2019 IL App (4th) 180786-U

NO. 4-18-0786

FILED
June 27, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re COMMITMENT OF ANTHONY SULLIVAN,	)	Appeal from
	)	Circuit Court of
(The People of the State of Illinois,	)	McLean County
Petitioner-Appellee,	)	No. 13MR220
v.	)	
Anthony Sullivan,	)	Honorable
Respondent-Appellant).	)	Paul G. Lawrence,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices DeArmond and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court properly denied respondent's (1) request for the appointment of an independent examiner and (2) petition for discharge.

¶ 2 Respondent, Anthony Sullivan, a person committed under the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/1 *et seq.* (West 2016)), appeals the McLean County circuit court's November 19, 2018, order denying his motion for the appointment of a qualified expert and petition for discharge. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In April 2013, the State filed a petition to have respondent committed as a sexually violent person under the Act. After a January 2017 bench trial, the circuit court found respondent was a sexually violent person. At the March 2017 dispositional hearing, the court concluded respondent needed treatment in a secure facility and entered a written order

committing respondent to institutional care in a secure facility. Respondent appealed, and this court affirmed the circuit court's judgment. *In re Commitment of Sullivan*, 2018 IL App (4th) 170219-U.

¶ 5 On April 10, 2018, the State filed a motion for court review of the periodic reexamination and argument in support of a finding of no probable cause. Attached to the motion was the March 9, 2018, psychological reexamination report prepared by Dr. Edward Smith. In preparing the report, Dr. Smith interviewed respondent and reviewed approximately 10 documents. The report set forth respondent's relevant history, including his criminal, sexual, and treatment histories. In the criminal and sexual history sections, Dr. Smith quoted from another examiner's 2011 evaluation report of respondent, who was born in April 1993 and thus would have been around 18 years old at the time of the 2011 evaluation.

¶ 6 As to respondent's treatment history, Dr. Smith noted respondent had been in a treatment and detention facility run by the Department of Human Services since May 2013. Dr. Smith explained the Department of Human Services had a five-phase treatment program. The five phases, in order, were the following: (1) assessment, (2) accepting responsibility, (3) self-application, (4) incorporation, and (5) transition. Respondent was participating in sex offense specific treatment. He had made some progress and was currently in phase two.

¶ 7 In the report, Dr. Smith found respondent continued to suffer from (1) other specified paraphilic disorder, non-consenting females, with sadistic features, nonexclusive type, in a controlled environment; (2) alcohol, cannabis, cocaine, ecstasy use disorder, in a controlled environment; and (3) antisocial personality disorder. Dr. Smith explained his reasoning for each diagnosis and with the other specified paraphilic disorder, he noted respondent had "recently denied the presence of sadistic arousal, interest or behaviors" and the issue was being addressed

with his treatment team. On the issue of respondent's dangerousness, Dr. Smith used the Static-99R and the Static-2002R risk assessments. Respondent placed in the above average risk category on both assessments. Dr. Smith also noted respondent had the following empirical risk factors for future sexual offending: (1) any paraphilic interest, (2) sexual preoccupation, (3) any personality disorder, (4) any substance abuse, (5) general self-regulation problems, (6) employment instability, (7) impulsiveness/recklessness, and (8) neglect and physical/emotional abuse. Dr. Smith opined respondent had no protective factors such as age, medical condition, or sex-offender treatment. In finding age was not a protective factor, he noted respondent's age was actually an aggravating factor, and it had already been incorporated into the risk assessments. To a reasonable degree of psychological certainty, Dr. Smith opined respondent had not progressed to the point where he could be safely managed in the community on conditional release. He also opined respondent should continue to be found a sexually violent person under the Act because his condition had not changed.

¶ 8 In August 2018, respondent filed a joint petition for discharge under section 65 of the Act (725 ILCS 207/65(b)(1) (West 2016)) and a motion for the appointment of a qualified expert under section 55(a) of the Act (725 ILCS 207/55(a) (West 2016)). Respondent asked the court to review the recent cases dealing with how juveniles' brains work and how that affects their decision-making process. He then suggested the court take the aforementioned information into consideration when comparing respondent as a juvenile to where he is now in determining whether respondent remains a sexually violent person. Attached to respondent's petition for discharge was his master treatment plan, which was authored by Dr. Jaleesa Freitas, and his Department of Human Services treatment and detention facility progress notes from December 2017 to January 2018. Respondent noted he had not been observed to demonstrate any

symptoms suggesting a diagnosis of sexual sadism disorder or other specified paraphilic disorder during the reexamination period. Dr. Freitas's master treatment plan did note respondent had not been observed to demonstrate, describe, and/or endorse any symptom of (1) sexual sadism or (2) sexual arousal to fantasies, urges, and/or behaviors that involve rape and/or other aggressive acts. In the master treatment plan, Dr. Freitas did not discuss respondent's other diagnoses. The master treatment plan also identified the following four areas that respondent was addressing: (1) increase healthy sexuality, (2) increase interpersonal relating and self-regulation, (3) develop realistic and flexible cognitive framework, and (4) increase meaningful, fulfilling living. Respondent's progress notes discussed his sexual sadism diagnosis and explored whether the diagnosis was still appropriate. The diagnosis was not ruled out in the progress notes that respondent provided.

¶ 9 The State filed a response, asserting respondent's joint motion for an expert and petition for discharge should be denied. The State noted respondent was in the early stages of the comprehensive treatment program and had "yet to develop his offense cycle or his relapse prevention plan." Thus, the State asserted respondent had not completed the necessary components of his treatment to reduce his risk to reoffend. It further argued respondent had "failed to allege any sufficiently persuasive reason or change in condition necessitating the appointment of an evaluator at this time."

¶ 10 On November 19, 2018, the circuit court held a hearing on respondent's petition for discharge and motion for an appointment of an expert. The court began by first addressing the appointment of an expert. The parties presented their arguments. The court stated the progress notes respondent attached to his motion were made by someone who was not a licensed sex offender evaluator and the notes never indicated respondent was no longer a sexually violent

person. It also noted the validity of the original commit order is not at issue and pointed out respondent was still in phase two of the program that had five phases.

¶ 11 After denying respondent's request for an independent examiner, the circuit court had the parties make arguments on respondent's petition for discharge. The court concluded respondent had not established probable cause he no longer met the definition of a sexually violent person. The court noted respondent was still in stage two of the five-phase treatment program. It also explained respondent was still arguing the underlying issues the court had already decided.

¶ 12 On November 28, 2018, respondent filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. July 1, 2017). See *In re Detention of Samuelson*, 189 Ill. 2d 548, 559, 727 N.E.2d 228, 235 (2000) (providing cases under the Act are civil in nature). Thus, this court has jurisdiction of respondent's appeal under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994).

¶ 13 II. ANALYSIS

¶ 14 A. Independent Expert

¶ 15 Respondent first asserts the circuit court erred by denying his request for the appointment of an independent expert pursuant to section 55(a) of the Act (725 ILCS 207/55(a) (West 2016)). The State disagrees, asserting the circuit court properly exercised its discretion in denying respondent's motion for an independent expert.

¶ 16 Whether to appoint an independent expert under section 55(a) is a matter resting within the circuit court's sound discretion. *In re Commitment of Kirst*, 2015 IL App (2d) 140532, ¶ 33, 40 N.E.3d 1215; *People v. Botruff*, 212 Ill. 2d 166, 176, 817 N.E.2d 463, 469 (2004). Thus, we review the matter for an abuse of discretion. *Botruff*, 212 Ill. 2d at 176, 817

N.E.2d at 469. " 'An abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.' " *In re Detention of Erbe*, 344 Ill. App. 3d 350, 374, 800 N.E.2d 137, 157 (2003) (quoting *People v. Hall*, 195 Ill. 2d 1, 20, 743 N.E.2d 126, 138 (2000)).

¶ 17 "A respondent may be entitled to funds to hire an expert witness where expert testimony is deemed 'crucial' to a proper defense." *Kirst*, 2015 IL App (2d) 140532, ¶ 33, 40 N.E.3d 1215. A respondent establishes the aforementioned standard by showing "the expert services are 'crucial' to 'build a defense' and the defendant's financial ability to obtain his own expert will prejudice his case." *Botruff*, 212 Ill. 2d at 177, 817 N.E.2d at 469. Thus, the issue before this court is whether respondent demonstrated his case would be prejudiced if an independent examination was not performed, thus showing such an appointment was crucial to his defense.

¶ 18 Here, respondent emphasizes Dr. Freitas, who authored his master treatment plan, had not observed respondent demonstrate or endorse any symptoms indicative of sexual sadism. However, a reading of the entire master treatment plan and progress notes indicates that, while Dr. Freitas and respondent questioned his diagnosis of sexual sadism, the diagnosis had not been ruled out. In fact, when Dr. Freitas discussed her concerns about the sexual sadism diagnosis with the treatment team, the team recommended respondent be referred for an "alternative stimulus PPG [penile plethysmograph]." Respondent agreed to do the evaluation. Dr. Jelinek reported the results of the evaluation were "deemed invalid due to the PPG indicating [respondent] had attempted to suppress his responses." Respondent did express disagreement with the results, asserting he did not experience any arousal during the evaluation. The plan and notes also showed that, while respondent was engaged in his treatment, he was still only in the

second phase of the five-phase program and still had goals to work on. Thus, we disagree with respondent he demonstrated a conflict in expert opinions regarding his diagnosis and classification as a sexually violent person. Accordingly, we find the circuit court did not abuse its discretion by denying respondent's motion for the appointment of an independent examiner.

¶ 19 B. Discharge

¶ 20 Respondent also asserts the circuit court erred by finding probable cause did not exist for an evidentiary hearing on respondent's petition for discharge. The State contends the circuit court's judgment was proper. This court reviews a circuit court's finding of no probable cause *de novo*. *In re Detention of Kelley*, 2019 IL App (1st) 162184, ¶ 53.

¶ 21 Section 65(b)(1) of the Act (725 ILCS 207/65(b)(1) (West 2016)) allows a committed person to petition the court for discharge from custody. For the committed person to receive an evidentiary hearing on the issue under section 65(b)(2) of the Act (725 ILCS 207/65(b)(2) (West 2016)), the court must find probable cause exists that, since the most recent periodic reexamination or the initial commitment if the person has not yet received a periodic reexamination, the person's condition has so changed that the person is no longer a sexually violent person. This means the committed person must present sufficient evidence he or she no longer meets the following elements for commitment: (1) he or she no longer has " 'a mental disorder' " or (2) he or she is no longer dangerous to others because his or her mental disorder no longer creates a substantial probability he or she will engage in acts of sexual violence. *Kelley*, 2019 IL App (1st) 162184, ¶ 53 (quoting 725 ILCS 207/5(f) (West 2016)). In making this determination, the court considers all reasonable inferences it can draw from the facts in evidence. *Kelley*, 2019 IL App (1st) 162184, ¶ 53. However, at this stage of the proceedings, the court does not "choose between conflicting facts or inferences or *** engage in a full and

independent evaluation of [an expert's] credibility and methodology [citation]." (Internal quotation marks omitted.) *Kelley,* 2019 IL App (1st) 162184, ¶ 53 (quoting *In re Detention of Hardin,* 238 Ill. 2d 33, 48, 53, 932 N.E.2d 1016, 1024, 1027 (2010)). Moreover, the circuit court " 'should not attempt to determine definitively whether each element of the [movant's] claim can withstand close scrutiny as long as some "plausible" evidence, or reasonable inference based on that evidence, supports it.' " *Kelley,* 2019 IL App (1st) 162184, ¶ 53 (quoting *Hardin,* 238 Ill. 2d at 51-52, 932 N.E.2d at 1026).

¶ 22 Here, respondent has presented no evidence he no longer suffers from a mental disorder or is no longer dangerous to others. While questions were raised about one of respondent's diagnoses in his treatment plan and progress notes, the evaluation his treatment team wanted him to complete to assist in reconsidering his diagnosis came back with an invalid result. As previously noted, the invalid result was due to respondent attempting to suppress his response. Thus, the materials respondent attached to his petition for discharge did not show he no longer suffered from a mental disorder, as they show respondent's treatment team was still in the process of reconsidering a diagnosis of sexual sadism. Moreover, his treatment plan indicated he was only in the second phase of the five-phase treatment plan and had several treatment goals he was working on.

¶ 23 As to respondent's claim his age had changed, we note the circuit court found respondent was a sexually violent person in January 2017 when respondent was 22 years old. Respondent's maturation since he committed his predicate offense (January 2011) and first underwent a sexually violent persons evaluation (March 2013) was taken into account when he was found to be a sexually violent person. Respondent's reexamination report was completed in March 2018 when he was 23 years old, and respondent's current treatment plan was developed in

April 2018, right after he turned 24 years old. Thus, we do not find his change in age constituted probable cause for him no longer having a mental disorder or being dangerous to others since the initial commitment order.

¶ 24 III. CONCLUSION

¶ 25 For the reasons stated, we affirm the McLean County circuit court's judgment.

¶ 26 Affirmed.