did not make significant progress in his therapy sessions, and could not be safely released into the public under any circumstances. Thus, when viewing this evidence in the light most favorable to the State, a rational trier of fact could have found that Hancock remained a sexually dangerous person. *Bailey*, 405 Ill. App. 3d at 171, 937 N.E.2d at 745. We therefore agree with counsel that any argument on this issue would be frivolous.

¶ 38 F. Posttrial Motion

¶ 39 Counsel believes it would be frivolous to argue that the trial court erred by denying Hancock's motion for judgment notwithstanding the verdict, or in the alternative, a new trial. We agree.

¶ 40 We review *de novo* a trial court's denial of a judgment notwithstanding the verdict. *Ford v. Gizzle*, 398 Ill. App. 3d 639, 650, 924 N.E.2d 531, 542 (2010). A judgment notwithstanding the verdict is properly entered when all the evidence, when viewed in the light most

favorable to the nonmoving party, so overwhelming favors the moving party that no contrary verdict based on that evidence could ever stand. *Id.* A motion for a new trial will be granted if a jury's verdict is contrary to the manifest weight of the evidence. *Id.* at 650, 924 N.E.2d at 543. We will not reverse a trial court's ruling on a motion for a new trial unless the trial court abused its discretion. *Id.*

¶ 41 For the reasons already mentioned above, we conclude that the trial court correctly denied Hancock's motion for a judgment notwithstanding the verdict. *Id.* at 650, 924 N.E.2d at 542. Likewise, we conclude that the trial court did not abuse its discretion in denying Hancock's motion for a new trial. *Quinn*, 373 Ill. App. 3d at 95-96, 867 N.E.2d at 547. Therefore, we agree with counsel that any argument on these posttrial motion would be frivolous.

¶ 42 III. CONCLUSION

¶ 43 For these reasons, we agree with appellate counsel that no meritorious issue can be raised on appeal. We therefore grant counsel's motion to withdraw as appellate counsel and affirm the trial court's judgment. *Anders*, 386 U.S. at 744. We thank counsel for his detailed and well-reasoned brief.

¶ 44 Affirmed.