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2020 IL App (3d) 180306-U

Order filed October 5, 2020

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2020

| | | |
|---------------------------------------|---|-------------------------------|
| In re THE COMMITMENT OF: |) | Appeal from the Circuit Court |
| SCOTT HASKINS |) | of the 14th Judicial Circuit, |
| |) | Rock Island County, Illinois. |
| (The People of the State of Illinois, |) | |
| |) | |
| Petitioner-Appellee, |) | Appeal No. 3-18-0306 |
| |) | Circuit No. 12-MR-465 |
| v. |) | |
| |) | |
| Scott Haskins, |) | Honorable |
| |) | Frank R. Fuhr, |
| Respondent-Appellant). |) | Judge, presiding. |

JUSTICE CARTER delivered the judgment of the court.
Justices McDade and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's denial of respondent's motion to appoint an independent evaluator did not violate respondent's right to due process.

¶ 2 Respondent, Scott Haskins, was civilly committed under the Sexually Violent Persons Commitment Act (SVP Act) (725 ILCS 207/1 *et seq.* (West 2014)) to the Department of Human Services (Department). Following a second, mandatory, post-commitment reexamination of respondent, the State filed a motion for respondent's continued commitment as previously

ordered. In response, respondent filed a motion for the appointment of an independent evaluator, which the trial court denied. The trial court subsequently found there was no probable cause indicating that respondent was no longer a sexually violent person to warrant an evidentiary hearing on the issue and entered an order to continue respondent's commitment. Respondent appealed, arguing that the trial court erred in denying his motion to appoint an independent evaluator. We affirm.

¶ 3

I. BACKGROUND

¶ 4

On May 7, 2012, the State filed a petition to have respondent committed as a sexually violent person (SVP) pursuant to the SVP Act. *In re Commitment of Scott Haskins*, 2016 IL App (3d) 150767-U, ¶ 4. The petition alleged that in a 1995 case respondent had been convicted of aggravated sexual abuse, in a 1988 case had been convicted of aggravated criminal sexual assault, and had been diagnosed as having two mental disorders that predisposed respondent to commit acts of sexual violence. On May 12, 2014, the State amended its petition, revising respondent's alleged mental disorders to reflect new nomenclature for the disorders: (1) Other Specified Paraphilic Disorder (OSPD), Non-Consenting Females, Nonexclusive Type; and (2) Antisocial Personality Disorder (APD). *Id.* ¶ 4. The State attached to its amended petition a psychological evaluation report submitted by Dr. Barry M. Leavitt and Leavitt's subsequently updated psychological evaluation report.

¶ 5

Leavitt first evaluated respondent on July 25, 2011, to assist in determining whether respondent was an SVP as defined in the SVP Act. Respondent, who was 53-years-old at the time, declined to participate in the evaluation. The evaluation was based on a review of Illinois Department of Corrections (IDOC) records, which included police reports, investigative reports, psychological and psychiatric evaluations, and mental health or treatment reports. Leavitt's

report indicated that respondent had an extensive criminal history dating back to his youth (age 11), which included arson (1968), arson and escape (1977), driving with a revoked or suspended license (1981), burglary (1982), aggravated battery (1983), escape of a felon (1988), and unlawful restraint (1993). As for respondent's sexual offense history, Leavitt noted that in 1988, while on parole for burglary and aggravated battery, respondent committed the offense of aggravated criminal sexual assault against a 12-year-old girl and then escaped from custody when being held on the sexual assault charge. Leavitt further noted that in 1995, respondent forced a 15-year-old girl to have anal and vaginal sex with him against her will and was subsequently convicted of aggravated sexual abuse. Leavitt noted that the records also indicated an early childhood onset of respondent engaging in window peeping (voyeurism) within the timeframe of the onset of his arson behavior. The reports also indicated allegations made by respondent's girlfriend of domestic abuse, which involved violent and sexually sadistic behavior toward her and her children. In 1988, respondent's girlfriend also alleged that respondent had beat her, tied her up, forced her to have sex, and forced her into prostitution.

¶ 6 Leavitt noted that respondent had not participated in any course of sex offender specific treatment and, despite respondent self-reporting that he had an extensive history of alcohol and marijuana abuse and of misusing prescription drugs, respondent had not participated in any alcohol or substance abuse treatment. (Respondent had admitted to using alcohol at the time of both his 1998 and 1995 sexual offenses). Respondent also had not participated in any formal mental health or other relevant treatment services and continued to manifest difficulty in maintaining control over his violent and assaultive tendencies. During his most recent incarceration, respondent had four major disciplinary violations, which included two findings of guilt for assault (2002 and 2008). Leavitt diagnosed respondent with two mental disorders and

indicated that as a result of an adjusted actuarial risk assessment, respondent was found to be a substantial and continuing risk for committing future acts of sexual violence. Leavitt recommended that respondent be found to be an SVP and that he be civilly committed.

¶ 7 The State also attached to the amended petition, Leavitt's subsequently updated psychological evaluation report of December 6, 2013, which reflected Leavitt's diagnosis of respondent in terms of the updated version of the American Psychiatric Association Diagnostic and Statistical Manual for Mental Disorders (DSM 5), which was published in May 2013. Leavitt diagnosed respondent with the mental disorders of OSPD and APD, which were acquired, or congenital conditions affecting respondent's emotional and volitional capacity and predisposed him to commit sexually violent acts, as defined by the SVP Act. Leavitt noted that there was significant evidence that respondent had serious difficulty controlling his behavior as a result of his mental disorders and there was substantial, empirically demonstrated risk prediction factors that indicated that respondent was a significant risk for sexual re-offense. Leavitt indicated that it remained his opinion that there was a substantial probability that respondent will engage in acts of sexual violence in the future unless some clinical intervention took place, and he recommended that respondent be found to be an SVP.

¶ 8 On February 9, 2015, the parties filed a stipulation and agreement without commitment. In addition to Leavitt's evaluations (described above), Dr. Edward Smith's evaluation report of July 31, 2012, was attached to the stipulation. In his report, Smith indicated that respondent politely declined to participate in the evaluation. As a result of reviewing respondent's records, Smith noted respondent's criminal history (similar to that noted by Leavitt). Smith indicated, in part, that while in the 10th grade, respondent ran away from home, set two fires, and peeped in windows. Smith noted respondent's history of antisocial behavior from as early as the age of 10,

when respondent started setting fires. Smith noted respondent's criminal history included respondent being charged with three counts of arson (1973), theft (1975), arson and escape (1977), battery (1980), driving on a revoked or suspended license (1981), criminal damage to property, aggravated battery, and criminal trespass to land (1981), burglary (1981), and two counts of aggravated battery (1983). In 1988, while on parole for burglary and aggravated battery, respondent fondled the vagina of 12-year-old R.C. for the purpose of sexual arousal, and a few weeks later, respondent committed an act of sexual penetration by placing his penis in R.C.'s anus. As a result, respondent was charged with two counts of aggravated criminal sexual abuse and three counts of aggravated criminal sexual assault. He subsequently pled guilty to one count of aggravated criminal sexual assault (with the other charges dismissed) and was sentenced to 10 years of imprisonment. While detained at the Rock Island County Jail on those charges, respondent escaped and was subsequently convicted of escape and sentenced to 10 years of imprisonment. In October 1993, respondent was charged with domestic battery for striking his girlfriend in the chest, with the charge subsequently dismissed. In December 1993, respondent was charged with unlawful restraint after abducting a victim (presumably his girlfriend at the time), beating her up, taking her to his house, and using the threat of force to have sex with her, with the charge subsequently dismissed. In 1993, respondent was also charged with resisting a peace officer and battery. In 1995, respondent convinced the 15-year-old girlfriend of his nephew to accompany him to a motel to meet her boyfriend (respondent's nephew), and once in the motel, respondent forced her to have anal and vaginal sex against her will. Respondent was subsequently convicted of aggravated criminal sexual abuse and sentenced to 30 years of imprisonment.

¶ 9 Smith noted in his report that respondent had been admitted to a Department treatment and detention facility on May 11, 2012. Respondent had not signed a consent for treatment but was participating in the orientation group. Smith indicated that according to group estimates under an actuarial measurement of relative risk for sexual offense recidivism (Static-99R), respondent was assessed as being in the moderate-high risk category for recidivism. On another actuarial risk assessment tool designed to predict sexual and violent recidivism (Static-2002R), respondent was assessed as being in the moderate risk category. Respondent also had eight additional risk factors that were not measured by the risk assessment instruments, which contributed to his risk of sexual re-offense: intimate relationship conflicts, any paraphilic interest, antisocial personality disorder, general self-regulation problems, employment instability, substance abuse, being intoxicated during the offense, and being non-compliant with supervision. Smith noted that respondent had not participated in sex offender specific treatment and did not suffer from a medical condition that would lower his risk of sexual violence. Smith indicated that respondent was 55 years old, but the age-item on the Static-99R assessment accounted for an age-based risk reduction. Smith concluded the following to a reasonable degree of psychological certainty: respondent met the criteria for being diagnosed with the mental disorders of Paraphilia, Not Otherwise Specified, and APD, which predisposed respondent to engage in acts of sexual violence; due to respondent's mental disorders and assessed risk, it was substantially probable that respondent will engage in future acts of sexual violence; and respondent met the criteria to be found an SVP under the SVP Act.

¶ 10 In the parties' agreed stipulation, respondent stipulated that: (1) he had been convicted of aggravated criminal sexual assault and aggravated criminal sexual abuse; (2) the diagnosing doctors were experts in clinical psychology in the evaluation, diagnosis, and risk analysis of sex

offenders and had diagnosed respondent with OSPD and APD; (3) the experts would testify that respondent's mental disorders were congenital or acquired conditions that seriously affected respondent's emotional or volitional capacity and predisposed him to engage in future acts of sexual violence; and (4) the experts would testify that respondent's mental disorders made it substantially probable that respondent will engage in future acts of sexual violence. The stipulation also indicated that both experts would testify to the facts and information contained in their evaluation reports. The trial court found respondent to be an SVP and entered an order without commitment. *Id.*

¶ 11 At the dispositional hearing to determine commitment, Smith testified as an expert in clinical psychology and risk assessment. *Id.* ¶ 6. Smith testified that respondent was convicted in 1998 of aggravated criminal sexual assault of a 12-year-old girl for “ ‘fondling her vagina and forcing his penis into her anus’ ” and was convicted in 1995 of aggravated criminal sexual abuse for “ ‘sexually assaulting the 15-year-old girlfriend of his nephew by forcing her to engage in vaginal and anal sex.’ ” *Id.* ¶ 7. Smith also noted that there had been two additional reports of sexual violence committed by respondent that did not result in convictions. *Id.* Smith additionally testified that while respondent was in the custody of the Department, respondent had received several disciplinary tickets for insolence, trading, and trafficking, and, on one occasion, for physically assaulting another resident. *Id.*

¶ 12 As to respondent's mental condition, Smith testified that respondent had been diagnosed with OSPD, which occurs “when an ‘individual experiences strong sexual arousal and interests involving either sexual urges or sexual fantasies, or engag[es] in sexual behaviors with nonconsenting persons’ for a period of at least six months.” *Id.* ¶ 8. Smith noted the chronic nature of OSPD and respondent's recidivistic nature. *Id.* Smith described APD as a condition in

which by the age of 15 an individual has demonstrated a significant pattern of behavior, attitudes, emotional regulation, and impulse control that increase an individual's willingness to violate laws and rules of society. *Id.* ¶ 9. Respondent had been diagnosed with APD based on his aggressive and violent behavior and his willingness to harm others, which had continued from a young age. *Id.* Smith testified as to a comparison of treatment options for respondent in a secure treatment facility versus those available upon conditional release and opined, within a reasonable degree of psychological certainty, that respondent required commitment to a secure facility for care and treatment. *Id.* ¶ 10.

¶ 13 The trial court found the State had proven that respondent was an SVP and remained a danger to society, noting that if respondent were released into society “he would clearly be a high risk to re-offend.” *Id.* ¶ 11. The trial court concluded that a secure facility was the least restrictive environment in which respondent could be placed. *Id.* On October 30, 2015, the trial court entered an order committing respondent to secure care of the Department for care, control, and treatment until further order of the court. *Id.* Respondent appealed, and this court affirmed the trial court’s order of commitment. *Id.* ¶ 2, 18.

¶ 14 On October 29, 2016, Smith conducted a reexamination of respondent in accordance with section 55 of the SVP Act (725 ILCS 207/55 (West 2016)), which included a clinical interview. *In re Commitment of Scott Haskins*, 2018 IL App (3d) 179413-U, ¶ 5. In the report, Smith concluded that respondent had not made sufficient progress in treatment to be safely managed in the community on conditional release. *Id.* On November 10, 2016, based upon Smith’s reexamination report, the State filed a motion for the trial court’s review of the periodic reexamination report and for a finding of no probable cause to indicate respondent was no longer an SVP. *Id.* ¶ 6. After the probable cause hearing, the trial court found that no probable cause

existed to warrant an evidentiary hearing to determine whether respondent's condition had so changed that he was no longer and SVP. The trial court ordered that respondent's commitment continue. Respondent appealed, and this court affirmed. *Id.* ¶¶ 2, 15.

¶ 15 On November 15, 2017, the State filed a second motion for the trial court's review of the reexamination of respondent and for a finding of no probable cause. The State attached to its motion, Smith's second reexamination report dated October 28, 2017. In his report Smith, reiterated respondent's criminal history and noted that respondent had not ever participated in sex offender or substance abuse treatment. Respondent was actively participating in the treatment foundations and mentoring groups and had completed the distress tolerance, anger management, healthy relationships, and treatment concepts groups. Respondent's current treatment plan listed the following active problems: sexual dangerousness, limited interpersonal and coping skills, deficits in personal insight, responsible living, substance abuse, and discharge planning. Respondent was removed from the sex education group due to excessive absences and began declining in the disclosure group. As the result of the death of respondent's father, respondent began decompensating emotionally and physically. Respondent "black[ed] out" and assaulted another resident. He was found guilty of battery on May 26, 2017, and of fighting on August 8, 2017. Respondent was also given warnings for rule violations, trading and trafficking, and insolence during the reporting period.

¶ 16 Smith further indicated that respondent's goals included completing phase II of the treatment program for SVPs to reduce his risk of recidivism. In discussing respondent's risk, Smith indicated that respondent was in the category of "average risk" (the middle of five risk categories), as measured by the Static-99R and Static-2002R actuarial instruments. Offenders in that category had criminogenic needs in several areas and required meaningful investments in

structured programming to decrease their recidivism risk. Smith again noted respondent's eight additional risk factor that were not measured by the risk assessment instruments that contributed to respondent's risk of re-offense. Smith indicated that the risk assessment instruments and respondent's additional risk factors "support that [respondent] is at a substantial probability to engage in acts of sexual violence." Smith indicated that while respondent had completed a number of ancillary treatment groups, no treatment-based risk reduction was warranted. Some age-based risk reduction was warranted due to respondent's age of 60 years old, but the age-item on the Static-99R accounted for this age-based risk reduction. Smith concluded to a reasonable degree of psychological certainty that respondent had not progressed in treatment to the point where he could be safely managed in the community on conditional release and that respondent should continue to be found to be an SVP.

¶ 17 On February 7, 2018, respondent filed a motion for the appointment of an independent evaluator, arguing that such an appointment was "crucial" to his ability to meet his burden of showing that there was probable cause that he was no longer an SVP. At the hearing on the motion, respondent's attorney argued that the failure to appoint an independent evaluator would violate his right to due process. The attorney for the State noted that respondent had not filed for a discharge or conditional release and that respondent's most recent reexamination report indicated that respondent had a minimum of six rule violations and that respondent was participating in a treatment readiness group but was not yet engaged in sex offender treatment.

¶ 18 The trial court noted that, to date, respondent had not commenced participation in sex offender specific treatment and respondent was "still in the preparing phase of the program so there [was]n't any chance of finding that he's not SVP." The trial court further stated, "I guess the only question I have is whether or not there is any evidence that the science, the accepted

science, has changed substantially.” The trial court further stated, “based on the fact that the treatment program at the facility has not changed, I don’t see how there would be any evidence that the science has changed unless there’s some allegation that the State facilities aren’t keeping up with the current science.” The trial court denied respondent’s request for an independent evaluator. The case was continued for a probable cause hearing.

¶ 19 On May 18, 2018, following a probable cause hearing, the trial court found there was no probable cause to indicate that respondent was no longer an SVP to warrant an evidentiary hearing. The trial court ordered that respondent remain committed for continued care, control, and treatment. Respondent appealed.

¶ 20 II. ANALYSIS

¶ 21 On appeal, respondent argues that he was denied due process when the trial court denied his motion to appoint an independent evaluator and requests that this court reverse the trial court’s finding of no probable cause and remand with direction for the appointment of an independent evaluator. Respondent contends an independent evaluator was “crucial” to his defense against the State’s motion for a finding of no probable cause, but he does not indicate how an independent evaluator would have aided in his “defense.” Rather, he argues that his due process rights were violated because he was prevented from presenting his own evidence that the accepted science had changed substantially. In his reply brief on appeal, respondent acknowledges that the Department’s expert (Smith in this case) was not the “State’s expert” and was free to conclude that respondent should be conditionally released or was no longer an SVP. Respondent argues, however, that without the appointment of an additional expert, the court was left to consider only one expert’s opinion and he was hindered from presenting sufficient evidence that he no longer met the criteria for commitment as an SVP. The State, without

addressing respondent's due process argument, contends that the trial court did not abuse its discretion in denying respondent's motion for an independent evaluator.

¶ 22 The SVP Act authorizes the involuntary civil commitment of “sexually violent persons” to the custody of the Department for “control, care and treatment until such time as the person is no longer a sexually violent person.” 725 ILCS 207/40(a) (West 2014). The SVP Act defines a “sexually violent person” as “a person who has been convicted of a sexually violent offense *** and who is dangerous because he or she suffers from a mental disorder that makes it substantially probable that the person will engage in acts of sexual violence.” 725 ILCS 207/5(f) (West 2014). A “mental disorder” is defined under the SVP Act as a “congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence.” 725 ILCS 207/5(b) (West 2014).

¶ 23 Once an individual has been committed to institutional care under the SVP Act, the Department is responsible for evaluating the individual's mental condition at least once every 12 months. 725 ILCS 207/55(a) (West 2018)). The purpose of periodic reexaminations is to determine whether: (1) the person made sufficient progress in treatment to be conditionally released; and (2) the person's condition had so changed since the most recent periodic reexamination that the person is no longer an SVP. *Id.*; *People v. Botruff*, 212 Ill. 2d 166, 171 (2004) (the purpose of reexamination is to determine whether the person has “progressed enough to be conditionally released or discharged”).

¶ 24 Under section 65(b)(1), a committed person has three options following a periodic reexamination: (1) affirmatively waive his or her right to a hearing, essentially assenting to further commitment; (2) petition the committing court for a discharge and receive a probable cause hearing to determine whether facts exist to believe that since the most recent periodic

reexamination, the committed person's condition had so changed that he or she was no longer an SVP; or (3) neither file a petition for discharge nor a waiver of the right to petition for discharge and receive a probable cause hearing consisting of only a review of the reexamination reports and arguments made by the parties. 725 ILCS 207/65(b)(1) (West 2018)) (if a person does not file a petition for discharge and also fails to waive the right to petition for discharge, "then the probable cause hearing consists only of a review of the reexamination reports and arguments on behalf of the parties"). At the probable cause hearing, if the court determines that probable cause exists to believe that the condition of the committed person has so changed that he or she is no longer an SVP, then the court shall set a hearing on the issue. 725 ILCS 207/65(b)(2) (West 2018).

¶ 25 At the time of a section 55(a) reexamination, "the person who has been committed may retain or, if he or she is indigent and so requests, the court may appoint a qualified expert or a professional person to examine him or her." 725 ILCS 207/55(a) (West 2018). Whether to appoint an independent evaluator in periodic reexamination proceedings is a matter of the trial court's discretion. *Botruff*, 212 Ill. 2d at 176. A circuit court does not abuse its discretion by denying a request for the appointment of an independent evaluator where there is nothing in the record to show that the respondent's case was prejudiced or that the trial court would have found differently had an independent examiner been provided. *Id.* at 177.

¶ 26 In this case, under the terms of the statute, the trial court was not required to appoint an independent evaluator in the periodic reexamination proceedings. See *id.* at 176 (whether to appoint an independent evaluator under section 55(a) of the SVP Act was a matter of the trial court's discretion). According to respondent's contention, however, the trial court violated his right to due process by denying his request for the appointment of an independent evaluator.

¶ 27 Claims of due process violations are questions of law which are reviewed *de novo*. *In re Z.M.*, 2019 IL App (3d) 180424, ¶ 44. In determining whether procedures are constitutionally sufficient, courts balance three factors: “(1) the private interest implicated by the official action; (2) the risk of an erroneous deprivation of that interest through the procedures used and the probable value of the proposed additional or substitute safeguards; and (3) the government’s interest, including the function involved and the administrative or fiscal burdens that would result from the proposed additional or substitute safeguards.” *Botruff*, 212 Ill. 2d at 179 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

¶ 28 Here, the private interest at stake is respondent’s liberty interest. *Id.* (a committed person under the SVP Act is committed to a secure facility and cannot obtain discharge without a favorable hearing in the committing court). As to the second factor, in light of the procedural safeguards provided under the SVP Act, the risk of an erroneous deprivation of respondent’s liberty interest was minimal. *Id.* 179-80 (noting sections 55 and 65(b)(1) of the SVP Act adequately protect a person’s liberty interest by explicitly providing for annual reexaminations, the right to have an attorney represent the committed person at the probable cause hearing, and the right to petition for discharge at any time). Our supreme court has indicated that a respondent may be entitled to the appointment of an independent evaluator where the expert’s services are “crucial” to a proper defense and the respondent’s financial inability to obtain his own expert will prejudice his case. *Id.* at 177. However, “[i]t is rational not to appoint an independent evaluator when a respondent has shown no need for one, especially during perfunctory reexamination proceedings where the respondent has not affirmatively opted to petition for discharge.” *Id.* at 177-78. There would be little probable value in allowing for the appointment of an additional evaluator where there has been no assertion of a reason for doing so. As for the third *Mathews*

factor, requiring trial courts to grant any request by an indigent SVP for the appointment of an independent evaluator, even where there is no indication that such an appoint would add anything substantive to the proceedings, would place an undue administrative and fiscal burden upon the State. Thus, in considering the *Mathews* factors, we conclude that due process did not require the trial court to grant respondent's motion for the appointment of an independent evaluator where respondent failed to indicate how such an appointment would be crucial to his defense and his financial inability to obtain his own expert would prejudice his case.

¶ 29

III. CONCLUSION

¶ 30

The judgment of the circuit court of Rock Island County is affirmed.

¶ 31

Affirmed.