2019 IL App (1st) 181628-U

FIRST DIVISION
March 29, 2019

No. 1-18-1628

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MAIKOBI BURKS, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Cook County, Criminal Division. No. 93 - CR - 24478 Honorable Lawrence E. Flood Judge Presiding.

JUSTICE GRIFFIN delivered the judgment of the court.
Justices Pierce and Walker concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court's determination that defendant failed to present clear and convincing evidence necessary to warrant her conditional release was not against the manifest weight of the evidence.

¶ 2 After a bench trial on July 7, 1995, defendant Maikobi Burks (presently known as Mia Tatiana Martinez) was found not guilty by reason of insanity and acquitted of the first-degree murder (720 ILCS 5/9-1(a) (West Supp. 1993)) of her father, mother and sister. The trial court held a hearing and admitted defendant to the care of the Illinois Department of Human Services ("DHS") for a maximum term of natural life.

¶ 3 On April 5, 2017, defendant filed a petition for conditional release. The State opposed the petition and the matter proceeded to an evidentiary hearing. Three expert witnesses testified, including defendant's treating psychiatrist, who at the time of the hearing, saw her on an almost daily basis.

¶ 4 At the close of the evidence, the trial court found defendant's treating psychiatrist was most familiar with defendant and her progress, but considered all three expert witnesses to be credible. Defendant's treating psychiatrist opposed her conditional release. The trial court denied defendant's petition and defendant appeals, arguing that the trial court erred as a matter of law when it denied her petition. We affirm.

¶ 5 BACKGROUND

¶ 6 Defendant was arrested on September 23, 1993 and charged with six counts of first-degree murder. 720 ILCS 5/9-1(a) (West Supp. 1993). The alleged victims were her father, mother and sister. Defendant was 17 at the time.

¶ 7 Defendant was born with male genitalia, but identified as female during her youth. The day before the crime, defendant attended her aunt's funeral dressed as a woman and brought her boyfriend. Angered by her actions at the funeral, defendant's father took her home and told her they would speak about the incident when he got home from work. At home, defendant's mother questioned her about a maxed-out credit card the family had given her. When her father returned from work, he threatened to "beat [her] ass."

¶ 8 Defendant grabbed her father's revolver and shot him 20 times. She then picked up a second and third gun, shot her sister three or four times and shot her mother in the eyes and back of the right hand. She called the police from her neighbor's house and later admitted to committing the crimes. None of her victims survived.

¶ 9 A bench trial was held on July 7, 1995 and the trial court found defendant not guilty of the crimes by reason of insanity ("NGRI"). A commitment hearing was held December 6, 1995, and the trial court found defendant was in need of mental health services on an inpatient basis. Defendant was admitted to the care of DHS for a maximum period of natural life.

¶ 10 DHS placed defendant at the Elgin Mental Health Center ("Elgin"). While there, her psychiatric symptoms stabilized, she completed her high school education, took online community college and university courses.

¶ 11 On June 13, 1997, the trial court entered an order granting DHS discretion to issue defendant unsupervised on-grounds pass privileges. These passes allow a patient to walk in a designated area unaccompanied by staff for 30 minutes, two to three times a day.

¶ 12 In October of 2003, defendant's treatment team recommended she be given supervised off-grounds passes, which allow a patient to take supervised trips to the community. The trial court granted defendant's request on May 12, 2004 and she used the passes to participate in the community reorientation program ("Program"). As part of the Program, defendant took supervised trips and used public transportation to visit the Elgin community College, the Elgin Library, Walmart and local restaurants. She completed the trips without incident.

¶ 13 On August 17, 2007, defendant was granted unsupervised off-grounds pass privileges for employment and education. She secured a job and worked for a few months as a telemarketer until her passes were suspended on March 20, 2008 when Elgin staff discovered that defendant had purchased a Cadillac in violation of an agreement she entered into with the facility director. She also fathered a female child during that time.

¶ 14 On September 19, 2009, defendant escaped (eloped) from Elgin. As a result, she was transferred to Chester Mental Health Center ("Chester"), a maximum security facility. On June

18, 2010 the trial court revoked her unsupervised off-grounds passes. Defendant secured a transfer from Chester to the Alton Mental Health Facility ("Alton"), but was transferred back to Chester in 2011 after she allegedly engaged in the financial manipulation of another patient.

¶ 15 While at Chester, defendant was diagnosed with gender dysphoria and granted permission to begin hormone treatment to facilitate her transition from male to female. She returned to Elgin in February 14, 2012 and a year later sought permission to undergo surgical feminization procedures. Defendant eventually underwent successful gender reassignment surgery.

¶ 16 In August of 2014, defendant filed a petition for conditional release. 730 ILCS 5/5-2-4(e) (West 2017). Following an evidentiary hearing, the petition was denied. The judgment was affirmed on appeal. See *People v. Burks*, 2016 IL App (1st) 152581-U (West 2016).

¶ 17 In January of 2016, defendant's treatment team recommended she be granted pass privileges. The recommendation was retracted, however, when a search of defendant's unit revealed that she was in possession of three credit cards. Patients are not permitted to possess credit cards as they can be stolen and may facilitate an escape from the facility.

¶ 18 On January 26, 2017, defendant's treatment team wrote a report ("January 2017 Report") asking the court to allow DHS to issue: (1) unsupervised on-grounds privileges to be used by defendant at the discretion of her treatment team; and (2) supervised off-grounds pass privileges for the purpose of attending medical appointments and to explore outpatient treatment centers prior to recommending conditional release. The January 2017 Report contained the following statement: "[t]he treatment team does not currently consider [defendant] to be dangerous to herself or others."

¶ 19 On April 5, 2017, defendant filed the instant petition for conditional release. 730 ILCS

5/5-2-4(e) (West 2017). The State opposed defendant's petition and the matter proceeded to an evidentiary hearing. The hearing was held for the trial court to determine whether defendant was reasonably expected to inflict serious physical harm upon herself or another and would benefit from or was in need of inpatient care. See *Id*., § 5-2-4(a-1)(B).

¶ 20 Defendant called two expert witnesses: Dr. Stephen Dinwiddie, a professor of psychiatry at Northwestern University, and Dr. Syed Hussain, defendant's treating psychiatrist at Elgin since 2014. The State called Dr. Fidel Echevarria, a licensed staff psychiatrist who worked for Forensic Clinical Services. Dr. Dinwiddie testified first.

¶ 21 He was qualified as an expert in forensic psychiatry and testified that he interviewed defendant for two and a half hours. He reviewed relevant records and updated a report he previously prepared in support of defendant's prior unsuccessful petition for conditional release. After the State's expert submitted his written assessment, Dr. Dinwiddie prepared a supplemental report.

¶ 22 He diagnosed defendant with type 1 bipolar disorder, which "had been in remission for many years," and an unspecified personality disorder. He performed a violence risk assessment, which combined an actuarial instrument, ideographic factors, and a semi-structured clinical evaluation. According to Dr. Dinwiddie, defendant scored relatively low on the violence risk assessment and he made the following additional findings: (1) defendant's psychiatric illness was not active; (2) no ideographic factors indicated an elevated potential for violent behavior under specific and identifiable circumstances; (3) defendant demonstrated an ability to avoid acting in a way that would foreseeably lead to violent behavior; and (4) she had not committed any violent acts in 22 years.

¶ 23 Based on his findings, Dr. Dinwiddie formed the opinion to a reasonable degree of

medical certainty that defendant was not reasonably expected to inflict serious physical harm upon herself or others. He further explained that in order for defendant to progress and reintegrate into society she would need to "be faced with the challenges of a less sheltered milieu."

¶ 24 On cross-examination, Dr. Dinwiddie acknowledged that his violence risk assessment was designed for criminal felons who were convicted and sentenced to a term of imprisonment, not defendants found NGRI, such as defendant. He did not inquire into defendant's financial status or explore from where or how she obtained income because he considered those points not relevant.

¶ 25 On re-direct examination, Dr. Dinwiddie testified that defendant's unsupervised off-grounds work served as the "closest we have to a real-life experiment" and defendant showed no violent behavior during that experiment. He noted, however, there was evidence of poor judgment, which would need "ongoing monitoring." Defendant's treating psychiatrist testified next.

¶ 26 Dr. Syed Hussain was qualified as an expert in the field of psychiatry and board certified in that field. At time of his testimony, Dr. Hussain worked at Elgin as a staff psychiatrist. He treated defendant since May of 2014 and headed her treatment team, which included a psychologist, social worker, nurse, therapist and "security therapy aides."

¶ 27 He testified that defendant had not committed a violent act in 22 years, she was compliant with her medication and her bipolar 1 disorder was in remission. He could not, however, confirm that the disorder would always be in remission. He testified that defendant's illness was "cyclical" and has the capacity to come back in "a breakthrough episode." It was "life-long" and there was "no cure."

¶ 28 Dr. Hussain testified that in 2007, defendant was granted unsupervised off-grounds pass privileges and worked for a company for six-months until she violated an agreement by purchasing an expensive car. He did not know where defendant went with the car, but believed she did not harm anyone.

¶ 29 Dr. Hussain testified that defendant has gender dysphoria, which he referred to as "a very complex topic because it pertains to both a psychological, emotional, and a physical acceptance of one's self." He stated that despite her successful gender reassignment surgery, defendant was still receiving psychotherapy and medical consultations because gender dysphoria was "a very complicated topic by itself." He further noted that defendant's substance abuse disorder, which she developed prior to the crime, was in remission in a controlled environment and she was participating in a number of substance abuse programs.

¶ 30 Dr. Hussain testified that in December of 2017, the treatment team learned that a mosque (Masjid-Al-Rabia) had created website to raise $3,000 to help pay defendant's legal fees. The website indicated that any money in excess of that amount would be given to defendant directly and contained information only defendant could have provided. Dr. Hussain did not approve of this and defendant, when questioned, gave him a "totally different story about this whole issue."

¶ 31 Dr. Hussain noted that legal fees, and who is paying for them is "none of our business," but stated that when it "comes to financial manipulation or false representation, we have concerns with that because that's one of the issues that can trigger, you know affective responses in those who have a personality disorder."

¶ 32 On cross-examination, Dr. Hussain testified that in order to know if defendant presented a danger to herself or others it was critical to analyze "precipitating factors of any particular crime *** any particular episode of mental illness and its consequences. So we have to figure

out, you know, the whole context of that particular episode, whether it be a bipolar illness or a crime or even a manifestation of her personality disorder."

¶ 33 He continued: "one of the risk factors for any kind of recidivism or recidivistic activity pertaining to violence is financial issues." In defendant's specific case, Dr. Hussain considered the "financial component" to be a "big fraction" of her risk for violence.

¶ 34 He testified that when defendant was located at Alton she was able to commit financial fraud by using credit cards and stealing credit cards from other patients. Her committing such acts presented the potential for violence to occur because she did not contemplate how others would react to what she was doing.

¶ 35 Dr. Hussain also testified that defendant had developed a webpage called "CNA Needs" that solicited business for a home care needs service company. This was an issue because it involved "misrepresenting one's self" without remorse and demonstrated antisocial behavior. He noted that defendant's "under-the-table" deals could have "dire consequences."

¶ 36 Dr. Hussain concluded, "[i] think we need to make this a gradual, graduated process where we provide [defendant] with opportunities with less supervision, less restrictions." He stated that "our goal is *** to give the courts reasonable assurance of safety *** she needs to go through those phases before I can say categorically, [w]ell, is she reasonably safe to be released?"

¶ 37 He continued: "[a]t this moment I can't say that because she hasn't gone through the particular program. I have no idea how she's going to react on a bus or in a restaurant or a library or et cetera. I have no idea. So I don't have all information to - - or data available at this stage to give that kind of reassurance to the Courts that she should be conditionally released." Dr. Hussain affirmed that defendant would benefit from further inpatient care.

¶ 38 Defendant called two additional fact witnesses, Scott Ammarell and Yolanda Martinez, the chief executive officer and director of Chicago House Social Services Agency ("Chicago House") and Bryn Mawr Care ("Bryn Mawr"), respectively. They testified about their facilities. Chicago House did not have a psychiatrist on-site and Bryn Mawr offered on-site psychological and psychiatric services. Defendant rested her case.

¶ 39 The State called Dr. Echeverria, who was qualified as an expert in the field of psychiatry. He was not board certified in the field, but testified he was held to the same standards as those who had board certification. He previously testified as an expert in the field of forensic psychiatry over 300 times.

¶ 40 Dr. Echevarria evaluated defendant eight times since 2007 and conducted a conditional release assessment of defendant on May of 2017, which lasted about 90 minutes. He testified that defendant had "several diagnoses" which included bipolar 1 disorder, alcohol use disorder, stabilant cocaine disorder and "a non-specific personality disorder that has combined traits of what we refer to as cluster B personality issues."

¶ 41 According to Dr. Echevarria, the unspecified personality disorder combined traits of antisocial and borderline personality disorders, and narcissistic traits of entitlement. He testified that antisocial disorder is associated with increased violence and that borderline personality disorder can be associated with increased violence. Gender dysphoria was "more complicated."

¶ 42 Dr. Echevarria assessed defendant as having a "moderate" risk of violence due to "ongoing problems with decision making" and stated that "if one assumes that her bipolar illness, her substance use, are stable, then the only explanation for the continued problems that she has had in court is the presence of these ongoing symptoms of her personality disorder." He explained that "we don't have medication for personality disorders," and that improvement

requires a commitment to fairly intensive therapy to modify thinking emotions and behaviors.

¶ 43 Dr. Echevarria testified that he was familiar with defendant's background and her past violations of facility rules, which included defendant's purchase of a car, her escaping from Elgin, possession of credit cards not her own and engagement in a relationship with a convicted felon while using her unsupervised off-grounds pass privileges. To Dr. Echevarria, these incidents demonstrated "impulsivity" or an inability to delay gratification and poor judgment, all of which reflected antisocial traits and borderline features. Dr. Echevarria believed that impulsivity might lead to violent behavior.

¶ 44 Dr. Echevarria concluded his testimony by stating that conditional release was not appropriate at the time of the hearing and that defendant was in need of inpatient treatment due to her mental illness. He made the statement within a medical degree of certainty, but hoped his opinion would change upon defendant's sustained appropriate use of further pass privileges.

¶ 45 On cross-examination, Dr. Echevarria testified that Cluster B diagnoses were not well studied and when asked to cite a basis for his determination that impulsivity might lead to violent behavior, he stated as follows: "I think this is understood psychologic and psychiatric, impulsivity is one of those characteristics increases for either self[-]harm or violence towards others. It is a feature that can make someone more likely, more vulnerable to acting in that manner. It's the Dr. Echevarria Standard." The State rested its case.

¶ 46 Defendant recalled Dr. Dinwiddie in rebuttal. He testified that Dr. Echevarria relied on his own subjective clinical judgment, which was "grossly inaccurate" and susceptible to bias on the part of the assessing clinician. He characterized Dr. Echevarria's "moderate" risk assessment as scientifically meaningless because he did not compare it to a base rate and no studies were done on unspecified personality disorders. Dr. Dinwiddie noted that impulsive aggression was an

unknown predictor of violence, but testified that such it was absent from defendant's history in treatment.

¶ 47 Finally, Dr. Dinwiddie took issue with Dr. Hussain's "purely speculative" testimony that the way defendant dressed could provoke others. He maintained that defendant's best option for improvement and progression was to experience the real world.

¶ 48 The trial court found that defendant failed to carry her burden of showing by clear and convincing evidence that conditional release was warranted. It denied her petition and defendant appeals.

¶ 49 ANALYSIS

¶ 50 The issue on appeal is whether the trial court's determination that defendant failed to satisfy her burden of proof was against the manifest weight of the evidence.

¶ 51 Defendant presents the following argument: because defendant is non-dangerous and Illinois law mandates the conditional release of a non-dangerous defendant, defendant here must be released and the trial court's decision not to release her is reversible as a matter of law. This argument is flawed in the first instance.

¶ 52 It presupposes the weight of the evidence, in defendant's favor, and thereby treats defendant's non-dangerousness as established fact in an effort to frame this case as presenting a purely legal issue that we should review and reverse on a *de novo* basis. But the trial court, not defendant or the testifying experts, was the finder of fact in this case. *People v. Cross*, 301 Ill. App. 3d 901, 911 (1998) (noting that the trier of fact, not the psychiatrists, considers and weighs all the evidence in this case).

¶ 53 The trial court weighed the evidence presented at the evidentiary hearing, assessed the credibility of the expert witnesses, and denied defendant's petition. In doing so, it determined

defendant was in need of mental health services on an inpatient basis. See 730 ILCS 5/5-2-4 (West 2017) (defining a defendant in need of mental health services on an inpatient basis as one who had been found not guilty by reason of insanity but, who, due to mental illness, is (1) reasonably expected to inflict serious physical harm upon himself or another and (2) who would benefit from inpatient care or is in need of inpatient care).

¶ 54 The question then is not, as defendant argues, whether the trial court erred as a matter of law in deciding that a non-dangerous patient was not entitled to conditional release, but rather, whether the trial court erred in finding that defendant was reasonably expected to inflict serious physical harm upon herself or another (dangerous) and would benefit from or was in need of inpatient care. See *Id*., § 5-2-4(a-1)(B).

¶ 55 We review the trial court's determination under the manifest weight of the evidence standard. *People v. Bryson*, 2018 IL App (4th) 170771, ¶ 66 (finding that a trial court's determination of whether a defendant has proven entitlement to conditional release by clear and convincing evidence will stand unless it was against the manifest weight of the evidence). A trial court's finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary or not based on the evidence presented. *Id*.

¶ 56 In fact, in cases such as these, the discretion vested in the trial court is even greater than an ordinary appeal applying the manifest weight of the evidence standard. *People v. Bethke*, 2014 IL App (1st) 122502, ¶ 17 ("[g]iven the delicacy of cases involving an individual's mental health treatment and its relationship to public safety, the discretion vested in the trial court is even greater than an ordinary appeal applying the manifest weight principle").

¶ 57 We initially reject defendant's claim that the trial court was required to support its ruling

with an express finding of dangerousness. Defendant claims, repeatedly, that the trial court failed to comply with section 3-816(a) of the Mental Health and Developmental Disabilities Code (405 ILCS 5/3-816(a) (West 2017)) ("Mental Health Code"), which directs a court to enter final orders under the Mental Health Code in writing and state its findings of fact and conclusions of law on the record. But our supreme court has construed this statutory section as directory, not mandatory.

¶ 58 In the case of *In re Rita P.*, 2014 IL 115798, the court declined to depart from the presumption, enjoyed by statutes that issue procedural commands to government officials, that section 3-816(a) of the Mental Health Code was directory after finding that the statute did not injure the liberty interests the Mental Health Code was intended to protect. *Id.*, ¶¶ 44, 60. Defendant here fails to challenge the presumption that section 3-816(a) of the Mental Health Code is directory and therefore cannot overcome it.

¶ 59 Furthermore, given that the trial court was not required to make an express finding as to defendant's dangerousness in the first place, she cannot argue that the absence of such a finding from the record shows the trial court's denial of her petition stemmed from some misapplication or misapprehension of the law. That argument is rejected as well.

¶ 60 With respect to defendant's contention that the trial court employed the wrong legal standard to deny her petition, we presume that the trial court knew the law and applied it properly absent an affirmative showing to the contrary in the record. *In re N.B.*, 191 Ill. 2d 338, 345 (2000). Defendant has not turned our attention to any such indication and we find none. We now turn to address the issue in this case.

¶ 61 The conditional release of a defendant from DHS custody is governed by statute. See 730 ILCS 5/5-2-4 (West 2017). Section 5-2-4(a) of the Unified Code of Corrections (*Id.* § 5-2-4(a))

requires a court to discharge a defendant from the custody of DHS upon a determination that he or she is not "in need of mental health services on an inpatient basis." A person is in need of mental health services on an inpatient basis if he or she is (1) reasonably expected to inflict serious physical harm upon himself or another and (2) would benefit from inpatient care or is in need of inpatient care. *Id*. § 5-2-4 (a-1)(B). Put another way, a defendant may only be detained so long as he or she is both mentally ill and dangerous. *People v. Robin*, 312 Ill. App. 3d 710, 716 (2000). The defendant must show by clear and convincing evidence that conditional release is warranted. *Id*. § 5-2-4(g).

¶ 62 An NGRI finding alone is sufficient to commit a defendant and place him or her into the care of DHS. *Jones v. United States*, 463 U.S. 354, 366 (1983). However, a state may not confine a harmless mentally ill person because it is unconstitutional as a matter of due process. *Id*.

¶ 63 We hold that the trial court's determination was not against the manifest weight of the evidence. The trial court could have reasonably found that defendant's recurring and unresolved financial issues were triggering factors that, given her mental illness and continuing need for treatment, gave rise to the expectation that she would inflict serious physical harm upon herself or another if conditionally released.

¶ 64 Of the three expert witnesses who testified, the trial court found Dr. Hussain was "most familiar with the [defendant] and progress over the years" and served as her treating psychiatrist since 2014. Dr. Hussain testified that he was unable to say that defendant was reasonably safe to be released from care and that she required further inpatient care. He opposed defendant's conditional release and told the trial court that "a gradual, graduated process where we provide [defendant] with opportunities with less supervision, less restrictions" was the necessary course of action.

¶ 65 He further indicated that, since defendant returned from Chester, she had not yet used her supervised off-grounds pass privileges granted by the court to participate in the Program (community reorientation program) and therefore had "no idea" how defendant would "react on a bus or in a restaurant or a library or et cetera." Defendant was to be enrolled in the Program in the spring of 2018, after the evidentiary hearing.

¶ 66 The conduct that gave rise to a defendant's criminal prosecution is highly relevant to the question of whether he or she poses a reasonable risk of harm to himself or others. See *Bryson*, 2018 IL 170771, ¶ 52. Accordingly, particular attention must be paid to defendant's history of financial indiscretions.

¶ 67 The record shows that defendant's mother questioned her about excessive spending before she shot and killed her mother, father and sister. Dr. Hussain testified that "one of the risk factors for any kind of recidivism or recidivistic activity pertaining to violence is financial issues" and that in defendant's case, "the financial component" was a "big fraction" of her risk for violence because it was a "precipitating" factor that led to her crime.

¶ 68 Over the course of defendant's commitment, she broke an agreement with the director of Elgin and purchased an expensive vehicle, created a fictional business on the Internet, was found to be in possession of another patient's credit cards in violation of facility rules and may have assisted a local mosque, without the knowledge of Dr. Hussain, to create a website for the purpose of soliciting funds from the public. To be clear, these acts are not, in and of themselves, violent. But to confine defendant's financial acts in such a way, as defendant would have us do, is to divorce them from context.

¶ 69 Dr. Hussain testified that defendant's "financial manipulation or false representation" was concerning because it could trigger "affective responses in those who have a personality

disorder." He further stressed that defendant's "under-the-table-deals" could have "dire consequences."

¶ 70 Defendant places particular emphasis on the statement contained in the January 2017 Report (that defendant at the time was not dangerous) and advances the argument that, once the statement was admitted into evidence and acknowledged by Dr. Hussain, it combined with other evidence presented at the hearing to produce the "undisputed fact" that defendant was non-dangerous. Hence, defendant argues, the trial court's decision to keep in DHS custody a non-dangerous defendant was incorrect and reversible.

¶ 71 But defendant's argument combines only favorable evidence and Dr. Hussain opposed conditional release at the hearing on her petition. It bears repeating that the trial court, not the psychiatrists or defendant's treatment team, is the finder of fact and ultimately determines whether the evidence presented, as a whole, satisfies the statutory burden of proof.

¶ 72 Our review of the record does not lead us to conclude that it was clearly evident defendant was not reasonably expected to inflict serious physical harm upon herself or another and would not benefit from or was not in need of inpatient care. Accordingly, the trial court's determination was not against the manifest weight of the evidence.

¶ 73 Given our holding, we need not address defendant's argument her continued inpatient treatment failed to comport with the requirements of due process. *People v. Hampton*, 225 Ill. 2d 238, 244 (2007) (courts must avoid reaching constitutional issues when a case can be decided on nonconstitutional grounds).

¶ 74 CONCLUSION

¶ 75 Accordingly, we affirm.

¶ 76 Affirmed.