

No. 1-19-0949

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of Cook
)	County
Plaintiff-Appellee,)	
)	
v.)	No. 14 CR 5013
)	
ROMANDO JACKSON,)	
)	Honorable Angela Munari Petrone,
Defendant-Appellant.)	Judge, presiding.
)	

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Hoffman and Rochford concurred in the judgment.

ORDER

¶ 1 **Held:** We affirm the circuit court’s denial of defendant’s petition for conditional discharge over his contention that his counsel rendered ineffective assistance.

¶ 2 In 2014, Romando Jackson stabbed a neighbor once in the torso with a kitchen knife. He was subsequently charged with one count of attempt first degree murder (720 ILCS 5/8-4(a), 720 ILCS 5/9-1(a)(1) (West 2012)) and two counts of aggravated battery (720 ILCS 5/12-3.05 (West 2012)). After a bench trial, Jackson was found not guilty by reason of insanity. The court

remanded Jackson to the Illinois Department of Mental Health and set a *Theim* date of August 28, 2039. See *People v. Theim*, 52 Ill. App. 3d 160 (1977).

¶ 3 In 2017, Jackson filed a petition for conditional release. After a hearing, the circuit court denied the petition. In 2018, Jackson filed two further *pro se* petitions for conditional release, the first of which the court denied and the second of which the court struck because Jackson was represented by counsel. In January 2019, Jackson filed a petition for discharge, conditional release, and/or other privileges. The next month, the court held a hearing on the petition.

¶ 4 The first witness was Dr. Richard Malis, a psychiatrist at Elgin Mental Health Center (Elgin), where Jackson is committed. Dr. Malis testified that Jackson had been his patient for three years. He testified that Jackson had been diagnosed with schizophrenia and alcohol, marijuana, and cocaine use disorders. Jackson's treatment plan at the time of the hearing included daily medication and group therapy, as well as meeting with Dr. Malis monthly.

¶ 5 Dr. Malis testified that Jackson's primary symptom was "delusional thinking, such as feeling that people were trying to harm him when they may not have been." He opined that Jackson did not understand the criminality of his behavior. Jackson maintained a belief that he had stabbed his neighbor in self-defense rather than because of schizophrenic delusions. In sessions with Dr. Malis, Jackson would say that he should have "handled things differently," but Dr. Malis gave little weight to such statements because Jackson "seems aware of what he is supposed to say about these types of things."

¶ 6 Dr. Malis described Jackson's illness as "being in partial remission, and that his symptoms are definitely improved from how they were when he first was arrested." With medication, Jackson had "improved to a significant extent, but there still continues to be some symptoms that are present." Dr. Malis testified that Jackson had been compliant with his

treatments and his symptoms have improved. He also testified that Jackson had successfully completed a substance abuse program. He opined that if Jackson stopped taking his medication, it might take as little as a few days or as long as a few months for his symptoms to reappear.

¶ 7 Dr. Malis testified that Jackson's risk of danger to himself is "in the low category" when he is in a structured facility such as Elgin and taking his medication. However, he opined, "[i]f Jackson were not in a medium secure facility, I think his risk would be high." In particular, he worried that Jackson "would be at high risk for violence again" upon release because of the "very high chance" that he would not continue treatment and would relapse with substance abuse.

¶ 8 Among Dr. Malis's other concerns was the fact that Jackson had an extensive criminal background, including an earlier felony arson charge on which he was found not guilty by reason of insanity. Jackson had also stated during a group therapy session that he wanted to kill a man—no one in particular—before he died. Jackson also got into arguments at Elgin from time to time, often over minor issues such as room searches or the television remote control. Dr. Malis's opinion was that Jackson would be a danger to himself and others if he were released or granted other "off-grounds" privileges.

¶ 9 Next, Jackson testified that he had been diagnosed with paranoid schizophrenia and that Dr. Malis had been his treating doctor for the previous three-and-a-half to four years. Jackson testified that that he was compliant with treatments and had completed a substance abuse program. He also testified that he had received certain "passes" to move about within the secure facility and that he had not abused those privileges.

¶ 10 Jackson maintained that he had acted in self-defense, and that he had wanted his trial counsel to advance that theory of the case rather than insanity. He also claimed that although he had “tried drugs and alcohol,” he never had a substance abuse problem.

¶ 11 When questioned about his statement in therapy that he wanted to kill a man, he explained that the statement was made as part of discussion about the murder of his father and the rape of his mother. “I should have never said that,” Jackson went on. “It was just something that just came in my mind. It was wrong to say.” He denied that he harbors any desire to harm anyone.

¶ 12 Jackson testified that he had come to accept that he has a mental illness and that he must continue treatment indefinitely. However, he opined that he had made excellent progress since being committed to Elgin and that he was ready for outpatient treatment. He testified that he had previously been the patient of two private doctors, each of whom he could go back to if released. He admitted, however, that he had not been in contact with those doctors and was unsure whether they were still in practice.

¶ 13 On cross-examination, Jackson admitted that he had had several altercations with other patients and staff at Elgin over the years. Finally, Jackson read a prepared statement expressing “remorse for [his] crime” and claiming that he had made significant strides with his mental health. The statement also emphasized Jackson’s completion of the substance abuse program and his “hundred percent” cooperation and participation in his treatments.

¶ 14 The court found that Jackson had “failed to meet his burden, to show by clear and convincing evidence, that he is appropriately stable enough to receive passes or to be conditionally released from Elgin.” The court pointed specifically to Dr. Malis’s “credible testimony” that Jackson was at risk for violence if released, Jackson’s continued insistence that

his mental illness did not cause his criminal acts, and his altercations at Elgin. The court denied a subsequent motion to reconsider. This appeal follows.

¶ 15 Jackson argues that his counsel rendered ineffective assistance by failing to request an impartial examination by an independent psychiatrist or clinical psychologist. He also contends that his counsel rendered ineffective assistance by failing to prepare Dr. Malis to testify.

¶ 16 Claims of ineffective assistance of counsel are governed by the test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984) and adopted in *People v. Albanese*, 104 Ill. 2d 504, 525-26 (1984). To succeed on such a claim, a defendant must prove (1) that his attorney’s performance fell below an objective standard of reasonableness, and (2) that there exists a reasonable probability that, absent the errors, the outcome would have been different. *Strickland*, 466 U.S. at 687. A reasonable probability is a probability sufficient to undermine confidence in the outcome. See *Albanese*, 104 Ill. 2d at 525.

¶ 17 As to the first *Strickland* prong, Jackson argues that it was objectively unreasonable for his counsel not to request an independent evaluation. “A petitioner who is acquitted of a criminal charge by reason of insanity and is involuntarily committed to the custody of the Department may petition the court for release [periodically].” *People v. Bledsoe*, 268 Ill. App. 3d 869, 871 (1994) (citing 730 ILCS 5/5-2-4(e) (West 1992)). If the petitioner requests “an impartial examination of the defendant by a psychiatrist or clinical psychologist *** who is not in the employ of the Department of Human Services,” the court “shall” order such an examination and consider the report at the hearing. 730 ILCS 5/5-2-4(f) (West 2018). The legislature’s use of the word “shall” in this context is mandatory. *Bledsoe*, 268 Ill. App. 3d at 872.

¶ 18 Jackson reasons that his counsel must have failed to prepare Dr. Malis to testify. If she had interviewed Dr. Malis before the hearing, she would surely have known that Dr. Malis was

going to recommend that Jackson's petition be denied. Given how Dr. Malis ultimately testified, Jackson's counsel either knew or should have known that Dr. Malis's opinion was not favorable to Jackson's case. Therefore, he argues, it was objectively unreasonable for his counsel not to request the statutorily available independent examination.

¶ 19 However, we need not address whether counsel's failure to request an independent examination was objectively unreasonable because we may resolve an ineffective assistance of counsel claim based only on the prejudice prong. *People v. Patterson*, 2014 IL 115102, ¶ 81. Proof of prejudice requires an affirmative showing of a "reasonable probability that, but for counsel's unprofessional errors, the results of the proceeding would have been different." *Strickland*, 466 U.S. at 687.

¶ 20 The evidence at the hearing established that Dr. Malis had treated Jackson for three to four years, during which time Jackson's symptoms had greatly improved. Dr. Malis testified that Jackson's illness was in "partial remission" and that he was a low threat to himself or others at Elgin. However, Dr. Malis also testified that Jackson was a poor candidate for discharge because there was a significant chance that he would relapse with substance abuse and not follow through with his treatment. Based on that testimony, the circuit court found that Jackson would be a threat to himself and others were he conditionally released or otherwise allowed off the grounds of Elgin.

¶ 21 Jackson's argument, in essence, is that an independent expert may have offered a conflicting opinion which the circuit court could have accepted over Dr. Malis's opinion. See *People v. Sims*, 374 Ill. App. 3d 231, 251 (2007) (when confronted with a battle of the experts, it is "for the trier of fact to evaluate the expert testimonies and weigh their relative worth in context"). However, the mere *possibility* that another doctor might have opined that Jackson was

stable enough to be released is well short of a “reasonable probability” that the result of the hearing would have been different had counsel requested an independent evaluation. See *People v. Howard*, 130 Ill. App. 3d 967, 977 (1985) (“Defendant’s argument that his expert may have reached conclusions from separate tests which would assist the defense [is] mere conjecture and insufficient to show actual prejudice.”) Jackson cannot show a reasonable probability that, but for his counsel’s failure to request an independent examination, the result of the hearing would have been different. Therefore, he cannot satisfy the second prong of the *Strickland* test.

¶ 22 We affirm the judgment of the circuit court because Jackson has failed to establish that his counsel rendered ineffective assistance. We note that our decision in this appeal does not affect Jackson’s statutory right to file future petitions for relief. See 730 ILCS 5/5-2-4(e) (West 2018) (allowing for additional petitions no fewer than 180 days after the most recent hearing).

¶ 23 Affirmed.