

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2019 IL App (3d) 180329-U

Order filed April 11, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

In re COMMITMENT OF CHRISTOPHER D. HOCH,)	Appeal from the Circuit Court of the 14th Judicial Circuit, Rock Island County, Illinois.
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-18-0329
)	Circuit No. 04-MR-156
v.)	
)	
Christopher D. Hoch,)	The Honorable
)	Frank R. Fuhr
Respondent-Appellant).)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice Schmidt and Justice Carter concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court properly denied respondent sexually violent person's motion for appointment of an independent evaluator where respondent did not show an expert was necessary to determine if he remained a sexually violent person.

¶ 2 Respondent Christopher D. Hoch was adjudicated a sexually violent person (SVP) in 2004. In 2018, the State filed a motion for court review of periodic examination asserting that there was no probable cause to warrant an evidentiary hearing to determine that respondent was

still an SVP. Respondent filed a motion for appointment of an independent evaluator. Following a hearing, the court denied respondent's motion. The court then held a probable cause hearing and found no probable cause to believe that respondent was no longer an SVP. Respondent appeals the trial court's denial of his motion for appointment of an independent evaluator. We affirm.

¶ 3

FACTS

¶ 4

In 2004, the State petitioned the trial court to commit respondent pursuant to the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/1 *et seq.* (West 2004)). In the petition, the State alleged that respondent had been convicted of aggravated criminal sexual abuse in 2001 for fondling the buttocks of a 10-year-old boy. Prior to that, respondent was convicted of indecent solicitation of a child in 1993 and in 1991. Respondent was also convicted of criminal sexual assault in 1986 for tying up a 12-year-old boy and molesting him anally and orally. The State's petition alleged that respondent suffered from a mental disorder that makes it substantially probable that he will engage in future acts of sexual violence: pedophilia, sexually attracted to males, exclusive type.

¶ 5

Following a bench trial, the trial court found respondent to be an SVP and ordered him to be committed to the custody of the Illinois Department of Human Services (DHS) for institutional treatment. Respondent appealed that determination, and we affirmed. *In re Detention of Hoch*, No. 3-05-0431 (2006) (unpublished summary order under Illinois Supreme Court Rule 23(c)).

¶ 6

From 2004 to 2017, respondent received 13 periodic evaluations as required by section 55 of the Act (725 ILCS 207/55(a) (West 2018)). Following each evaluation, the trial court

found no probable cause to warrant an evidentiary hearing to determine that respondent was still an SVP.

¶ 7 On December 29, 2017, Dr. Amy Louck Davis, a licensed clinical psychologist, performed the fourteenth and latest evaluation of respondent and prepared a report as required by the Act. After reviewing the report, on January 24, 2018, the State filed a motion for court review of periodic reexamination and moved for a finding of no probable cause to warrant an evidentiary hearing to determine that respondent was still an SVP. The State submitted Dr. Louck Davis' report in support of its motion.

¶ 8 In preparing her report, Dr. Louck Davis reviewed respondent's file. She was unable to interview respondent because he refused. Dr. Louck Davis reviewed respondent's criminal charges, which included multiple convictions for indecent solicitation of a child and aggravated criminal sexual abuse from 1985 to 2000. She found that respondent "has taken minimal, if any responsibility for these offenses ***."

¶ 9 Since respondent's commitment to DHS in 2004, he has refused to participate in treatment activities other than an initial assessment. During the relevant re-examination period, respondent continued to decline sex offender treatment and did not participate in any recreational or ancillary groups. He met with a therapist on one occasion when the therapist approached him to inquire about possible interest in treatment.

¶ 10 Based on her review of respondent's records, Dr. Louck Davis concluded to a reasonable degree of psychological certainty that respondent meets the criteria for the following disorders: (1) pedophilic disorder, non-exclusive type, sexually attracted to males, (2) other specified personality disorder, antisocial and avoidant traits, and (3) schizophrenia.

¶ 11 Dr. Louck Davis used the Static-99R and 2002R to measure respondent's risk for sexual offense recidivism. Respondent scored a 7 on the Static 99R, which according to Dr. Louck Davis, places him in the highest risk category. On the Static 2002R, respondent scored an 8, which also places him in the highest risk category. Both scores place respondent in the "well above average" risk categories. Dr. Louck Davis also used two meta-analyses and found eight additional factors contributing to respondent's risk of sexual re-offense: (1) deviant sexual interest/sexual interest in children/sexual interest in boys, (2) any personality disorder, (3) poor problem solving, (4) emotional identification/congruence with children, (5) childhood sexual abuse, (6) general psychological functioning, (7) lack of emotionally intimate relationships, and (8) loneliness. Dr. Louck Davis made no reduction in risk for protective factors because respondent has not participated in sex offender treatment, he does not suffer from a debilitating medical condition, and his age of 52 was accounted for by the actuarial measures.

¶ 12 Dr. Louck Davis concluded, to a reasonable degree of psychological certainty, that (1) "Mr. Hoch's condition has not changed since his last examination and he remains substantially probable to commit a future act of sexual violence"; and (2) "Mr. Hoch has not made sufficient progress in treatment to be Conditionally released; and he should continue to be committed to the Illinois Department of Human Services-Treatment and Detention Facility for further secure care and sexual offense specific treatment."

¶ 13 On March 5, 2018, respondent filed a motion for appointment of an independent evaluator pursuant to section 55(a) of the Act (725 ILCS 207/55(a) (West 2018)). He asserted: "Expert testimony is 'crucial' to a proper defense against the State's motion because Respondent has a due process right to defend himself against the State's motion and eventually secure his release." On April 4, 2018, the trial court held a hearing on respondent's motion and entered an

order denying it. On May 18, 2018, the trial court held a probable cause hearing and then entered an order finding that there was no probable cause to warrant an evidentiary hearing to determine that respondent is still an SVP.

¶ 14

ANALYSIS

¶ 15

The Act allows the State to seek a civil commitment of an individual who has been convicted of a sexually violent offense. *In re Commitment of Wilcoxon*, 2016 IL App (3d) 140359, ¶ 31. The Act defines an SVP as “a person 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 2018). If the State proves beyond a reasonable doubt that an individual is an SVP, the SVP 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 2018).

¶ 16

Following a commitment under the Act, DHS is responsible for reexamining an SVP’s mental condition at least once every 12 months. 725 ILCS 207/55 (West 2018). The purpose of these examinations is to determine whether: “(1) the person has made sufficient progress in treatment to be conditionally released and (2) the person’s condition has so changed since the most recent periodic reexamination *** that he or she is no longer a sexually violent person.” *Id.*

¶ 17

At the time of reexamination, the committed person receives written notice of the right to petition the court for discharge. 725 ILCS 207/65(b)(1) (West 2018). The notice must contain a waiver of rights. *Id.* If the committed person does not waive the right to petition for discharge, the court conducts a probable-cause hearing to determine if facts exist to warrant a further hearing on the issue of whether the person remains an SVP. *Id.*

¶ 18 At the time of reexamination, a committed person “may retain or, if he or she is indigent and so requests, the court may appoint a qualified expert or a professional person to examine him or her.” 725 ILCS 207/55(a) (West 2018). Under this section, the trial court has discretion to grant or deny an indigent SVP’s request for an expert. *People v. Botruff*, 212 Ill. 2d 166, 176 (2004).

¶ 19 A court does not abuse its discretion by denying a motion for an independent evaluator when nothing in the record demonstrates that the court would have found differently had an independent evaluator been provided. *Id.* at 177. “It is rational not to appoint an independent evaluator when a respondent has shown no need for one, especially during perfunctory reexamination proceedings where the respondent has not affirmatively opted to petition for discharge.” *Id.* at 177-78. Where there has been no change in the respondent’s condition, and the respondent is resistant to sex offender treatment, appointing an expert would be of no assistance to the court. See *In re Detention of Cain*, 341 Ill. App. 3d 480, 483 (2003). To be entitled to an independent evaluator, the respondent must show that “expert services are ‘crucial’ to ‘build a defense’ and the [respondent]’s financial inability to obtain his own expert will prejudice his case.” *Botruff*, 212 Ill. 2d at 177 (quoting *People v. Lawson*, 163 Ill. 2d 187, 220-22 (1994), *People v. Keene*, 169 Ill. 2d 1, 8 (1995)); see *In re Commitment of Kirst*, 2015 IL App (2d) 140532, ¶ 33.

¶ 20 Here, as in *Botruff*, the proceeding was a perfunctory reexamination, as respondent did not file a petition for discharge. Respondent alleged in his motion that appointment of an independent evaluator was “crucial” to his defense of the State’s motion. However, he failed to explain how or why. Respondent provided no possible basis to rebut Dr. Louck Davis’ opinion that he remains a sexually violent person. Further, given respondent’s continued refusal to

participate in treatment, nothing an independent expert may have said would have been helpful to the court or changed its opinion. See *Cain*, 341 Ill. App. 3d at 483. Because respondent did not show that an independent evaluator was necessary to determine if he remained an SVP, the trial court did not abuse its discretion in denying respondent's motion.

¶ 21

CONCLUSION

¶ 22

The judgment of the circuit court of Rock Island County is affirmed.

¶ 23

Affirmed.