2019 IL App (1st) 172101-U
Order filed May 10, 2019

FIRST DISTRICT
Fifth Division

No. 1-17-2101

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

In re COMMITMENT OF ANTHONY HOWARD,	)	Appeal from the
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
	)	Cook County.
Petitioner-Appellee,	)	
	)	
v.	)	No. 01 CR 80009
	)	
ANTHONY HOWARD,	)	Honorable
	)	Steven G. Watkins,
Respondent-Appellant).	)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court applied the correct legal standard in considering respondent's petitions for conditional release of his commitment as a sexually violent person and we find that its determination that respondent had failed to make sufficient progress in treatment to the point that he was no longer substantially probable to engage in acts of sexual violence if on conditional release was not contrary to the manifest weight of the evidence.

¶ 2 Respondent-Appellant, Anthony Howard was civilly committed to a secure facility under the control, care and treatment of the Illinois Department of Human Services ("DHS") pursuant

to the Sexually Violent Persons Commitment Act (the Act) (725 ILCS 207/1 *et seq.* (West 2008)) after being found to be a sexually violent person. In 2014, respondent filed a petition and later a supplemental petition seeking conditional release pursuant to section 60(d) of the Act (725 ILCS 207/60(d) (West 2014)). After an evidentiary hearing, the trial court denied the petitions. On appeal, respondent argues the denial should be reversed and a new hearing held because the court applied an incorrect legal standard. Respondent, in the alternative, argues that if the trial court observed the proper standard, the court's denial of his petitions was contrary to the manifest weight of the evidence. We affirm.

¶ 3 In 1987, respondent was convicted of aggravated criminal sexual assault pursuant to a guilty plea in case No. 86 CR 14631 and sentenced to 30 years in prison. Before the completion of his sentence, the State, in 2001, petitioned the trial court to commit respondent as a sexually violent person under the Act. The court found probable cause to believe respondent was sexually violent and ordered him transferred to DHS.

¶ 4 In 2009, the State filed an amended petition to commit respondent as a sexually violent person. The amended petition asserted that Dr. Jacqueline Buck had diagnosed respondent with "paraphilia, not otherwise specified, sexually attracted to non-consenting females, nonexclusive type" which made it substantially probable he would commit future acts of sexual violence and required that he should be committed under the Act. The petition to commit included Dr. Buck's report which set forth the basis for her opinion that respondent was a sexually violent person.

¶ 5 Following a jury trial, respondent was found to be a sexually violent person under sections 5(f) and 15(b)(1) of the Act (725 ILCS 207/5(f), 15(b)(1) (West 2008)). In January 2011, after a dispositional hearing, the trial court entered an order committing respondent to care in a secure DHS treatment and detention facility until further order of the court. Defendant

appealed and this court affirmed respondent's civil commitment. *In re Commitment of Howard*, 2013 IL App (1st) 112300-U, ¶ 95. Subsequently, based on reexaminations of respondents as required by the Act, clinical psychologists continued to find he was a sexually violent person. The Act provides that these reexaminations were "for the purpose of determining whether the person has made sufficient progress to be conditionally released or discharged." 725 ILCS 207/55(a) (West 2008).

¶ 6 Respondent remained at the DHS treatment and detention facility and received treatment until March 2013, when he was convicted of attempted aggravated battery of a female staff member and imprisoned. After serving his sentence for that offense, respondent returned to the treatment and detention facility in October 2014. Prior to that, in July 2014, Dr. Joseph W. Proctor had reexamined respondent and concluded that respondent had not "made sufficient progress in treatment" and should continue to be committed in a DHS treatment and detention facility.

¶ 7 On November 14, 2014, respondent filed a petition and later in February 2015 a supplemental petition, seeking conditional release of his commitment. Respondent requested the appointment of a different examiner to evaluate him because the statistical norms for evaluating sex offenders had changed since Dr. Proctor's 2014 reexamination and a hearing to determine whether probable cause existed to believe it was no longer substantially probable that he would engage in acts of sexual violence if on conditional release.

¶ 8 In April 2015, the trial court appointed Dr. Brian Abbott to evaluate respondent. His December 29, 2015 report contained his opinion that respondent had made sufficient progress in treatment to be conditionally released.

¶ 9 On April 1, 2016, the trial court found probable cause to hold an evidentiary hearing on respondent's petitions for conditional release. The evidentiary hearing was held on May 31 and June 1, 2017.

¶ 10 At the outset of the hearing, the trial court stated the matter was proceeding on respondent's petition and supplemental petition for conditional release. In an opening statement, respondent's counsel made a single point: a petition for conditional release under section 60(d) of the Act must be granted "unless the State proves by clear and convincing evidence that the person has not made sufficient progress in treatment to the point where he or she is no longer substantially probable to engage in acts of sexual violence if on conditional release." The trial court voiced no disagreement with this assertion.

¶ 11 The State called Dr. Kimberly Weitl, a clinical psychologist who testified as an expert in the field of sex offender evaluation and risk assessment. Dr. Weitl conducted a reexamination of respondent in 2016 and in doing so, she reviewed Dr. Proctor's records, respondent's previous evaluations, his "master file" from the Illinois Department of Corrections (DOC), court documents, and DHS records. She interviewed respondent and conducted a risk analysis. Her report to DHS, dated July 25, 2016, was admitted into evidence. Prior to the hearing, Dr. Weitl reviewed Dr. Abbott's evaluation of respondent and additional DHS records.

¶ 12 Dr. Weitl, in reexamining respondent, considered his criminal history. In addition to several juvenile offenses, as an adult, respondent was convicted of: sexual assault and armed robbery (while holding a gun, made a 14-year old boy bring him home where he raped his mother and took their belongings) in 1975; the sexual assault of a female family member (rape while armed with a knife) in 1979; the sexual assault of a fellow male DOC inmate in 1982; and aggravated criminal sexual assault (rape of a woman he had offered to drive home, while holding

a screwdriver to her throat) in 1987. Dr. Weitl observed that respondent had committed certain of these crimes while on parole. Respondent was convicted in 2013 of attempted aggravated battery of a female staff person at the DHS facility. He had over 30 rule violations during his most recent imprisonment

¶ 13 Based on respondent's criminal history, his DOC records and her interview with him, Dr. Weitl diagnosed respondent with other specified paraphilic disorder nonconsent, which meant he is sexually interested in nonconsenting partners. This disorder is usually based on at least six months of urges, fantasies or behaviors involving a nonconsensual partner. Dr. Weitl's diagnosis was based in part on the fact that respondent's behavior began while he was "very young" and continued after he was charged and convicted of crimes and while he was incarcerated or on parole. Respondent had reported he was first arrested at age 11, first committed sexual assault at age 12, and began using alcohol and drugs around those ages. Respondent reported to Dr. Weitl that he had victimized 14 or 15 individuals by the time he was 17 years old and 31 victims by the time she evaluated him. An offender's self-reporting of offenses reveals patterns of deviant behaviors.

¶ 14 Additionally, Dr. Weitl diagnosed respondent with antisocial personality disorder, as evidenced by his disregard of social mores and his violation of the rights of others, as well as his lack of remorse. The antisocial personality disorder made respondent more likely to act on his paraphilic urges. And in her report, Dr. Weitl stated that "research has revealed that sex offenders with this personality disorder are more likely to sexually reoffend."

¶ 15 Finally, she also diagnosed respondent with alcohol use disorder based on his inability to decrease or stop its use, along with its effect on his daily functioning. Her report stated that

respondent's "use of alcohol would impair his already flawed judgment concerning sexually violent behavior and increase his predisposition to commit sexually violent offenses."

¶ 16 Respondent was first admitted to a DHS treatment and detention facility in 2001. He began a five phase sex offender treatment in 2008 and entered the second phase in 2008 or 2009. The goals of the treatment plan were to allow respondent to overcome a defense of denial, honestly disclose his actions and manage his deviant behavior. In phase one, respondent was assessed and an initial treatment plan was prepared. In phase two, respondent was to attend a group session at which participants disclose a general timeline of their sexual behaviors and a polygraph exam is conducted to ensure full disclosure of offenses. In phases three and four, which respondent had not entered, his behavior patterns were to be analyzed and a relapse prevention plan would be constructed in which respondent would identify what actions he should take in situations where he is at risk to re-offend. Phase five involves preparation for re-entry into the community. Dr. Weitl testified that sex offenders are not considered to be cured; rather, their condition is managed to the point where they can "live a functional life."

¶ 17 When respondent left the facility in 2013 to serve his sentence for the attempted aggravated battery, he was still in the second phase of treatment. According to Dr. Weitl, respondent "still has some things to do in phase two before he is done." In 2011 and 2012, he had disclosed his past offenses and considered inappropriate sexual behaviors. However, a treatment objective checklist completed in 2016 indicated respondent had completed only 1 of 14 or 15 objectives in phase two and completed no objectives in phase three. He was discharged from his substance abuse group for unexcused absences.

¶ 18 Dr. Weitl opined that respondent continued to meet the criteria for other specified paraphilic, antisocial personality, and alcohol use in a controlled environment disorders. These

three disorders are congenital conditions that affect respondent's emotional or volitional capacity and predispose him to engage in continued acts of sexual violence. As to the paraphilic disorder, she stated it was not common for a "long standing early onset pattern" to end but said respondent had not "gotten to the point in treatment" where he could control his behavior.

¶ 19 Dr. Weitl also concluded that respondent was "substantially probable to commit another act of sexual violence" and that he had not made sufficient progress in treatment to be conditionally released. Respondent had only recently acknowledged victimizing others and sometimes became defensive when discussing his offenses. In discussing his history of sex offenses, some of which involved victims with whom he was familiar, respondent told Dr. Weitl those offenses involved him "being on a date" and he believed he had been rejected by those individuals, which caused him to force them to have sex. Respondent's representations were not consistent with his criminal history and the charges. He often described his offenses in differing ways which made it difficult to discern any patterns.

¶ 20 Dr. Weitl explained her conclusion that respondent had not made sufficient progress to be conditionally released, as follows:

> "Because he is still in the early phases of a five-phase program. Really it's the first therapeutic phase. So he is just beginning to start treatment. At this point I think it would do more harm than good. I think that it would sabotage him. If he went out and made a mistake – even if he didn't reoffend if he made a mistake and had to come back, it would set him back. It would set him way back."

¶ 21 Dr. Weitl applied two assessment tools, the Static 99-R and the Static 2002-R, to assess respondent's risk of reoffending. The tests take into account historical or static factors such as the respondent's age, prior criminal behavior, and his relationship, if any, with the victim.

Respondent scored an eight on the Static 99-R, which meant according to Dr. Weitl's report, he "scored higher than 99% of the men in the normative samples" and "he is 7.32 times more likely to be charged or convicted of another sexual offense compared to the typical sex offender." Respondent scored a nine on the Static 2002-R, which Dr. Weitl's report stated meant he "falls in the 98.3 percentile and indicates he is 6.9 times more likely to be charged or reconvicted of another sexual offense than the typical sexual offender." Both scores placed respondent in the "High Risk Category" as to the likelihood to reoffend.

¶ 22 Dr. Weitl identified additional risk factors or characteristics of respondent, which were not accounted for on the tools. Those risk factors are: (1) a deviant sexual interest; (2) the early onset of his sexual deviance; (3) his antisocial lifestyle beginning in childhood; (4) his personality disorders; (5) his lack of success with supervised release and resistance to rules; (6) his substance abuse; (7) his intoxication during the commission of a sexual offense; (8) his impulsivity and general self-regulation problems; and (9) his hostility and deficit with intimacy. She defined a "deviant sexual interest" as being distinct from a single incident of exhibitionism, for example, and involving an individual with a "distinct pattern" of deviant behaviors, which she noted was the "strongest predictor of reoffense." As in respondent's case, Dr. Weitl noted that the earlier in life that an offender's deviant behavior begins, "the worse the prognosis." Additional factors, such as disregard of rules, substance abuse, and impulsivity, indicated that respondent could not follow guidelines of parole or conditions of release, had difficulty making decisions and would often act on impulse before processing or correcting any error in thinking. She also testified that the Static 99-R test had accounted for respondent's age and that "his age has not effected his ability to engage in violent or aggressive behaviors." She believed his medical condition was not debilitating, as he can ambulate but does use a wheelchair.

¶ 23 Dr. Weitl discussed the result of a 2010 penile plethysomograph test (PPG) used to measure respondent's sexual response to various stimuli. The result of that test did not demonstrate any "arousal to anything either healthy or deviant," which "really means nothing" because a subject can "distract themselves and not pay attention." The PPG test was not a factor in her conclusions.

¶ 24 On cross-examination, Dr. Weitl said she does not treat, but primarily conducts sexually violent person evaluations. She does between 48 and 60 evaluations each year for DHS.

¶ 25 Respondent's counsel sought to impeach Dr. Weitl as to her conclusion that respondent had made insufficient progress in treatment with her December 2016 deposition. She had been asked the meaning of "sufficient progress in treatment to be conditionally released." Dr. Weitl answered:

> "It means that they have had enough exposure to treatment that they have made some changes, they gained some insight as to what they have done, and that usually looks like someone that's disclosing their offenses in an honest, genuine fashion. It somewhat matches the records. Obviously that's not a necessity, but you want to see some consistency in the way they describe their offenses, if they have some insight into what was involved in that, what were some of the risk factors, what are some of the ways they can keep from doing that again. So the program is set up very nicely so that typically by phase five I have the confidence that the staff is held accountable and that he has met the treatment [objectives.] Typically, by phase five if they can talk to me about their offenses and talk to me about their risk factors that's typically – then I suggest that they are ready for CR, conditional release."

¶ 26 Respondent's counsel then asked her if, based on her deposition testimony, she would recommend an individual be conditionally released without reaching phase five if that individual had a medical condition that sufficiently reduced the risk of offending. Dr. Weitl responded that she would consider recommending an offender be conditionally released under this circumstance if the offender had a medical condition which "served as a strong enough protective factor."

¶ 27 Respondent's counsel asked Dr. Weitl if part of her assessment of respondent was "watching things grow so you get to know him year after year." Dr. Weitl responded she would not "use those words," but would consider whether respondent had "gain[ed] insight" and met the treatment objectives. Counsel then read the following portion of Dr. Weitl's deposition testimony:

> "Q. Do you think that Mr. Howard has a lack of healthy relationships or how do you view that factor for Mr. Howard?
>
> A. Yes, this is my first year with Mr. Howard. Those are the kinds of things that I watch grow as I know these guys year after year, but from what I know about Mr. Howard that is an area of weakness for him. I don't have a good feel for him yet. ***"

¶ 28 Dr. Weitl, after cross examination as to her use of the Static 99-R tool, testified that "maybe" his score should be seven. However, a score of seven was "still in the highest category."

¶ 29 The respondent called Dr. Abbott as an expert in clinical and forensic psychology including in the field of sex offender evaluation and risk assessment. In September 2015, Dr. Abbott conducted a psychological evaluation of respondent to determine whether he was no longer substantially probable to engage in acts of sexual violence if conditionally released. In doing so, he reviewed respondent's criminal records, DOC records, and DHS records of his

treatment and evaluations. Dr. Abbott also interviewed respondent and prepared a report dated December 29, 2015 that was admitted into evidence.

¶ 30 Dr. Abbott had reviewed Dr. Weitl's 2016 report and agreed with her diagnoses of the specific type of paraphilia and antisocial personality disorders. Dr. Abbott believed that in his early adult years, respondent was living "pretty much a criminal [] lifestyle consistent with his antisocial personality disorder." He noted that respondent was in his 20s when he committed his sex offenses and displayed "poor impulse control, moderate levels of aggression and anger and callous disregard for the victims."

¶ 31 However, based on his evaluation of respondent, Dr. Abbott concluded respondent had made sufficient progress in treatment such that he was no longer substantially probable to engage in acts of sexual violence if conditionally released. He concluded respondent did not "appear to continue to exhibit any sexual interest in forcible sexual behavior." In addition, respondent no longer showed signs of antisocial personality disorder or symptoms of substance abuse.

¶ 32 Dr. Abbott summarized respondent's activities while in the DHS treatment and the detention facility. Respondent had been participating primarily in group therapy, including eight psychoeducational groups and an orientation group to "get him ready to start in the sex offender treatment program." The psychoeducational groups included a behavioral therapy or mindfulness group, a healthy sexuality group and a disclosure group, which required respondent to compile a sexual history timeline and discuss common issues. Respondent was "also working on developing empathy" for his victims, and those activities help respondent learn why he committed his past offenses. The next step in respondent's treatment was to "develop adaptive ways to cope with those circumstances" so he did not commit more offenses.

¶ 33 As to respondent's risk to reoffend, Dr. Abbott testified that he gave respondent a score of six on the Static 99-R test, lower than Dr. Weitl's score of respondent on this test. Dr. Abbott used respondent's score and statistics from a comparable reference group of offenders that were within respondent's age range, and concluded that if respondent was placed on conditional release, his recidivism rate was about 20%. Dr. Abbott considered the conditions that would be placed on respondent if he was conditionally released, including his continued participation in treatment and periodic polygraphs and other testing. He believed that the risk estimate should not be adjusted based on empirical risk factors. Dr. Abbott relied on the results of the 2010 PPG test. Dr. Abbott did not use the Static 2002-R instrument as it was "virtually the same" test as the Static 99-R.

¶ 34 On cross-examination, Dr. Abbott testified that he does not currently treat patients. He agreed the Static 99-R instrument did not include all risk factors. The score of six on the Static 99-R was in the "highest nominal risk category." Dr. Abbott acknowledged that in six years, respondent had advanced from phase one to phase two and had not yet begun phase three of treatment. Respondent had not taken the required polygraph examination in phase two to determine if he had disclosed all of his victims. Therefore, respondent's report of 31 victims had not been verified. Dr. Abbott agreed respondent had not learned to develop adaptive coping strategies, does not have a relapse prevention plan, and does not have "a good life's plan." Dr. Abbott had not spoken to respondent about what to do if he was conditionally released.

¶ 35 The case was continued for ruling to July 19, 2017. On that date, the court stated it had reviewed the evidence, including the testimony of Drs. Weitl and Abbott. The court denied the petitions after stating:

> "Pursuant to statute, the burden is on the State to prove in this case by clear and convincing evidence that Anthony Howard has not made sufficient progress in treatment where he is no longer substantially probable to engage in acts of sexual violence.
>
> I have considered the nature and the circumstances of the behavior that was the basis in the initial petition, that being that the [r]espondent has been convicted of a sexually violent offense. I have considered the [r]espondent's mental history and his present mental condition and what arrangements are available to insure that the [r]espondent has access to and will participate in the necessary treatment if in fact he is conditionally released.
>
> The respondent does meet the criteria for other specified paraphilic disorder qualified or explained by non-consent. He does meet the criteria for anti-social personality disorder and alcohol use disorder. And these diagnoses, they are qualifying mental disorders, and he currently suffers from the mental disorder of a specific paraphilic disorder with qualifier of non-consent. He does currently suffer from the diagnosis of anti-social personality disorder. He does currently suffer from alcohol use disorder in a controlled environment.
>
> These disorders – and are congenital or acquired conditions that affect the respondent's emotions or volitional capacity and predisposes him to engage in continued acts of sexual violence
>
> After considering all that, and the evidence presented, I believe that the State has met its burden, and therefore the respondent's petitions are denied, and his current placement in [the treatment detention facility] will remain."

Respondent has now appealed.

¶ 36 On appeal, respondent argues the trial court's denial of his petition for conditional release should be reversed and a new hearing held because the court applied an incorrect legal standard or in the alternative that the decision was against the manifest weight of the evidence.

¶ 37 The Act defines a sexually violent person as 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." 725 ILCS 207/5(f) (West 2008). The petition alleging an individual is a sexually violent person must allege specific enumerated criteria, including that the person has been convicted of a sexual offense and has a mental disorder. 725 ILCS 207/15(b) (West 2008). If a court or jury determines that a person is sexually violent under the Act, he may be indefinitely committed "until such time as the person is no longer a sexually violent person." 725 ILCS 207/35(f), 40(a) (West 2008).

¶ 38 A person committed for institutional care in a facility as a sexually violent person may petition the court for conditional release, provided certain timelines have passed that are not at issue in this case. 725 ILCS 207/60(a) (West 2014). Before a petition for conditional release is considered, the trial court first determines, based on a report from an appointed examiner, whether probable cause exists to believe the person has made sufficient progress in treatment where he is no longer substantially probable to engage in acts of sexual violence if on conditional release. 725 ILCS 207/60(c) (West 2014).

¶ 39 If a probable cause finding is made, an evidentiary hearing is held on respondent's petition for conditional release without a jury. The trial court "shall grant the petition unless the State proves by clear and convincing evidence that the person has not made sufficient progress in treatment to the point where he or she is no longer substantially probable to engage in acts of sexual violence if on conditional release." 725 ILCS 207/60(d) (West 2014). In making that

determination, the court must consider the nature and circumstances of the behavior that was the basis for finding the individual a sexually violent person under section 15(b)(1) of the Act, along with his or her mental history and present mental condition and "what arrangements are available to ensure that the person has access to and will participate in necessary treatment." 725 ILCS 207/60(d) (West 2014); *see also In re Commitment of Tunget*, 2018 IL App (1st) 16255, ¶ 31.

¶ 40 In arguing the trial court applied an incorrect standard in denying his petitions, respondent notes that when the court set out the wording of the applicable statute, section 60(d) of the Act, at the beginning of its findings, it omitted the phrase "if on conditional release." Respondent contends the court's description of the statute more closely resembled the definition of a sexually violent person found in section 5(f) of the Act.

¶ 41 "In a bench trial, the court is presumed to know the law, and this presumption may only be rebutted when the record affirmatively shows otherwise." *People v. Mandic*, 325 Ill. App. 3d 544, 661(2001) (citing *People v. Kelley*, 203 Ill. App. 3d 628, 639 (1999)). Additionally, "'[t]he trier of fact in a bench trial is not required to mention everything – or for that matter anything that contributed to its verdict.'" *Id.* (quoting *People v. Curtis*, 296 Ill. App. 3d 991, 1000 (1998).

¶ 42 Here, the record as a whole supports the presumption that the trial court applied the correct standard for conditional release under section 60(d). At the outset of the evidentiary hearing the trial court stated that the hearing involved respondent's petitions for conditional release of his commitment. Respondent's counsel then pronounced the applicable standard under section 60(d) in its entirety, including the final phrase, "if on conditional release." The court voiced no disagreement with this statement. In denying the petitions, the trial court acknowledged the State had the burden of proof to show respondent had not made sufficient progress in treatment where is no longer substantially probable to engage in acts of "sexual

violence" and that the burden must be met by clear and convincing evidence. The fact that the court did not include the words "if on conditional release" does not mean the court did not use the proper standard. The hearing was clearly conducted on respondent's petitions under section 60(d) seeking conditional release. The whole gist of the hearing was whether respondent had made sufficient progress in treatment such that it was no longer substantially probable that he would not reoffend "if on conditional release."

¶ 43 Moreover, as respondent acknowledges, the trial court set out in its oral ruling the specific factors listed in section 60(d). Accordingly, we reject respondent's contention that the court used an incorrect standard in denying his petitions for conditional release.

¶ 44 Respondent also argues the trial court's denial of his petitions for conditional release was contrary to the manifest weight of the evidence. He maintains the State, based on weaknesses in Dr. Weitl's testimony, failed to meet its burden of proving by clear and convincing evidence that his treatment had not reached the point where he was no longer substantially probable to engage in acts of sexual violence if on conditional release.

¶ 45 Specifically, respondent contends that Dr. Weitl offered no support for her conclusions that he was substantially probable to commit another act of sexual violence and had not made sufficient progress in treatment to be conditionally released. He argues Dr. Weitl was not fully familiar with the treatment he had completed and points out that she did not lend as much weight to his progress from 2011 to 2015 as his progress during 2016. Respondent asserts Dr. Weitl's assessment that he had not made sufficient progress was based on her general statement that he was only beginning the treatment program and if he were to be conditionally released and made a mistake, "it would set him back." He argues there is no required "minimum phase" of treatment at which an offender can be conditionally released.

¶ 46 A trial court's determination under section 60(d) is disturbed on appeal only if it is contrary to the manifest weight of the evidence. *In re Commitment of Sandry*, 367 Ill. App. 3d 949, 978 (2006). A finding is against the manifest weight of the evidence if the opposite conclusion is clearly evident or if the trial court's conclusion is unreasonable, arbitrary and not based on the evidence presented. *Tunget*, 2018 IL App (1st) 162555, ¶ 35.

¶ 47 As discussed, the trial court, in determining that respondent had not made sufficient progress in treatment such that he is no longer substantially probable to engage in acts of sexual violence if on conditional release, considered the statutory factors: (1) the nature and circumstances of the behavior that was the basis of finding that the respondent was a sexually violent person; (2) the respondent's mental history and present mental condition; and (3) arrangements for access to and participation in necessary treatment. 725 ILCS 207/60(d) (West 2014). We find the state met its burden by clear and convincing evidence and the trial court's denial of respondent's request for conditional release was not contrary to the manifest weight of the evidence.

¶ 48 Dr. Weitl testified that respondent continued to display signs of the three disorders which were the basis of the initial finding that he was a sexually violent person: other specified paraphilic (nonconsent), antisocial personality, and alcohol use disorders. She testified that these congenital disorders predispose him to engage in continued acts of sexual violence and that he had not reached a point in treatment where he could control his behavior. She believed there was a potential for setback if respondent was placed on conditional release.

¶ 49 It was undisputed that despite being in a treatment facility for years, respondent had only reached phase two of five phases of treatment. In fact, respondent had completed only one of 14 or 15 phase two objectives as of 2016 and had not taken the required polygraph to confirm the

veracity of his self reporting of violent acts. The evidence establishes the importance of successful completion of phases three and four as to reducing the risk of reoffending if on conditional release. These phases were designed to allow an offender to develop a relapse prevention plan and make preparations and plans for reentry into the community. Although respondent's counsel attempted to impeach Dr. Weitl with her previous testimony regarding her understanding of what constituted sufficient progress in treatment for conditional release, Dr. Weitl's prior deposition statements did not undermine her present testimony to any significant degree.

¶ 50 Respondent's scores on the Static 99-R and Static 2002-R tests placed him in the group with the highest risk to reoffend. Additionally, Dr. Weitl in her report and in her testimony delineated numerous risk factors not included in these assessments which made it even more likely that respondent would reoffend.

¶ 51 The testimony of Dr. Abbott, respondent's expert, provided no basis for the trial court to lend more weight to his opinion than that of Dr. Weitl. Although Dr. Abbott concluded that respondent no longer showed any interest in "forcible sexual behavior," he agreed with respondent's diagnosis of the specific type of paraphilia. Dr. Abbott gave respondent a more favorable score on the Static 99-R than Dr. Weitl but Dr. Abbott acknowledged on cross examination that even this score placed respondent in a high risk category. Dr. Abbott testified consistently with Dr. Weitl that respondent had not progressed beyond the second phase of treatment and had not taken a polygraph examination to determine if he had disclosed all of his victims, a requirement to compete phase two. As such, his self-reported number of 31 victims was not verified.

¶ 52 We cannot ignore the evidence that phases three to five of treatment are designed to allow respondent, after an analysis of his inappropriate behavior patterns, to develop a relapse prevention plan and make preparations and plans for reentry into the community. Dr. Abbott acknowledged that he had not spoken to respondent about what respondent would do if he was released. The doctor agreed that respondent had not learned to develop adaptive coping strategies and had no relapse prevention plan nor a "good life's plan."

¶ 53 Accordingly, the trial court's determination that respondent had not made sufficient progress such that he was no longer substantially probable to engage in acts of sexual violence if on conditional release was not contrary to the manifest weight of that evidence.

¶ 54 Our conclusion is not altered by respondent's contention that during Dr. Weitl's testimony, she used wording from a prior version of section 60(d) when she opined that respondent had not made sufficient progress in treatment to be conditionally released. Section 60(d) previously stated the trial court must grant a petition for conditional release unless the State proved by clear and convincing evidence "that the person has not made sufficient progress in treatment to be conditionally released." 725 ILCS 207/60(d) (West 2010). In 2012, the statute was amended to the current version, which requires the State to prove by clear and convincing evidence "that the person has not made sufficient progress in treatment to the point where he or she is no longer substantially probable to engage in acts of sexual violence if on conditional release." 725 ILCS 207/60(d) (eff. Aug. 24, 2012) (amending 725 ILCS 207/60(d) (West 2010)); see generally *In re Commitment of Rendon*, 2014 IL App (1st) 123090, ¶ 24. The current section 60(d) retains the requirement that the offender make sufficient progress in treatment. In *Rendon*, the court, while examining the current section 60(d), observed that for a sexually violent person to be conditionally released, the person must "reach a certain point in treatment so that he can be

safely managed in the community" while still subject to the conditions set by the court. *Id*. Here, Dr. Weitl testified that based on her examination of respondent and all relevant data, respondent was substantially probable to commit another act of sexual violence. In her report she stated that respondent has no "protective factors at this time" and "has not made sufficient progress in treatment to be conditionally released." Dr. Weitl further stated that respondent should remain committed "for further *secure* care and sexual offense specific treatment." (Emphasis added). Dr. Weitl's testimony and report supported the trial court's determination that the State had met its burden of proof under the current section 60(d).

¶ 55 In summary, the trial court did not apply an incorrect standard in considering respondent's petitions for conditional release. Moreover, the court's determination that respondent had not made sufficient progress in treatment to the point where he is no longer substantially probable to engage in acts of sexual violence if on conditional release was not contrary to the manifest weight of the evidence as the State met its burden of proof by clear and convincing evidence.

¶ 56 Accordingly, the trial court's denial of respondent's petition for conditional release under section 60(d) of the Act is affirmed.

¶ 57 Affirmed.