

2019 IL App (2d) 180635-U
No. 2-18-0635
Order filed June 11, 2019

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of Du Page County.
Plaintiff-Appellee,)	
)	
v.)	No. 16-CF-1619
)	
DAVID JASON OSTROWSKI,)	Honorable
)	George J. Bakalis,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Presiding Justice Birkett and Justice Spence concurred in the judgment.

ORDER

- ¶ 1 *Held:* Trial court did not err in determining that inpatient treatment was appropriate for mentally ill defendant.
- ¶ 2 The defendant, David Jason Ostrowski, has a long history of mental illness and violent actions. In September 2016, he attempted to break into his sister's home while wielding a baseball bat and yelling threats to kill her. After a bench trial, the circuit court of Lake County found him not guilty by reason of insanity (NGRI) of home invasion and attempted home invasion. Ostrowski was then evaluated, and a hearing was held pursuant to section 5-2-4 of the Unified Code of Corrections (Code) (730 ILCS 5/5-2-4 (West 2016)) to determine whether he

should receive inpatient treatment or outpatient treatment subject to terms of conditional release, or whether he was not in need of mental health services. The trial court determined that inpatient treatment was appropriate. Ostrowski appeals that determination. We affirm.

¶ 3

I. BACKGROUND

¶ 4 Ostrowski was born in 1974. He had behavioral problems in school beginning when he was five years old. In fourth grade, he was placed in a separate classroom for students with behavioral disorders. When he was 12, he was placed in a more structured setting in an alternative behavioral program due to aggressiveness. He became physically violent in class.

¶ 5 Ostrowski's substance abuse also began early, at age 13. Hospital records indicated an extensive history of abusing alcohol, marijuana, PCP, opiates, and hallucinogens. He has attended Narcotics Anonymous and Alcoholics Anonymous programs in the past. He has been diagnosed with substance abuse disorder involving alcohol, marijuana, and cocaine.

¶ 6 Ostrowski suffers from mental illness, diagnosed as Bipolar Disorder Type I. He began treatment for this when he was 16, but he refused to take medication at that point as he was afraid he would be poisoned. He was hospitalized at various inpatient facilities in 1991 after twice climbing to a roof and threatening to jump off. He has had multiple other hospitalizations over the years, including 13 admissions to Department of Human Services (DHS) facilities and several other private hospitalizations.

¶ 7 Over the years, Ostrowski frequently displayed aggressive and violent behavior. He reported that, during his 1991 hospitalizations, he required restraints 200 times. In 2008, he threatened to kill a Du Page County sheriff's deputy and her children. In 2010, he attempted to stab his brother with a pitchfork. Members of his family and others obtained orders of protection

against him in 2008, 2010, 2012, 2013, and 2016. Ostrowski's sister's petitions for orders of protection included allegations that he choked her, pushed her, and threatened to kill her.

¶ 8 Ostrowski's criminal history is also lengthy. When Ostrowski was 10, he was charged with criminal damage to property. He was adjudicated delinquent and committed to the Department of Children and Family Services. He was arrested again for trespass when he was 15. As an adult, he was arrested multiple times and charged with battery (four occasions), criminal trespass (four occasions), disorderly conduct (four occasions), telephone harassment (three occasions), domestic battery (two occasions), marijuana possession (twice), violating an order of protection, criminal damage to property, retail theft, and unlawful possession or consumption of alcohol. He was convicted of burglary and threatening a public official, for which he spent about 20 months in prison.

¶ 9 On September 8, 2016, Ostrowski arrived at his sister's home. He took a shovel and beat on her front door hard enough to leave a dent. He then got a baseball bat and tried to come through her back sliding glass door, hitting it and yelling, "This is going to be you, bitch." Ostrowski's sister and her minor children were inside and could hear the threats. Ostrowski was arrested and taken to the Bolingbrook police department, where he gave a statement. Among other things, the statement included Ostrowski's belief that his sister was some sort of high priest of a satanic church.

¶ 10 In September 2017, following a bench trial, Ostrowski was found NGRI of home invasion and attempted home invasion. The trial court ordered that he be committed to the care of DHS, and he was transferred to the Elgin mental health facility for evaluation. His dispositional hearing was held on June 21, 2018.

¶ 11 At the hearing, the State sought to have Ostrowski ordered to inpatient treatment. In support, they presented three witnesses: Dr. Vikrajit Gill, Ostrowski's attending psychiatrist; Melissa Perkins, a social worker at the Elgin facility; and Elias Palacios, a treating psychologist.

¶ 12 Dr. Gill testified regarding Ostrowski's lengthy history of mental illness including his substance abuse disorder, and his history of aggressive and criminal conduct. Dr. Gill identified a cycle of Ostrowski being hospitalized, complying with prescribed medication, but then ceasing to take medication and relapsing into substance abuse upon his release. The reemergence of his mental symptoms and his substance abuse, taken together, rendered Ostrowski unable to control himself. This was a consistent pattern going back 20 years. When Ostrowski was manic, he became aggressive if he was upset or was denied something he wanted. Dr. Gill opined that in that state Ostrowski posed a threat of serious harm to anyone who crossed his path as well as to himself. Further, the substance abuse itself was extensive and could trigger violent episodes. Ostrowski needed inpatient treatment to properly address his substance abuse as well as his mental illness.

¶ 13 Regarding Ostrowski's past year at the Elgin facility, Dr. Gill testified that he voluntarily took his medication and was generally compliant with directives and rules. Dr. Gill interacted with him in some way almost every day, and saw him one-to-one two or three times per month. In Dr. Gill's opinion, the biggest concern with Ostrowski was his lack of insight into his own mental illness and substance abuse. Ostrowski continued to deny that he needed substance abuse treatment, and although he participated in some substance abuse groups, he had so far refused to participate in Mental Illness and Substance Abuse (MISA) counseling that Dr. Gill had specifically recommended for him, saying that he did not need it. Ostrowski also minimized his own criminal history, telling staff that the 2016 incident was just a verbal family argument, and

at one point describing it as him just “getting a sandwich.” He denied that he had ever threatened anyone. Dr. Gill testified that, unless Ostrowski acknowledged and understood the seriousness of his past conduct, he could not progress properly in treatment. Dr. Gill noted that several members of Ostrowski’s family believed that they had escaped being killed by him only because they had been able to drive him away or protect themselves behind locked doors.

¶ 14 Perkins, the social worker, testified that Ostrowski had acted out in various ways while at the Elgin facility. He bullied a fellow patient who was wheelchair-bound over a period of time, with cruel treatment including coming up to the patient and pouring water all over him, coming into the patient’s room when he was trying to sleep and turning the room lights on, and taking the patient’s TV remote and placing it out of reach. Ostrowski also had a verbal altercation with another patient who accused Ostrowski of bullying him and taking money from his debit card. It took multiple staff members repeatedly telling Ostrowski to back away before he complied. When Ostrowski broke rules and Perkins spoke to him about losing privileges, Ostrowski yelled at her using profanity.

¶ 15 Shortly after Ostrowski entered the Elgin facility, a woman complained that Ostrowski had been contacting her by phone and harassing her. Ostrowski said he would stop. However, the woman contacted Elgin five months later to complain that Ostrowski was still harassing her.

¶ 16 Palacios, the Elgin psychologist, testified that Ostrowski had a long-standing problem with substance abuse. His alcohol abuse was believed to have played a role in the 2016 home invasion. Ostrowski tended to “self-medicate” with illicit substances when he was in a manic state. To date Ostrowski had not made significant progress in his substance abuse treatment. He merely parroted back vocabulary he learned in the program without truly accepting that he required treatment. Ostrowski needed to continue to abstain from taking illicit substances in

order to continue his recovery, but he was likely to resume such use if he were released. The MISA program was only available inpatient, and there were no outpatient substance abuse programs that were likely to benefit him.

¶ 17 Ostrowski called two witnesses in his defense: Sebin Jose (his current social worker at Elgin) and Dr. John Murray (the forensic psychologist who had evaluated him for various purposes including his fitness for trial). Jose testified consistently with other witnesses regarding Ostrowski complying with medication and treatment, Ostrowski's bullying of other patients, and his telephone harassment of a woman. Ostrowski did regularly attend groups; his attendance was 95 percent. The MISA group was the only treatment group Ostrowski had refused to attend, saying he did not need it. Jose stated that, although Ostrowski's compliance was good, he was not yet committed to continuing treatment including medication to ensure that he did not relapse. Ostrowski also continued to minimize the 2016 home invasion, referring to it as a "family dispute" and saying he had not committed any crime. Jose believed that Ostrowski was reasonably likely to inflict serious physical harm upon himself or others if he were released.

¶ 18 Dr. Murray had conducted three evaluations of Ostrowski: the fitness determination, a "sanity" evaluation, and an evaluation to determine whether he should receive inpatient or outpatient treatment. Dr. Murray testified that he understood section 5-2-4 of the Code to require a greater-than-50-percent likelihood that a NGRI defendant would inflict serious physical harm. Dr. Murray believed that Ostrowski met this standard of likely causing serious harm if released. Ostrowski had bipolar disorder, alcohol use disorder, cannabis disorder, cocaine disorder, and gambling disorder. While at the Elgin facility, he had complied with medication and attended group therapy, was generally cooperative with other patients, and he had not required restraints or emergency medication. Ostrowski had also indicated a willingness to abstain from drugs and

alcohol. However, the symptoms of a manic episode could emerge very quickly days, weeks, or even months after ceasing treatment. In fact, relapse could occur even if treatment were being followed. Dr. Murray testified that someone could be reasonably expected to cause serious physical harm even if they had not done so before. Dr. Murray noted Ostrowski's history of violent and aggressive behavior including the four batteries, threats to kill a deputy and her children, and attempts to stab his brother with a pitchfork. Dr. Murray was not confident that Ostrowski would have discontinued his threats or violent behavior if Ostrowski had not been interrupted by others.

¶ 19 In addition to the testimony of these witnesses, the trial court also received documentary evidence including copies of six orders of protection issued against Ostrowski between 2008 and 2016 and records of four criminal convictions (two for domestic violence, and one each for burglary and threatening a public official). The trial court also took judicial notice of Dr. Gill's reports to the court. The last of these was dated July 6, 2018, which was after the date of the hearing but before the trial court had ruled. This report noted an escalation in Ostrowski's inappropriate and aggressive behaviors during the week after the hearing, including amorously approaching several female staff members, throwing items at other patients and stealing one patient's clothing from the shower, engaging in telephone harassment of a female patient in another unit, and repeatedly becoming argumentative with staff. When his room was searched, staff discovered liquid with plants in it that Ostrowski described as "hooch" (a slang term for homemade alcohol). As a result of this conduct and Ostrowski's inability to control himself, he was moved to a different hall and was twice given emergency medication.

¶ 20 On July 12, 2018, the trial court issued a five-page memorandum opinion in which it summarized the evidence, noted the applicable legal standards, and found that Ostrowski could

reasonably be expected to inflict serious physical injury on himself or others if released. It therefore determined that inpatient treatment was necessary. Ostrowski filed a timely notice of appeal.

¶ 21

II. ANALYSIS

¶ 22 In this case, the State bore the burden of establishing, by clear and convincing evidence, that Ostrowski was in need of mental health services on an inpatient basis. A defendant who has been found NGRI is “in need of mental health services on an inpatient basis” if he is, due to mental illness, “reasonably expected to inflict serious physical harm upon himself or another” and he or she would benefit from inpatient care. 730 ILCS 5/5-2-4(a-1)(B) (West 2016). Ostrowski does not dispute that he would benefit from inpatient care. His sole argument on appeal is that the trial court erred in determining that he was reasonably expected to inflict serious physical harm on himself or another.

¶ 23 We review a trial court’s determination that a defendant should receive inpatient treatment deferentially and will not reverse unless that determination is against the manifest weight of the evidence. *People v. Bethke*, 2014 IL App (1st) 122502, ¶ 17. Indeed, in mental health cases, our deference is even greater than in the usual manifest-weight appeal because of “the delicacy of cases involving an individual’s mental treatment and its relationship to public safety.” *Id.* A determination is against the manifest weight of the evidence only when the opposite conclusion is clearly appropriate. *Id.*

¶ 24 At the hearing to determine whether a defendant is reasonably expected to inflict harm, the evidence presented may include:

“(1) whether the defendant appreciates the harm caused by the defendant to others and the community by his or her prior conduct that resulted in the finding of [NGRI];

- (2) whether the person appreciates the criminality of conduct similar to the conduct for which he or she was originally charged in this matter;
- (3) the current state of the defendant's illness;
- (4) *** any[] medications the defendant is taking to control his or her mental illness;
- (5) *** any[] adverse physical side effects the medication has on the defendant;
- (6) the length of time it would take for the defendant's mental health to deteriorate if the defendant stopped taking prescribed medication;
- (7) the defendant's history or potential for alcohol and drug abuse;
- (8) the defendant's past criminal history;
- (9) any specialized physical or medical needs of the defendant;
- (10) any family participation or involvement expected upon release and what is the willingness and ability of the family to participate or be involved;
- (11) the defendant's potential to be a danger to himself, herself, or others;
- (11.5) a written or oral statement made by the victim; and
- (12) any other factor or factors the Court deems appropriate.” 730 ILCS 5/5-2-4 (West 2016).

¶ 25 In this case, we have no difficulty finding that the trial court's determination was not against the manifest weight of the evidence. The majority of the statutory factors clearly weigh in favor of inpatient treatment for Ostrowski. Dr. Gill testified that Ostrowski continues not to appreciate the harm caused by his conduct in the 2016 incident, minimizing it as a mere verbal dispute with his family. Several witnesses testified that he has a high likelihood for alcohol and drug abuse, which interacts negatively with his ability to control his conduct during manic

phases, and that he has not truly understood and accepted his chemical dependency. Indeed, Ostrowski was apparently attempting to manufacture alcohol in his room. Witnesses also testified that Ostrowski could decompensate rapidly and with little warning if he were released and did not take his medications, as he has done several times in the past. In fact, although Ostrowski was largely compliant with his medications and cooperative during his current stay in the Elgin facility, even there he displayed mounting aggressive conduct during the week after the commitment hearing. He has a lengthy criminal history that demonstrates a pattern of engaging in violent behavior.

¶ 26 In fact, Ostrowski's main argument on appeal—that his past conduct does not show that he has ever *seriously* harmed anyone—demonstrates the same minimization observed by his treating therapists. Ostrowski's past behavior includes conduct that clearly poses the risk of serious harm and loss of life such as choking, attacking with a pitchfork, or attacking with a baseball bat or shovel. Ostrowski also asserts that he has been largely compliant and cooperative during his current confinement, and he argues that he would be likely to continue his compliance and cooperation if released subject to the condition that he attend outpatient therapy, take his medications, and refrain from violent conduct. However, although Ostrowski has shown the capacity to mostly control his conduct over several months when medicated, he has also failed to confront the seriousness of his aggression and he has continued that aggression, bullying other patients, harassing women, and physically acting out. He has even attempted to gain access to alcohol by manufacturing it. *Every* witness, including those presented by Ostrowski, opined that he was likely to cause serious harm to himself or others if released in his current state.

¶ 27 As the State points out, a finding of NGRI itself can justify confinement for mental treatment, at least as an initial matter and subject to release upon improvement. An NGRI

finding “establishes two facts: (i) the defendant committed an act that constitutes a criminal offense, and (ii) he committed the act because of mental illness.” *Jones v. United States*, 463 U.S. 354, 363 (1983). And although its evidentiary weight depends on the circumstances of the underlying offense, “[t]he fact that a person has been found, beyond a reasonable doubt, to have committed a criminal act certainly indicates dangerousness.” *Id.* at 364. Thus, “a finding of [NGRI] is a sufficient foundation for commitment of an insanity acquittee for the purposes of treatment and the protection of society.” *Id.* at 366. Given that basic legal principle, our deferential standard of review, and the evidence adduced in this case, we find no error in the trial court’s determination that Ostrowski should receive inpatient treatment.

¶ 28

III. CONCLUSION

¶ 29 For the reasons stated, the judgment of the circuit court of Du Page County is affirmed.

¶ 30 Affirmed.