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2019 IL App (3d) 170862-U

Order filed April 9, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 9th Judicial Circuit, McDonough County, Illinois.
Plaintiff-Appellee,)	
v.)	Appeal No. 3-17-0862 Circuit No. 12-CF-119
DEVON FREELAND,)	
Defendant-Appellant.)	Honorable William E. Poncin, Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice Schmidt and Justice Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* The State proved by clear and convincing evidence that the defendant was still a sexually dangerous person.

¶ 2 The defendant, Devon Freeland, appeals the circuit court's denial of his application for discharge or conditional release. Specifically, the defendant argues that the State failed to prove by clear and convincing evidence that he was still a sexually dangerous person (SDP). We affirm.

¶ 3 **FACTS**

¶ 4 On March 4, 2014, the defendant, Devon Freeland, stipulated to a Sexually Dangerous Persons Petition and was found to be a Sexually Dangerous Person. 725 ILCS 205/0.01 *et seq.* (West 2012). He was confined at Big Muddy River Correctional Center (Big Muddy), where he participated in the treatment program offered at the facility. He filed an Application for Discharge on December 5, 2016. Appointed counsel filed an Amended Application for Discharge, following which, the defendant was evaluated by Dr. Melissa Weldon-Padera, an individual qualified and licensed under the Sex Offender Evaluation and Treatment Provider Act. 725 ILCS 205/9 (West 2012).

¶ 5 Dr. Weldon-Padera conducted a statutory SDP evaluation of the defendant on March 2, 2017. Her report (SDP report) was filed on August 15, 2017. Dr. Weldon-Padera gathered extensive data from multiple sources in preparing her evaluation of the defendant, including an interview with the defendant lasting approximately 3.25 hours. The correctional facility's SDP treatment program semi-annual evaluation of the defendant for the period of January 2017 through June 2017 indicated that the defendant was rated as a "high risk" of reoffending.

¶ 6 At the August 15, 2017, bench trial, Dr. Weldon-Padera testified that she has a Doctor of Psychology in forensic psychology, with a practice concentration in the evaluation of sex offenders. She testified that, to perform sex offender evaluations, Illinois required one to be a licensed sex offender evaluator and a licensed clinical psychologist, and she had both and was currently approved to perform sex offender evaluations. She was admitted as an expert in the field of sex offender evaluations without objection. Dr. Weldon-Padera testified that she had conducted 44 prior evaluations pertaining to SDP recoveries and had performed the SDP recovery evaluation of the defendant.

¶ 7 Regarding the defendant, Dr. Weldon-Padera testified that she followed her usual procedures for recovery evaluations. She interviewed the defendant in an interview room at Big Muddy for about three hours and fifteen minutes, after obtaining his consent. She consulted with the defendant's primary therapist about his group participation, his treatment progress, and areas he still needed to work on in treatment. She reviewed the defendant's treatment file, including the treatment plans, the group therapy notes, his semi-annual evaluations, and any disciplinary tickets he had received. She also reviewed the defendant's "IDOC [(Illinois Department of Corrections)] master file."

¶ 8 The defendant was originally found to be a sexually dangerous person on March 4, 2014, and Dr. Weldon-Padera testified that the instant petition was the defendant's first recovery evaluation. She observed that the defendant "was alert and oriented, that he was cooperative with the interview, that he had concrete thinking and below average intelligence, and that he had poor incite [*sic*] and judgment." She took care to assure that the defendant understood her questions. She had reviewed his criminal history, including Case No. 12-CF-119 in which he was originally declared to a SDP for having sexual intercourse in his apartment with a four-year-old neighbor when he was 16. In that case, the victim told the defendant he was hurting her, but defendant did not stop. The defendant told police he had no sexual contact with the victim, although he admitted that he brought her to his room with the intent to have sex with her, but only touched her with his hand. During the recovery evaluation, the defendant told Dr. Weldon-Padera that he had checked the victim for injuries after a bicycle accident, but he denied sexually assaulting her.

¶ 9 Dr. Weldon-Padera noted the defendant had been investigated in 2010 by DCFS and had been indicated for sexually abusing a five-year-old female, the daughter of his mother's boyfriend's sister. The victim reported that the defendant removed her clothing and his pants and

underwear, and, on several occasions, he lay on top of the victim and placed his penis on her vagina. At that time, the defendant admitted to lying on the victim and rubbing his penis against her vagina and engaging in “sexual play” with the victim on three occasions starting when she was three years old. The defendant claimed it was the child’s idea or that she had initiated the sexual contact. During the recovery interview, the defendant admitted to mutual kissing with the five-year-old victim and to rubbing his penis on her vagina, and said they each exposed their genitalia to each other, and he, again, claimed that the victim had asked for and initiated all of the sexual contact. Dr. Weldon-Padera again stated that the defendant admitted to the sexual incidents with children, but did not accept responsibility for them. She also discussed a 2007 incident report wherein the defendant’s three-year-old half-sister reported that he had touched her vagina on two occasions, which the defendant previously admitted. Her report noted that the defendant denied these incidents during the interview, but said he accidentally touched her when they were playing.

¶ 10 Dr. Weldon-Padera further noted that, during the SDP evaluation interview, the defendant did not admit to or accept responsibility for the crime for which he had been committed for SDP treatment. She opined that the defendant’s victim blaming and lack of awareness of the criminality of his sexual acts with children led her to the opinion that the defendant was substantially likely to reoffend. It was her further opinion that, based on the likelihood of reoffending, the defendant’s application for discharge should be denied.

¶ 11 On cross-examination, Dr. Weldon-Padera testified that she had recently checked on the defendant’s progress in treatment and his disciplinary record since the time of her evaluation on March 16, 2017. She testified that she had reviewed the defendant’s progress in SDP treatment sometime in early August, less than six months after she completed her evaluation and report,

and less than two weeks prior to trial. When asked if she had reviewed defendant's mental health progress notes between March 2017, and about one week prior to trial, she testified that she was not allowed to have copies of notes from a person's medical file, and she only receives documents from a person's SDP program. Dr. Weldon-Padera testified that she reviewed the defendant's master file and learned that he had received an IDOC ticket on June 1, 2017, for admittedly having prohibited sexual contact with another inmate on three occasions. She noted that this information indicated that, as recent as two months prior to trial, defendant was still engaging in prohibited sexual behavior.

¶ 12 Dr. Weldon-Padera was also asked about the defendant's age and intellectual functioning. She acknowledged that the defendant has low intellectual functioning, with an IQ of 68. She further testified that some of the statements she relied upon in making her diagnosis and in forming her opinion of the defendant were made when he was 15 years old. Dr. Weldon-Padera acknowledged that the defendant's intellectual functioning would have caused him some difficulty in the course of their interview, however, she opined that the defendant's age and intellectual functioning level did not impact her ability to render a diagnosis or an opinion as to the defendant's likelihood to reoffend.

¶ 13 Dr. Weldon-Padera diagnosed the defendant with Pedophilic Disorder. She noted that her diagnosis was consistent with a prior diagnosis rendered following a psychiatric examination in 2013. Dr. Weldon-Padera also diagnosed defendant with Pedophilic Disorder in the current SDP report filed with the court, which was consistent with the prior diagnoses.

¶ 14 At the conclusion of the bench trial, the court ruled that the defendant remained a sexually dangerous person and should continue to be held in the custody of the IDOC. This appeal followed.

ANALYSIS

¶ 15

¶ 16

Defendant argues that the State failed to prove by clear and convincing evidence that he was still a sexually dangerous person. Specifically, he maintains that Dr. Weldon-Padera failed to conduct a sufficient and fair analysis of his current condition and her opinion as to his likelihood to reoffend should have been given no weight by the trial court.

¶ 17

In a proceeding on a SDP recovery petition, the State must show by clear and convincing evidence that a defendant is still sexually dangerous. 725 ILCS 205/9(b) (West 2012). The appropriate standard of review is whether the court’s finding was against the manifest weight of the evidence. See *People v. Donath*, 2013 IL App (3d) 120251, ¶ 38; *In re Commitment of Sandry*, 367 Ill. App. 3d 949, 977 (2006). A decision is against the manifest weight of the evidence if an opposite conclusion is clearly apparent. *Donath*, 2013 IL App (3d) 120251, ¶ 38.

¶ 18

After reviewing the record, we find that the circuit court’s determination that the defendant was still a SDP was not against the manifest weight of the evidence. Section 1.01 of the Sexually Dangerous Persons Act (Act) defines “sexually dangerous persons” as:

“All persons suffering from a mental disorder, which mental disorder has existed for a period of not less than one year, immediately prior to the filing of the petition hereinafter provided for, coupled with criminal propensities to the commission of sex offenses, and who have demonstrated propensities toward acts of sexual assault or acts of sexual molestation of children ***.” 725 ILCS 205/1.01 (West 2012).

Additionally, a finding of sexual dangerousness under the Act “must *** be accompanied by an explicit finding that it is ‘substantially probable’ the person subject to the commitment

proceeding will engage in the commission of sex offenses in the future if not confined.” *People v. Masterson*, 207 Ill. 2d 305, 330 (2003).

¶ 19 The record in the instant case supports the circuit court’s finding that defendant was still a SDP. Dr. Weldon-Padera testified that the defendant suffered from a mental disorder—specifically, pedophilic disorder—that existed for a period of not less than one year. She further opined that the defendant had exhibited behavior and made statements to her that indicated he failed to acknowledge that his actions constituted legally offensive conduct, and that given his lack of responsibility for his actions, there was a substantial likelihood that he would offend in the future.

¶ 20 The defendant’s primary argument on appeal is that Dr. Weldon-Padera failed to properly consider more recent evidence regarding his propensity to reoffend. The record established, to the contrary, that Dr. Weldon-Padera had considered information gathered only a few short weeks prior to the hearing. The defendant further maintains that Dr. Weldon-Padera’s interpretation of the available data was done in an unfair manner calculated to cast his behavior in the most negative light. He argues that proper consideration of factors, such as his age and intelligence, would have established that he was no longer a SDP. We find that the defendant’s arguments are only concerned with the weight to be accorded to Dr. Weldon-Padera’s expert opinion. His argument is unpersuasive, as “[i]t was for the trial court to determine the weight to be given to [the witnesses’] testimony and the other evidence, and we find nothing in the record that would require us to substitute our judgment for that of the trial court.” *Donath*, 2013 IL App (3d) 120251, ¶ 41. Here, the record showed that Dr. Weldon-Padera’s credentials as a qualified diagnostician were well established. She had conducted over 40 prior SDP investigations and was accepted as an expert in the field. Her opinion regarding the substantial likelihood that the

defendant remained sexually dangerous was supported by her observations that the claimant continued to deflect and victim-blame regarding past instances of pedophilia and the defendant's continued engagement in proscribed sexual behavior. Given the totality of the record, we cannot say that the circuit court's finding that the defendant remained a SDP was against the manifest weight of the evidence.

¶ 21

CONCLUSION

¶ 22

For the foregoing reasons, we affirm the judgment of the circuit court of McDonough County.

¶ 23

Affirmed.