

NOTICE

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2019 IL App (4th) 180783-U

NO. 4-18-0783

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 17, 2019
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Sangamon County
RICHARD KALINOWSKI,)	No. 97CF103
Defendant-Appellant.)	
)	Honorable
)	Leslie J. Graves,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court’s denial of defendant’s application for recovery under the Sexually Dangerous Persons Act.

¶ 2 In August 1997, a jury found defendant, Richard Kalinowski, to be a sexually dangerous person within the meaning of the Sexually Dangerous Persons Act (Act) (725 ILCS 205/0.01 to 12 (West 1996)), and the trial court committed him to the custody of the Director of the Illinois Department of Corrections (IDOC) until such time as he was no longer a sexually dangerous person. In November 2017, defendant filed an application for recovery. In October 2018, the trial court conducted a bench trial on defendant’s application and denied his request for conditional release, finding the State had proved defendant remained a sexually dangerous person by clear and convincing evidence.

¶ 3 Defendant appeals, arguing the trial court’s finding was against the manifest weight of the evidence. We disagree and affirm.

¶ 4

I. BACKGROUND

¶ 5

A. Procedural History

¶ 6 In February 1997, defendant was indicted for aggravated criminal sexual abuse. 720 ILCS 5/12-16 (West 1996). In May 1997, the State filed a petition to commit defendant to the custody of the Director of the IDOC as a sexually dangerous person within the meaning of the Act. 725 ILCS 205/3 (West 1996). In August 1997, a jury found defendant to be a sexually dangerous person, and the trial court committed defendant to the custody of the Director of the IDOC until such time as he was no longer a sexually dangerous person. Defendant appealed, and this court affirmed. *People v. Kalinowski*, No. 4-97-1151 (Mar. 26, 1999) (unpublished order under Supreme Court Rule 23).

¶ 7

B. The Application for Recovery

¶ 8 In November 2017, defendant filed an application for recovery, alleging he was no longer sexually dangerous. 725 ILCS 205/9 (West 2016). In October 2018, the trial court conducted a bench trial on defendant's application.

¶ 9

1. *The State's Case*

¶ 10 Dr. Kristopher Clouch testified that he was a clinical psychologist and licensed sex offender evaluator for Wexford Health Sources. Clouch stated he reviewed defendant's prior treatment records, conducted an interview with defendant, and spoke with treatment staff at Big Muddy River Correctional Center (Big Muddy) where defendant was currently located. Clouch stated reviewing a sexually dangerous person's offense history is important to find patterns of sexually deviant behavior and to assess progress in treatment. Clouch indicated defendant had been in treatment three times. In 1987, defendant was convicted of criminal sexual assault for repeatedly engaging in sex acts with a 10-year-old boy when defendant was almost 16

years old. Between 1988 and 1990, defendant was in a treatment facility but was removed and convicted of second degree sexual assault for engaging in a sexual relationship with a 15-year-old resident when defendant was 18. In 1991, defendant was again placed in a treatment facility until he was (again) removed from the program for engaging in sex acts with a younger resident. In 1997, defendant was convicted of the underlying offense (criminal sexual abuse of a 13-year-old boy when defendant was 26 years of age), and a jury found he was a sexually dangerous person.

¶ 11 Clouch testified defendant disclosed 36 victims in prior treatment but mentioned only 8 during his interview. Clouch stated accepting responsibility is important for sexually dangerous persons because it allows them to recognize and address their range of offending patterns and behaviors. Clouch also noted defendant denied the majority of his previously reported deviant sexual arousal and fantasies. Denial meant defendant was not addressing these issues in treatment.

¶ 12 Throughout his testimony, Clouch relied heavily on treatment notes from, and his interview with, Jessica Stover, defendant's primary therapist. Based on these sources, Clouch testified defendant had difficulty accepting responsibility and with victim empathy. Clouch stated that in the interview, defendant "indicated feeling sad about offending against the victims that he did; however, he did not grasp the understanding of victim empathy and display empathy for his victims." Clouch testified that according to Stover, defendant was not internalizing any of the treatment he was receiving.

¶ 13 Clouch testified he reviewed defendant's semiannual program evaluations, which Big Muddy generated as a method for monitoring defendant's progress. In his most recent evaluation, in June 2018, defendant was rated as "considerable" or "very considerable need for

improvement” in 17 out of 29 areas. Clouch stated that Stover reported that defendant continued to push boundaries and break rules and she believed putting him in a less restrictive environment would increase his negative behaviors. During the interview with Clouch, defendant presented a “succinct” offense cycle and an understanding of both “core issues” and “high risk situations” that contributed to his offending. However, Stover indicated to Clouch that defendant struggled with these issues in treatment. Clouch also noted he was concerned with defendant’s minimizing the number of sexual partners he had had while in Big Muddy during the interview, compared to what he recently disclosed in treatment.

¶ 14 Clouch diagnosed defendant with “pedophilic disorder sexually attracted to males non-exclusive and stimulant use disorder severe in a controlled environment.” To assess defendant’s likelihood of reoffending, Clouch used the Static-99R actuarial assessment and the Stable-2007, which measures empirical risk factors for male sex offenders. Clouch testified that defendant scored a “5” on the Static-99R, which meant he was in the above-average risk category and had a relative risk ratio of 2.7 times the risk of a typical sex offender. Defendant scored a “15” out of 26 on the Stable-2007, which, combined with the Static-99R, placed defendant in the highest possible risk category. Clouch noted defendant could have scored a “7” on the Static-99R based on an armed-robbery conviction as a juvenile, which would have indicated he had a risk ratio 5.25 times the typical sex offender, but he still would have been in the highest risk category. Defendant’s history of substance abuse was a case-specific factor that increased his risk to reoffend. In Clouch’s opinion, defendant was a sexually dangerous person and was substantially probable to reoffend if he was not confined.

¶ 15 On cross-examination, Clouch acknowledged defendant had addressed his (1) offense cycle, (2) “victimology,” (3) triggers and risk factors, and (4) deviant sexual arousal

within the last two years of treatment. Clouch also acknowledged that defendant had improved in each of his last three semiannual program evaluations. Clouch agreed that based on the research, offenders who scored a 5 on the Static-99R were arrested or reconvicted at a rate of 21.2% over 5 years and a rate of 32.1% over 10 years. However, Clouch stated that “rearrested” was not the same as reoffending, and “absolute risk,” expressed as a percentage, was “no longer use[d]” because “it is not stable across different populations.”

¶ 16 On re-direct examination, Clouch stated that the actuarial assessments give a “conservative estimate” of one’s likelihood to reoffend. Clouch also stated that defendant only reported eight victims in the interview and was therefore minimizing his number of victims.

¶ 17 Jessica Stover testified that she was a social worker and worked as a sex offender therapist in the sexually dangerous persons treatment program at Big Muddy. Stover had worked there since 2010 and worked with defendant off and on for the duration of that period. For the past four years, Stover facilitated the therapy group that was at the core of defendant’s treatment. Defendant regularly attended groups, participated in treatment, understood concepts, and completed homework assignments. However, Stover indicated that defendant was only recently engaging more fully in treatment and applying what he learned.

¶ 18 Stover testified defendant participated in “rational emotive behavioral therapy” or “REBT” group, which she facilitated from June 2017 to December 2017. In that group, participants examined their belief systems to identify the thought patterns and personal beliefs that contributed to their sex offending behavior. Stover stated defendant had difficulty identifying his irrational beliefs and cognitive distortions and struggled to dispute them. Defendant was able to give answers that sounded appropriate but acknowledged that he did not actually believe them. Stover explained, “If you’re not able to identify and then effectively challenge and dispute your

irrational beliefs, the maladaptive or inappropriate behavior is likely to continue.”

¶ 19 Stover testified defendant presented his offense cycle, which a sexually dangerous person uses to examine the thoughts, circumstances, and behaviors that lead to his offending. When presenting his cycle, defendant was able to identify high-risk factors and thought patterns that he used to support his offending, and defendant indicated that he still had some of those beliefs; Stover testified defendant struggled to come up with interventions and new beliefs.

¶ 20 According to Stover, in the few months before trial defendant self-reported that he was just recently recognizing his “neediness or his sexual attraction” and “the way he deals with stress through engaging in sexual behaviors.” Stover added that “[a]s he’s been trying to reduce those behaviors *** he’s self-reporting a lot of anxiety, a lot of feelings of being out of control or stressed because *** he gains a feeling of acceptance from [engaging in sexual behaviors].” Stover testified that these self-reports demonstrated that defendant had not yet internalized the treatment.

¶ 21 In the fall of 2017, defendant self-reported that he was acting out sexually less, but if general population inmates were still housed in the same area of Big Muddy as sex offenders, he would sexually act out because they are less likely than sexually dangerous person inmates to tell. Stover indicated that defendant had similar views of institutional rules, frequently pushing boundaries and breaking rules when he thought he would not get caught.

¶ 22 Stover stated that when defendant presented his victimology, he focused on his age and environment rather than his own decisions. Specifically, defendant did not believe the children he offended against when he was a child were victims because he was close in age with those children.

¶ 23 *2. Defendant’s Case*

¶ 24 Dr. Lesley Kane, a clinical psychologist and sex offender evaluator, testified on behalf of defendant. Kane diagnosed defendant with antisocial personality disorder, cannabis use disorder in a controlled environment, stimulant use disorder, and a rule-out for anxiolytic hypnotic and sedative use disorder. Kane explained that none of these disorders would cause defendant to engage in future sexual offenses; however, each could increase his risk of reoffending. Kane disagreed with Clouch's diagnosis of pedophilia and further believed defendant did not meet the definition of any type of paraphilia.

¶ 25 Kane used the Static-99R and Static-2002R actuarial assessments to evaluate defendant's risk to reoffend. She scored defendant a "5" on the Static-99R and a "7" on the Static-2002R. Based on the Static-2002R, defendant had a risk to be rearrested or reconvicted of 26.8% over five years. Kane also used "meta-analyses" to evaluate defendant's dynamic risk factors. Out of 25 possible risk factors, Kane concluded defendant had 4.

¶ 26 Kane believed defendant's treatment significantly reduced his likelihood to reoffend. Kane noted defendant had progressed in treatment. Based on her discussions with Stover, Kane stated defendant's anger and manipulative behavior had dissipated over the past year, and defendant had developed coping mechanisms to use instead of sex. Kane also noted defendant's offense cycle and his relapse prevention plan were comprehensive, which she believed showed that defendant had the ability to recognize and interrupt an offense cycle before reoffending. Kane indicated defendant had a long track record of consistently engaging in treatment and he would receive just as much, if not more, treatment if placed on conditional release. Kane opined defendant could be safely placed on conditional release.

¶ 27 On cross-examination, Kane acknowledged defendant had previously been arrested during, or discharged from, prior treatment programs for sexual offenses. Kane would not di-

agnose defendant with pedophilia because defendant had not shown that he was attracted to pre-pubescent children as an adult, and most of his prior offenses were committed when he was a child or adolescent and similar in age to his victims. Kane agreed defendant had a long-standing pattern of sexual assaults and attraction to adolescents. However, Kane clarified that she believed there was not enough evidence currently available to her to diagnose him with pedophilia. Accordingly, Kane thought defendant might still be a sexually dangerous person but could be safely placed on conditional release. Kane agreed that the likelihood that someone would be rearrested or reconvicted was not the same as someone's likelihood to reoffend. Kane also agreed that having fewer risk factors did not necessarily lower risk to reoffend, but having more generally increases risk.

¶ 28

3. The Trial Court's Ruling

¶ 29

The trial court found the State proved by clear and convincing evidence that defendant remained a sexually dangerous person and required continued confinement. In making its ruling, the court stated as follows:

“I have heard quite a few of these. And I do believe that you have done a lot of work. Compared to most, you've done a lot of work. But I agree with the State. I think that you are very much on the right path, and I don't want this, my decision today[,] to stop you from working towards that because I think that you are on the right path.

You know, there's—between Dr. Clouch's recommendation and, you know, what—even though she can't make a diagnosis, what your counselor says is important to this Court. And you know, you could tell that she wanted to say everything that she could positive about you because she does believe that you're

trying. But there's just more work that needs to be done.”

¶ 30 This appeal followed.

¶ 31 II. ANALYSIS

¶ 32 Defendant appeals, arguing the trial court's finding was against the manifest weight of the evidence. We disagree and affirm.

¶ 33 Defendant argues the “objective” factors, in the form of actuarial assessments, indicated his likelihood of being rearrested or reconvicted in the next 5 years was 21.2% and 32.1% over the next 10 years. Further, defendant contends Clouch concluded defendant had only 2 dynamic risk factors out of a potential 15-20 and Kane concluded he had just 4 risk factors out of a possible 20-25. Based on the foregoing, defendant argues the “objective evidence” demonstrates he is not substantially probable to reoffend.

¶ 34 Defendant also claims he has completed many requirements, consistently engaged in treatment, and participated in every group that he could. In particular, defendant asserts he has addressed the areas Clouch said caused concern: relapse prevention, offense cycle, victimology, and sexually deviant thoughts and behaviors. Defendant has not broken any rules and consistently improved his semiannual program evaluation scores. Defendant argues that he has progressed substantially in treatment and has completed everything the treatment staff has asked him to do. Accordingly, defendant argues the trial court's finding was against the manifest weight of the evidence.

¶ 35 A. The Applicable Law and Standard of Review

¶ 36 In recovery proceedings under the Act, the State must prove by clear and convincing evidence that defendant remains a sexually dangerous person. *People v. Bailey*, 2015 IL App (3d) 140497, ¶ 12, 40 N.E.3d 839. A defendant is a sexually dangerous person if he has (1) a

mental disorder existing for at least one year before the petition was filed, (2) criminal propensities to the commission of sex offenses, and (3) demonstrated propensities toward acts of sexual assault or sexual molestation of children. 725 ILCS 205/1.01 (West 2018); *People v. Holmes*, 2016 IL App (1st) 132357, ¶ 103, 48 N.E.3d 185. “ ‘[C]riminal propensities to the commission of sex offenses’ means that it is substantially probable that the person subject to the commitment proceedings will engage in the commission of sex offenses in the future if not confined.” 725 ILCS 205/4.05 (West 2018).

¶ 37 “The [trial] court’s finding that [a] respondent is still sexually dangerous may not be disturbed on review, unless that decision is against the manifest weight of the evidence.” *People v. Donath*, 2013 IL App (3d) 120251, ¶ 38, 986 N.E.2d 1222. A decision is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent. *Id.*

¶ 38 In *People v. Kallal*, 2019 IL App (4th) 180099, ¶ 43, the defendant argued the State failed to present sufficient evidence that he remained sexually dangerous because, according to the State’s expert’s scoring of the Static-99R and Stable-2007, he had a 40% chance of reoffending over the next five years. This court noted that “the jury was not only concerned with the next five years. Further, the jury was not required to accept this statistic, and the statistic did not guarantee the likelihood of defendant reoffending.” *Id.* This court also noted the expert’s conclusion that defendant remained a sexually dangerous person “was based on more information than just these two assessment tools.” We stated as follows:

“While defendant admitted he committed the offenses for which he was charged, Dr. Weldon-Padera noted he failed to accept full responsibility. He minimized his actions and did not seem to understand his assault cycle. This increased his risk of reoffending. Defendant also had an incomplete intellectual understand-

ing of victim empathy and a poor understanding of his sexual attraction to the deviant acts and behaviors in which he engaged.” *Id.* ¶ 45.

Accordingly, we concluded the jury’s finding was not against the manifest weight of the evidence. *Id.* ¶ 46.

¶ 39

B. This Case

¶ 40 In this case, similar to *Kallal*, Clouch and Kane stated sex offenders who scored similarly to defendant on the Static-99R were rearrested or reconvicted at a rate of 21.2% over 5 years and 32.1% over 10 years. But the trial court was not required to accept these statistics or consider only the next 5 to 10 years. Clouch testified the actuarial tools were conservative and the percent chance of rearrest or reconviction was “no longer use[d]” because “it is not stable across different populations.” Both Clouch and Kane explained that rearrest and reconviction were not the same as reoffending because sex offenders often have more victims than arrests or convictions, including defendant. Both experts also noted defendant had a long history of sexually offending and had multiple dynamic risk factors that increased his risk of offending. Additionally, Clouch testified that defendant’s score on the Static-99R could have been higher due to a non-sex offense and defendant scored a 15 on the Stable-2007, which measures risk factors, and when combined with the Static-99R, placed him in the highest possible risk category. Clouch relied on these facts, combined with defendant’s lack of internalization of treatment, to conclude defendant remained a sexually dangerous person who was substantially probable to reoffend if not confined.

¶ 41 Further, Clouch did not rely solely on the assessments to determine defendant’s risk. As in *Kallal*, Clouch and Stover testified defendant struggled with victim empathy and accepting responsibility for his offenses. Defendant was inconsistent when discussing his victims

and denied the substantial majority of his prior deviant sexual thoughts, fantasies, and arousals, which Clouch explained meant defendant was not addressing these core issues in treatment. Defendant also minimized (1) the number of his victims, (2) his responsibility in engaging in sexual acts with them, and (3) his number of sexual partners at Big Muddy.

¶ 42 Both Clouch and Stover agreed that although defendant had engaged in treatment and intellectually understood the concepts, he had not internalized them and was only recently beginning the process of implementing what he had learned. Stover noted defendant had self-reported in the past few months increased feelings of anger, anxiety, and “being out of control” as he began recognizing his automatic sexual thoughts and behaviors. Regarding defendant’s understanding of his cycle, Stover explained that although he could identify high-risk behaviors and core beliefs that support his sexual offending behaviors, defendant “acknowledge[d] that he still believes those or he still engages in some of those behaviors, that those are still very much risk factors for him.” Stover also noted defendant recently stated he would still be acting out sexually if general population inmates were housed with sexually dangerous persons, and Clouch found this statement particularly concerning. Finally, Clouch and Stover were troubled by defendant’s continued pushing of boundaries and rule breaking when under less supervision. The inference of this testimony is that if defendant were placed in a less restrictive environment he was highly likely to engage in behavior that would lead to reoffending. Given this context, the trial court easily could have concluded the actuarial assessments understated defendant’s risk and he was in fact substantially probable to commit a sex offense if not confined.

¶ 43 Like the trial court and the witnesses, we recognize that defendant has taken many steps to improve in treatment. Stover said defendant engaged in treatment, consistently attended therapy, and completed all assignments. Clouch acknowledged defendant’s semiannual pro-

gram evaluations scores were going down, meaning he was progressing in treatment. The trial court stated defendant had “done a lot of work” and was “very much on the right path.” Ultimately, however, the court concluded that defendant had not made sufficient progress and remained a sexually dangerous person who presented a danger if not confined to an institution. After a thorough review, “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. The trial court was in the best position to evaluate expert testimony, make credibility determinations, and determine the weight to be given to the evidence and any inferences there from. See *id.*; see also *People v. Cosmano*, 2011 IL App (1st) 101196, ¶ 76, 964 N.E.2d 87. Based on the foregoing, we conclude that the trial court’s finding that defendant remained a sexually dangerous person was not against the manifest weight of the evidence.

¶ 44

C. Epilogue

¶ 45 We note that in a separate appeal in this case, we expressed concern that the trial court and parties had not had a trial on defendant’s application for recovery, which had been pending for years, and hoped that the court was able to proceed on a new application during the pendency of that appeal. *People v. Kalinowski*, 2018 IL App (4th) 170823-U, ¶ 68. As this appeal shows, the court did just that, and we commend it and the parties for doing so.

¶ 46

III. CONCLUSION

¶ 47

For the reasons stated, we affirm the trial court’s judgment.

¶ 48

Affirmed.