2014 IL App (2d) 130746-U
No. 2-13-0746
Order filed June 30, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Kane County.
Plaintiff-Appellee,	)	
v.	)	No. 06-CF-2934
GUSTAVO RODRIGUEZ,	)	Honorable James C. Hallock,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly granted the State a directed finding on defendant's petition for conditional release from commitment as a defendant found not guilty by reason of insanity: the court was entitled to find that defendant would not adhere to his medication regimen, that he would not participate in therapy, that he would be a potential danger to himself or others, that he did not appreciate the harm he had caused or the criminality of his conduct, and that he could become suicidal or relapse into alcohol or drug abuse.

¶ 2 In 2006, defendant, Gustavo Rodriguez, was found not guilty by reason of insanity (NGRI) of aggravated criminal sexual assault involving bodily harm (720 ILCS 5/12-14(a)(2) (West 2006)) and committed to the Elgin Mental Health Center (EMHC). He appeals a

judgment granting the State a finding (see 735 ILCS 5/2-1110 (West 2012)) on his petition for transfer to a nonsecure setting, discharge, or conditional release. We affirm.

¶ 3 In 2006, defendant was charged with four counts of aggravated criminal sexual assault involving a dangerous weapon (720 ILCS 5/12-14(a)(1) (West 2006)); five counts of aggravated criminal sexual assault involving bodily harm; three counts of aggravated criminal sexual assault perpetrated during the commission or attempted commission of another felony (720 ILCS 5/12-14(a)(4) (West 2006)); three counts of attempted aggravated criminal sexual assault (720 ILCS 5/8-4(a), 12-14(a)(1), (a)(2) (West 2006)); and two counts of aggravated unlawful restraint (720 ILCS 5/10-3.1(a) (West 2006)). All of the offenses were allegedly committed on November 8, 2006, against Sharon J., defendant's then-girlfriend.

¶ 4 On May 15, 2008, after the State had dismissed all but one charge, aggravated criminal sexual assault based on bodily harm, the trial court held a bench trial on stipulated evidence and found defendant NGRI (see 720 ILCS 5/6-2 (West 2006)). On September 26, 2008, after a hearing under section 5-2-4(b) of the Unified Code of Corrections (Code) (730 ILCS 5/5-2-4(b) (West 2008)), the court found that defendant was in need of inpatient mental health services.

¶ 5 A psychiatric report for the court, prepared by Syed Hussain, M.D., and dated July 28, 2009, stated as follows. Defendant had several prior convictions and a long history of drug and alcohol abuse. He had been admitted to EMHC three times before. Several weeks before he attacked Sharon, defendant had stopped taking his psychotropic medicine; had been drinking heavily; and had been experiencing increasing depression, delusions, and paranoia. "Risk factors" that he displayed included "affective instability and psychotic symptoms"; substance abuse; and the inability to appreciate "the social consequences of his mental disorder." Since being admitted to EMHC's forensic treatment program on July 9, 2009, defendant had been

cooperative and had admitted that he had been mentally ill for years, but he did not comprehend the seriousness of the charge against him. Defendant needed inpatient mental health services.

¶ 6 On March 26, 2009, the trial court committed defendant to the custody of the Department of Human Services until he was no longer subject to involuntary admission and in need of mental health services or until November 22, 2036, whichever came first (see *People v. Thiem*, 82 Ill. App. 3d 956 (1980)).

¶ 7 On November 19, 2012, defendant petitioned under section 5-2-4(c) of the Code (730 ILCS 5/5-2-4(e) (West 2012)) for transfer to a nonsecure setting, discharge, or conditional release. His petition alleged that he was no longer in need of inpatient or outpatient mental health services and, alternatively, that he was suited for treatment in a nonsecure setting.

¶ 8 On June 23, 2013, the trial court held a hearing on the petition. Defendant testified on direct examination that, since being committed to EMHC in December 2006, he had been undergoing treatment. He understood that, if conditionally released, he would still be required to follow certain rules, one of which might be to continue his mental health treatment.

¶ 9 Defendant testified that, currently, he was taking daily Seroquel, Haldol, "X Factor," and tramadol. Earlier in 2013, he had been taking lithium, but he stopped because it was not helping him with his depression, anxiety, anger, or mood swings, and it was causing various side effects. Asked whether he had discontinued lithium on his doctor's orders or on his own, defendant testified that, from his admission until he was transferred to the "M-unit" in 2010, he had asked his doctor "many times" to change the medicine, but "[s]he did not give [him] anything. She gave [him] the same excuse" and "ignored" him. He "kept taking" lithium, but, at his request, about a month and a half before the hearing, the doctor took him off it. Since then, his sleep had improved and his mood swings, anxiety, anger, and depression had lessened greatly.

¶ 10 Asked why he believed that he was ready for conditional release, defendant testified as follows. Since 2006, he had changed greatly in his mental health and spirituality. He was "very strongly in faith with his higher power" and was willing to do whatever was recommended to continue recovering. He had been to treatment at EMHC, including Alcoholics Anonymous (AA), Narcotics Anonymous (NA), "peer-to-peer" discussions of his and others' addictions, and a mental health class. Defendant was working on the third step of the 12-step program. He had been sober since being taken into custody in 2006.

¶ 11 Defendant testified that, if conditionally released, he would maintain his sobriety by continuing with AA and NA and getting counseling. He had obtained information about counseling that was available in Aurora, his home town. Defendant stated that he could comply with a condition that he abstain from alcohol or controlled substances, as his time in custody had given him the will and strength to continue being sober and drug-free.

¶ 12 Defendant testified that he had learned that his problems with alcohol and drugs were related to his mental illnesses. He had been diagnosed with "[b]ipolar, manic depressant [*sic*], suicidal tendencies." From his treatment at EMHC, defendant had learned that bipolar disorder involved a combination of mood swings, anxiety, anger, and suicidal tendencies. He did not experience these symptoms now. His medicines had helped him "very much" with these symptoms. He had learned the importance of continuing to take his prescribed medicines.

¶ 13 Defendant testified that, before starting treatment in 2006, he had never been diagnosed with mental illness but had been prescribed drugs for mental illness. In his "early years," he had been taking medicine for "manic depressant [*sic*] and suicidal tendencies," but his psychiatrist concluded that the medicine was not working, so defendant was switched to electroshock therapy. Defendant received this therapy three days weekly for three years. However, it caused

"brain damage" and affected his thinking. At EMHC, "they tried [electroshock therapy] one time, it worked," but it was too costly, so defendant was medicated instead. Now that he had found that medication could work, he would continue to take his medicines.

¶ 14 Defendant testified that he had waited to request conditional release, because he now felt that he had improved and learned a great deal. He put on presentations to help others to stay free of alcohol and drugs and work on recovery. If the court refused his petition, he would continue his treatment. The medicines had worked for him and he was not going to give them up. He had learned much from his counseling and therapy groups, and he would continue with them as well.

¶ 15 Defendant testified that, upon his release, he planned to live in Aurora. His parents lived there. So did his younger sister, who had "physical problems." Defendant had spoken with her about the possibility of living with her and assisting her. In preparation for his possible release, defendant had looked into treatment in Aurora. Mercy Center had a program with both inpatient and outpatient services. Another program, operated by a former counselor at Mercy Center, had told defendant that he was suitable but that there was currently a waiting list. Defendant would also reapply for social security benefits and get an apartment.

¶ 16 The trial court admitted a short letter that defendant had written to the trial judge on January 7, 2013. In the letter, defendant said that he felt "ready for discharge" and that he was attending psychotherapy and treatment groups daily. Also, he stated, he was hoping to obtain professional health care that had been lacking at EMHC.

¶ 17 Asked whether there was anything else he wanted to tell the court about his readiness for conditional release, defendant testified that his youngest son, with whom he had had no relationship before, had learned that defendant was at EMHC and had said that he wanted to have a relationship with defendant. His son was in prison in Michigan but was due to be

released in December 2013 and wanted defendant to reside with him in Holland, Michigan. Defendant would "highly appreciate it" if the court would allow him to reside with his son. Defendant testified that he knew that if he did not comply with the conditions of his release he would end up back in custody, either incarcerated or recommitted to EMHC.

¶ 18 Defendant testified on cross-examination as follows. Upon his release, he would take all of his required medicines, which did not include lithium. Asked whether he would take lithium, were it prescribed, defendant said that he would not but would take something that worked as well without the bad side effects. Defendant admitted that he was required to take Haldol in amounts of 10 milligrams in the morning and 20 milligrams in the afternoon but that from June 11, 2013, he had been taking only 5 milligrams in the morning and none in the afternoon. He conceded that the choice had been his; however, when asked whether his doctor had wanted him to stay on the prescribed dosage, he responded, "No. She advised me to go to Seroquel."

¶ 19 Defendant testified that he had stopped attending the "Responsibility Group," but that the decision had been made by his social worker. He had also stopped attending the "Coping Skills Group," but he had done so on the advice of the same social worker, who believed that other groups would benefit him more. Defendant admitted that, on his own initiative, he had stopped attending the "Emotion Management Group"; the "Chemical Dependency Group"; the "Obstacles to Recovery Group"; and the "Cognitive Rehabilitation Group."

¶ 20 Defendant testified that, in 2003, his doctor took him off all his medicines and put him on electroshock therapy. In 2006, before he was arrested for his attacks on Sharon, defendant had been drinking "a lot" of alcohol and using "a lot" of nonprescription drugs. He had been addicted to both. He was still addicted, but he was "fighting" his addictions.

¶ 21 Defendant still believed that he had not committed the sexual assault that had led to the NGRI finding. Asked whether he felt any remorse, he testified that he felt remorse "for leading on Sharon *** with rock cocaine and alcohol and sexual behavior, before the incident took place that she is accusing me [*sic*] of sexual assault [*sic*]."

¶ 22 Defendant also conceded that, twice within the previous two months, he had gotten into trouble for violating EMHC rules. Once, he bought chips for another patient ("peer") with his debit card. The other time, he tried to obtain $50 from another peer "for disposing [of] his clothes." Defendant had stuck his finger underneath his shirt to make it look as if he had a gun. He also told the other man that he had a 9-millimeter gun and said to him, "I'll take your clothes and dispose of it [*sic*]." In a third incident, which occurred within the previous six months, defendant pushed an elderly peer to the ground. Also, sometime the previous fall, he had called seven staff members "bitches" after, for no reason, they took a basket of snacks away from him and chased him out of the snack room. He also threatened to have them removed from the unit.

¶ 23 Defendant admitted that he had once left his unit without authorization and gone to the nurse manager's office. In July 2012, he was charged with possessing a peer's debit card. He did not recall having done so but stated, "If I did it, I did it, and I'm willing to take the blame for it." Finally, asked whether, in July 2011, he had been found in possession of a jar of coffee that had "disappeared from one of [his] peers," defendant testified, "That's what they say."

¶ 24 Asked what he thought would happen if he were released and failed to take his medicine, defendant responded that he would probably go back to being depressed and "start having suicidal tendencies." He would "start trying to commit suicide," take "overdoses of medication," start drinking and using drugs, "get angry," and isolate himself and become unsociable.

Defendant testified that he had scars on his wrist and wounds to his stomach and back from suicide attempts. He had attempted suicide at ages 8, 12, 16, 19, 29, and 34. (He was now 49.)

¶ 25 Asked whether his mental illnesses had included hallucinations, defendant testified that EMHC doctors had "documented" him with hallucinations but that his previous psychiatrist had not. Defendant did not report hallucinations at EMHC because he "remember[ed] very well" that he had had none. He conceded that, in 2009, he stopped taking any medicine. Asked whether that had led him to "decompensate" (go back to suicidal thoughts), he testified that he had attempted suicide before he stopped taking his medicine. Defendant explained that he stopped right before he was transferred to the M-unit. He did so because he was not getting "proper communications" from his doctor about the medicines' effectiveness and side effects. The side effects were worsening, so defendant discontinued taking the drugs.

¶ 26 Asked about his expressed interests in living with family in Aurora and in living with his son in Michigan, and how he was "going to do both of those," defendant explained that he would like to live in Aurora for six months to a year, follow up with social security, and get counseling, then, after complying with all conditions, move to Michigan. If he needed more time to comply, he would stay longer in Aurora.

¶ 27 Defendant rested. The State moved for a finding in its favor, contending generally that defendant had not met his burden of proof. Defendant responded briefly, but the page of the transcript containing the response is missing from the record on appeal. In reply, the State agreed with defendant that the trial court "ha[d] heard enough evidence to make a ruling at this point." The trial court then stated:

> "At this time the court *** finds that there have been some positive changes in Mr. Rodriguez's life in the past seven and a half years that he's been at [EMHC].

Mr. Rodriguez, I congratulate you on those positive changes. I think you're a different person today than you were when you came into the system ***.

And having had an opportunity to consider your testimony, the court reaches the conclusion that you are a self-medicator at this time.

It sounds *** as if the doctors have put you on a particular medication regime, and that you're the one who changes it or demands changes to it. And I think that clearly makes you a self-prescriber.

I think in connection with being a self-prescriber, if you were to be released today, I think you would be a danger both to yourself and to others.

That's not to say that you haven't come a long way, because I think you have come a long way, and I think you should be proud of that fact.

But the issue here is whether or not you should be released back to society. I think that with this problem with medication, first of all, you're a danger to yourself before others, but in the immediate situation, to yourself.

I believe, from your testimony, that if you were released, you won't take the medication that's prescribed or you won't take it in the dosage that's recommended through your prescriptions.

I was a little concerned *** that *** apparently with regard to at least half a dozen [therapy] groups, you've terminated participation. And I think that probably the groups have had a positive impact on you.

And I think, from your testimony, you feel like you've reached a point where you don't need the groups anymore. But I think from the testimony, it's clear to me that you do need the groups, and then you discontinue them.

> I'm concerned that if you're released at this time, with the discontinuation of medication, which I believe is what I extract from your testimony, together with the lack of groups on the outside, you put yourself at risk for another suicide attempt.
>
> When you quit a group in a controlled setting like [EMHC], the court is left with the conclusion that, without the structure there, there's no way that you would participate in the groups."

The trial court denied defendant's petition. He timely appealed.

¶ 28 On appeal, defendant contends that the trial court erred both procedurally and on the merits. He asserts first that the court did not follow the proper procedure for deciding a motion for a finding under section 2-1110 of the Code of Civil Procedure (735 ILCS 5/2-1110 (West 2012)). He asserts second that, because he presented a *prima facie* case for granting his petition, the judgment must be reversed and the cause remanded.

¶ 29 We first address the procedural issue, which we must do in order to resolve defendant's argument on the merits of the judgment. As pertinent here, section 2-1110 reads:

> "In all cases tried without a jury, [the] defendant [here, the State] may, at the close of [the] plaintiff's [here, the defendant's] case, move for a finding or judgment in [its] favor. In ruling on the motion the court shall weigh the evidence, considering the credibility of the witnesses and the weight and quality of the evidence. If the ruling on the motion is favorable to the defendant [here, the State], a judgment dismissing the action shall be entered. If the ruling on the motion is adverse to the defendant [here, the State], the defendant [here, the State] may proceed to adduce evidence in support of [its] defense, in which event the motion is waived." 735 ILCS 5/2-1110 (West 2012).

¶ 30 In deciding a section 2-1110 motion, "a court must engage in a two-step analysis." *527 S. Clinton, LLC v. Westloop Equities, LLC*, 403 Ill. App. 3d 42, 52 (2010); see *Kokinis v. Kotrich*, 81 Ill. 2d 151, 155 (1980). First, the court must decide as a matter of law whether the plaintiff has presented a *prima facie* case, *i.e.*, some evidence on every element essential to the cause of action; second, if the plaintiff clears this hurdle, the court must then consider and weigh all the evidence and decide whether sufficient evidence remains to support the plaintiff's *prima facie* case. *527 South Clinton*, 403 Ill. App. 3d at 52. On appeal, if the trial court granted the motion because it found that the plaintiff failed the first part of the test, then our review is *de novo*. *Id.* at 52-53. If the court granted the motion because it found that the plaintiff passed the first part but failed the second part, then we may reverse the judgment only if it is against the manifest weight of the evidence. *Id.* at 53.

¶ 31 Defendant contends that the trial court here failed to engage in the process that *527 S. Clinton* requires. He asserts that, because the State's argument did not explicitly ask the trial court to "weigh" the evidence (step two of the test), the court must have engaged only in the first step of the test and concluded as a matter of law that he did not present a *prima facie* case. Thus, defendant asserts, our review is *de novo*.

¶ 32 We do not accept defendant's characterization of the proceedings. The State did not *explicitly* request that the trial court weigh the evidence, and the court did not *explicitly* engage in the two-step process described in *527 S. Clinton*. However, we must presume that the trial court followed the law, unless the record affirmatively indicates otherwise. *In re Jonathon C. B.*, 2011 IL 107750, ¶ 72. As we read the trial court's explanation of its ruling, the court considered the weight, quality, and credibility of defendant's testimony and held that any *prima facie* case did not survive. Thus, the record does not indicate that the court did not follow the law. Rather, the

court's ruling suggests that it reached the second step of the process. Therefore, we consider whether the court's judgment is against the manifest weight of the evidence. A judgment is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *People v. Tibbetts*, 351 Ill. App. 3d 921, 926 (2004).

¶ 33 At the hearing, defendant testified on his suitability for conditional release and presented no evidence on either discharge or transfer to a nonsecure setting. Therefore, we consider only whether the trial court erred in denying him conditional release.

¶ 34 Under section 5-2-4(g) of the Code, a person committed civilly after a finding of NGRI has the burden to prove his case by clear and convincing evidence. See 730 ILCS 5/5-2-4(g) (West 2012); *People v. Wolst*, 347 Ill. App. 3d 782, 790 (2004). The factors that the trial court may consider include (1) whether the defendant appreciates the harm that he caused by the conduct that resulted in the NGRI finding; (2) whether he appreciates the criminality of conduct similar to that with which he was originally charged; (3) the current state of his mental illness; (4) what, if any, medicines he is taking to control his mental illness; (5) the adverse side effects, if any, of the medicines on him; (6) how long it would take his mental health to deteriorate if he stopped taking prescribed medicines; (7) his history of, or potential for, alcohol or drug abuse; (8) his past criminal history; (9) his specialized physical or medical needs, if any; (10) any family participation or involvement expected on release and the family's willingness and ability to be involved; (11) the defendant's potential to be a danger to himself or others; and (12) anything else the court deems appropriate. 730 ILCS 5/5-2-4(g) (West 2012).

¶ 35 We note that defendant relies heavily on *People v. Robin*, 312 Ill. App. 3d 710 (2000). However, as the State points out, *Robin* was decided when section 5-2-4(g) of the Code placed the burden on the *State* to prove by clear and convincing evidence that the defendant should be

subject to continuing involuntary commitment based on his mental condition. See *id.* at 715; see also 730 ILCS 5/5-2-4(g) (West 1998). Also, as we note later, *Robin* is factually distinguishable. That being said, we turn to defendant's specific arguments.

¶ 36 Defendant takes issue primarily with two aspects of the trial court's explanation of its judgment. The first is the court's characterization of him as a "self-medicator" and "self-prescriber" who, if released, would not take his prescribed medicine or would not take it in the recommended dosages. Defendant contends that his testimony supported no such conclusion. He notes in particular that he testified that, although he did not want to take lithium, he continued to do so until his doctor allowed him to switch to another medicine.

¶ 37 We do not find defendant's argument compelling. Defendant testified that, although his doctor prescribed 30 milligrams of Haldol for him daily, he had on his own initiative decreased the dosage to 5 milligrams a day. He made this choice only 12 days before the hearing. Defendant testified that his doctor later took him off Haldol and replaced it with Seroquel. However, the trial court did not need to equate switching medicines per a doctor's authorization with unilaterally and drastically reducing the dosage of the currently prescribed medicine.

¶ 38 Further, although the record does support defendant's assertion that he stopped taking lithium only after he obtained his doctor's authorization to do so, defendant also testified that, if upon his release he were prescribed lithium, he would not take it. He added that he would take something that worked as well without the side effects, but the trial court could note that defendant could not be certain that there was such a drug—or that his doctor would prescribe it.

¶ 39 Thus, the trial court had reason to be less than confident that defendant would adhere to his medication regimen. This consideration was of course highly pertinent under the statute (factors (4) and (6)). Defendant acknowledged that, if he discontinued his regimen, he could

become a danger to himself and others. He admitted that, in this eventuality, he would probably return to depression, attempts at suicide, and using alcohol and illicit drugs.

¶ 40 Defendant also takes issue with the trial court's statements that he had "terminated [his] participation" in "at least half a dozen [therapy] groups"; that he still needed the groups; and that the lack of structured therapy, combined with the "discontinuation of medication," would put him "at risk for another suicide attempt." Defendant notes that, although he admitted to having stopped participating in six therapy groups, he testified that he left two on the recommendation of his social worker. He also contends that the trial court engaged in "speculation" by predicting that he would not participate in therapy outside the structured environment of EMHC.

¶ 41 Defendant's characterization of his testimony is accurate, but it does not follow that the trial court's reasoning was unsound. Defendant admitted that, on his own initiative, he stopped attending four different therapy groups, even though he testified that group therapy had taught him a great deal. Thus, although the court might have overstated the degree to which defendant had voluntarily forgone group therapy, its essential point received support from defendant's testimony. Defendant's reluctance to pursue therapy in a controlled setting did not augur well for his future treatment outside the structure of EMHC.

¶ 42 Defendant's contention that the trial court relied on "speculation" that was unsupported by expert medical testimony is not well taken. In part this is because defendant relies on *Robin*, which, as we noted, was decided when the State had the burden to prove by clear and convincing evidence that an NGRI acquitee should continue in involuntary commitment. See *Robin*, 312 Ill. App. 3d at 715. Given this burden, it was not surprising that the State's failure to provide expert medical testimony on defendant's future dangerousness (*id.* at 716) was fatal to its position. It does not follow, however, that if the burden is on the defendant to prove that he ought to be

released, then a judgment adverse to him must also be supported by explicit medical opinion supporting a finding of future dangerousness.

¶ 43 Indeed, under the case law, the rule is otherwise. "[R]eviewing courts have long 'recognized that predicting the future dangerousness of an individual is an inexact medical science, and therefore, [they] have held that orders of commitment will not be overturned when there is "a reasonable expectation that the respondent would engage in dangerous conduct." ' " *People v. Youngerman*, 361 Ill. App. 3d 888, 895 (2005) (quoting *In re Knapp*, 231 Ill. App. 3d 917, 920 (1992), quoting *In re Powell*, 85 Ill. App. 3d 877, 880 (1980)).

¶ 44 Moreover, in addition to these considerations, *Robin* is distinguishable on its facts. There, in affirming a judgment granting the defendant conditional release, the reviewing court rejected the State's arguments that (1) the stresses of noninstitutional life would cause the defendant to decompensate and thus become dangerous; and (2) if the defendant failed to take his psychotropic medicine, he could decompensate and become dangerous. *Robin*, 312 Ill. App. 3d at 717. The court rejected the first argument as "speculation" (*id.*) and the second argument as based on a "possibility" (*id.*).

¶ 45 What defendant overlooks is that in *Robin* there was no *evidence* that the defendant would actually succumb to the stress of life on the outside or that he would fail to take his medicine. (Indeed, the only relevant evidence cited on the latter point was that the defendant had faithfully taken his medicines and once asked for an increased dosage because he was concerned that the current dosage was not sufficient (*id.* at 713). Here, the trial court based its concerns on evidence, supplied by defendant, that he had deviated significantly from his medication regimen and that he had, on his own initiative, dropped out of several support groups. Thus, although the trial court's concerns were based on possibilities rather than certainties, they cannot be dismissed

as mere speculation. Given that defendant had the burden to prove his case by clear and convincing evidence, the trial court's concerns had a sufficient evidentiary basis.

¶ 46 Moreover, we agree with the State that considerable evidence that the trial court did not specifically mention in its ruling also supported its judgment. This evidence was straightforward and we shall not presume that the court ignored it. Defendant admitted that, while he had been in EMHC, taking psychotropic medicine and attending numerous therapy groups, he had attempted suicide once and had engaged in several acts of misconduct. These included, in part, threatening a peer with what he claimed was a gun in order (apparently) to steal from him; pushing an elderly peer to the ground; and leaving his unit without authorization. There were also two alleged thefts that he neither admitted nor denied. These antisocial if not criminal acts were highly pertinent to whether defendant was fit for conditional release (factors (11) and (12)).

¶ 47 Further, defendant believed that he had not committed the sexual assault with which he was charged, and he expressed remorse for some of his conduct toward Sharon, but not for the assault itself. This evidence bore adversely on whether defendant appreciated either the harm that he caused or the criminality of conduct such as that with which he was charged (factors (1) and (2)). Finally, he admitted that, if he stopped taking his prescribed medicine, he would become depressed and suicidal (factor (6)) and that he had a long history of substance abuse and could relapse if he did not adhere to his medication regimen (factor (7)).

¶ 48 In sum, the trial court properly held that defendant did not sustain a *prima facie* case for conditional release. Therefore, the judgment of the circuit court of Kane County is affirmed.

¶ 49 Affirmed.