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2014 IL App (3d) 130420-U

Order filed August 19, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-13-0420
)	Circuit No. 03-CF-355
MATTHEW ALAN DEMPSEY,)	The Honorable
Defendant-Appellant.)	Kevin Lyons, Judge, presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice Lytton and Justice Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* The denial of an insanity acquittee's petition for conditional release was affirmed because, in granting a subsequent petition for conditional release, the trial judge demonstrated that any bias had been resolved and the defendant had already been granted the relief he sought.

¶ 2 The defendant, Matthew Dempsey, an insanity acquittee, appealed the denial of his petition for conditional release, filed pursuant to section 5-2-4(e) of the Unified Code of Corrections (730 ILCS 5/5-2-4(e) (West 2012)).

¶ 3 **FACTS**

¶ 4 On December 15, 2005, the defendant, Matthew Dempsey, was found not guilty by reason of insanity of armed robbery and committed to the Department of Human Services (DHS). On December 4, 2012, the defendant filed a petition for conditional discharge, contending that he was not subject to involuntary admission and was no longer in need of mental health services on an inpatient basis. A hearing was held on the petition.

¶ 5 At the hearing, Dr. James Corcoran, a psychiatrist and the facility director at Chicago-Read Mental Health Center, testified that he met with the defendant three or four times in the preceding few months and reviewed the defendant's record from his entire time in DHS custody. Corcoran testified that he found no evidence that the defendant had an Axis I major mental disorder at the time of the hearing, and the defendant was not currently on psychotropic medication. The defendant was diagnosed with an Axis II personality disorder with antisocial features. Based on Corcoran's review of the records, since the defendant's commitment in 2005, he never required restraints, he did not require as needed medications for any episodes of agitation or violence, there was no recorded violence, he cooperated with the treatment planning, attended groups, attended activities, attended to his own hygiene needs, and never inflicted any physical harm on himself or others. The defendant did have a history of substance abuse, but there was no evidence he was currently using drugs or alcohol.

¶ 6 Corcoran testified that the defendant was conditionally released in 2010, but violated the conditions of his release and was returned to DHS custody. Upon the defendant's return, it was again determined that psychotropic medications were unnecessary, and he was again cooperative in treatment. He attended group and individual counseling, and was enrolled in online college classes. The defendant had not

inflicted any harm on himself or others. Corcoran testified that the defendant was symptomatic between 2003 and 2005 with auditory hallucinations and some paranoia. The defendant was diagnosed with hyperthyroidism. That was treated with medication in 2005, and had not had any significant symptoms since that time. Corcoran recommended that the defendant be conditionally released, with conditions such as drug testing, weekly meetings with a mental health professional, and, at least initially, live in a supervised setting. Living with his mother would be appropriate. However, the defendant's January 15, 2013, treatment plan report recommended continued in-patient treatment. Corcoran explained that this was because the release plan had not been fully developed. A new written report, dated March 15, 2013, was submitted during the hearing, which recommended conditional release.

¶ 7 The defendant's treating psychiatrist, Dr. Lotesto, also testified. He began treating the defendant in August 2012. Lotesto testified that the defendant had no Axis I diagnosis, and had an Axis II diagnosis of a personality disorder, antisocial personality disorder. Lotesto opined that the defendant was not substantially impaired by the personality disorder. The defendant was not taking any psychotropic medication, and he was participating in therapy. Lotesto testified that a treatment plan involving weekly therapy via telephone, bi-monthly in-person therapy, random urine drug tests, and court reports, would ensure the defendant's satisfactory progress and the safety of the defendant and the community. The therapy was to be with Karen Grear, a social worker with the defendant's union employee assistance program. The trial judge was concerned that Grear was located in Washington DC, and commented "What penalty is that?" When questioned why he did not recommend the defendant's conditional release in the January 15, 2013, report, Lotesto testified that he was given that report, and disagreed

with it, but signed it anyway. He then signed the March 15, 2013, report, recommending release. The trial judge asked Lotesto if he had ever met Corcoran, even though Corcoran was the medical director. The trial judge then asked Lotesto if he or Corcoran were related to the defendant.

¶ 8 The trial court denied the petition, finding that the credibility of Drs. Corcoran and Lotesto was impaired, so that it could not find that the defendant was not a danger to himself or others based on that testimony. The report signed by both doctors also lacked credibility. The trial court relied on a previous pleading, a December 11, 2011, recommendation for treatment in a nonsecure setting. That document relayed the defendant's history of violence, criminal history, and drug use and the defendant's risk factors for future violence. It listed the defendant's diagnoses as: schizoaffective disorder – bipolar type, cannabis dependence in remission, hallucinogen abuse, and attention deficit hyperactivity disorder combined type (all Axis I, no Axis II or III diagnoses). The recommendation stated that the defendant was still considered high risk for violence or criminal activity if he were to be released into the community, but his mental illness appeared to be in remission. However, the report also stated that the defendant had not engaged in any violent behavior while hospitalized, and had been compliant with hospital rules since 2006.

¶ 9 The trial court found that the treatment plan was not sufficient to protect the public because the only monitoring would be by a psychologist on the east coast. The trial judge did not discount telepsychiatry based on testimony provided at the hearing, but stated: "I'm 56. I'm not sure I'm willing to embrace this teleconference thing as being the primary provider..." During the defendant's closing argument, in response to the argument that the defendant did not have a mental illness that needed treatment, the trial

judge commented: “When did the mental illness go away?” Also, the trial judge stated that the treatment plan was not sufficient, and maybe that was a failing of Chicago-Reed Mental Health Center.

¶ 10 Prior to oral argument in this court, the State filed a motion to supplement the record on appeal, informing this court that the defendant had been conditionally released on January 8, 2014. The Order for Conditional Release was attached. The defendant filed a response to the motion, arguing that the conditional release did not render this appeal moot because the conditional release imposed additional restrictions and burdens on the defendant that were not proposed by the treatment plan that is the subject of this appeal and because of the trial judge’s alleged bias against the defendant. Due to the allegations of bias, we agree that the appeal is not moot.

¶ 11 ANALYSIS

¶ 12 The defendant argues that the trial judge demonstrated bias against him, such that the defendant was denied a fair hearing. The defendant argues that there were several comments by the trial judge indicated bias: (1) the comment “What penalty is that?” regarding the treatment plan; (2) the trial judge’s reference to his own age in rejecting the telepsychiatry element of the treatment plan; (3) the trial judge’s statement that the testimony was inconsistent; (4) asking Dr. Lotesto if he had ever met Dr. Corcoran; (5) commenting that Chicago-Read Mental Health Center had not done well and could not be relied upon; and (6) asking “[w]hen did the mental illness go away.”

¶ 13 A defendant has a constitutional right to an unbiased, open-minded trier of fact. *People v. Taylor*, 357 Ill. App. 3d 642, 648 (2005). A trial judge is presumed to be impartial, and the burden of overcoming this presumption is on the party asserting the bias. *People v. Jackson*, 205 Ill. 2d 247, 276 (2001). In this case, the defendant made a

strong argument for bias, and the statements made by the trial judge could establish bias against the defendant and/or the mental health system. However, in granting the defendant's conditional release on January 8, 2014, the trial judge has demonstrated that any such bias had been resolved.

¶ 14 When an individual has been acquitted of a crime by reason of insanity, his subsequent treatment is governed by section 5-2-4 of the Code, which provides for the acquittee's involuntary commitment to treat his mental illness and also to protect him and society from his potential dangerousness. 730 ILCS 5/5-2-4 (West 2010); *People v. Bethke*, 2014 IL App (1st) 122502, ¶ 14. Once an insanity acquittee has been committed to the custody of the Department, he may be detained only as long as he continues to be in need of mental health services. 730 ILCS 5/5-2-4(a) (West 2010). However, an acquittee shall be conditionally released if he is found to be in need of mental health services, but not on an inpatient basis. 730 ILCS 5/5-2-4(a); *People v. Jurisec*, 199 Ill. 2d 108, 116 (2002). A defendant who is in in need of mental health services on an inpatient basis is a defendant who has been found not guilty by reason of insanity but who due to mental illness is reasonably expected to inflict serious physical harm upon himself or another and who would benefit from inpatient care or is in need of inpatient care. 730 ILCS 5/5-2-4(a-1)(B).

¶ 15 When a petition for conditional release is filed by the defendant, there must be a hearing. 730 ILCS 5/5-2-4(e) (West 2010). The burden of proof is on the defendant, and the findings of the court shall be established by clear and convincing evidence. 730 ILCS 5/5-2-4(g) (West 2010); *People v. Bethke*, 2014 IL App (1st) 122502. The trial court must still make adequate findings of fact and conclusions of law so that the reviewing court can effectively review the judgment. *Bethke*, 2014 IL App (1st) 122502, ¶ 17; 405

ILCS 5/3-816(a) (West 2010). A trial judge's decision of whether a defendant should be conditionally released from a mental health facility will not be reversed unless it is against the manifest weight of the evidence. *People v. Youngerman*, 361 Ill. App. 3d 888, 895 (2005).

¶ 16 Thus, to be entitled to conditional release, the defendant must not only show that he no longer poses a danger to himself and others but also that he no longer has a need for nor would benefit from inpatient care.¹ The State argues that the trial court's properly denied the petition because the defendant failed to prove by clear and convincing evidence that he was not reasonably expected to inflict serious physical harm on himself or another, and he failed to prove that he no longer needed or would benefit from inpatient care.

¶ 17 We find that the defendant proved by clear and convincing evidence that he no longer posed a danger to himself and that he no longer needed inpatient care. Although the trial court found the testimony of the two doctors, who recommended conditional release, to be not credible, the report that the trial court relied upon stated that the defendant had not shown physical aggression toward himself or others the entire time he was hospitalized (since 2003). It also stated that the defendant did not show any signs or symptoms of active mental illness, and his only medication was dextroamphetamine for attention deficit disorder. The report identified the defendant's risk factors for future violence and criminal activity as his prior history of violence, a history of noncompliance with treatment recommendations, and extensive problems with drugs and alcohol.

¹ The defendant argues on appeal that he was no longer mentally ill, so it was illegal to continue to confine him to a mental hospital. However, this appeal was based upon his petition, which specifically sought conditional release, not unconditional release on the basis that he was not mentally ill. In any event, the petition was filed by the defendant, so it was his burden to prove that he was no longer mentally ill by clear and convincing evidence. We find that he failed to do so.

However, as the report indicates, the noncompliance mainly involved taking medication for schizoaffective disorder, which the report also indicates that the defendant showed no signs or symptoms of despite not taking the medication since 2006 or 2007. Dr. Corcoran testified that there was no evidence presented that the defendant was currently using drugs or alcohol, and there was no other evidence offered of current drug or alcohol use. We find that the defendant established by clear and convincing evidence that he was entitled to conditional release.

¶ 18 The defendant argues that we should reverse and remand because the conditional release granted on January 8, 2014, imposed additional restrictions and burdens on the defendant that were not proposed by the treatment plan that is the subject of this appeal. However, a review of the testimony indicates that substantially the same restrictions were recommended during the hearing on the defendant's petition for conditional release. Specifically, the defendant argues that the additional burdens were: drug testing, possible prescription medication, home monitoring, and substantial participation in mental health treatment. However, both doctors recommended random drug screening and weekly therapy sessions. Although the conditional release provided for one home visit by the Human Services Center of Peoria, and possible future periodic home visits, it also provided for a less onerous therapy schedule. As for the provision regarding prescription medication, the conditional release order only requires the defendant to comply with any medications that may be prescribed. We find that the subsequent order for conditional release substantially granted the defendant the relief that he was seeking in this appeal, so we affirm the denial of this petition.

¶ 19

CONCLUSION

¶ 20

The judgment of the circuit court of Peoria County is affirmed.

¶ 21

Affirmed.