2022 IL App (4th) 210434-U

NO. 4-21-0434

FILED
July 15, 2022
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re COMMITMENT OF PHILIP R. WOLFF	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	McLean County
Petitioner-Appellee,	)	No. 03MR112
v.	)	
Philip R. Wolff,	)	Honorable
Respondent-Appellant).	)	Paul G. Lawrence,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The circuit court's denial of respondent's petition for conditional release was not against the manifest weight of the evidence.

¶ 2 On July 14, 2021, the circuit court denied respondent Philip R. Wolff's petition for conditional release. Respondent appeals, arguing the circuit court erred in denying his petition. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In June 2003, the State filed a petition to have respondent committed as a sexually violent person pursuant to the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/1 *et seq.* (West 2002)). In March 2004, the circuit court adjudicated defendant a sexually violent person and committed him to a Department of Human Services (DHS) treatment and detention facility. On December 18, 2020, respondent filed a petition for conditional release and motion

for the appointment of a qualified expert to examine him. On January 14, 2021, the circuit court appointed Dr. Luis Rosell to examine respondent for purposes of his petition for conditional release.

¶ 5 On June 29, 2021, the circuit court held a hearing on respondent's petition for conditional release. Dr. Amy Louck Davis testified she is a licensed clinical psychologist, a sex offender evaluator, and a sex offender treatment provider employed by DHS who had been assigned to respondent's case for five years. She evaluated respondent once per year, most recently in November 2020. Although employed by the State, Dr. Louck Davis testified she is required to be unbiased in her evaluation. As part of her annual evaluation of respondent, Dr. Louck Davis determined whether respondent had made sufficient progress to be conditionally released.

¶ 6 Respondent's history included an offense he committed while a minor, involving sexual acts against a 3-year-old child and a predatory criminal sexual assault conviction in 1997. In the latter case, defendant performed oral sex on a seven-year-old boy, penetrated the boy's mouth with his penis, and then forced the boy to perform oral sex on the boy's younger brothers. Dr. Louck Davis testified defendant's prior behavior was important to consider to understand respondent's patterns of behavior, his sexual issues, what sexually aroused him, and whether respondent had changed. Respondent's victims were young, accessible, and from whom he could easily gain compliance. Respondent acknowledged he used physical force to hold down his victims and blocked exits so his victims could not leave. In addition to the charged conduct, respondent also admitted he had victimized other children, including a 12-year-old girl and two 9-year-old boys.

¶ 7 As to respondent's personal history, Dr. Louck Davis indicated respondent

experienced many adverse childhood events, including sexual abuse by multiple people, instability in his family's home, and placement in a number of different institutions and foster homes. Dr. Louck Davis also reviewed respondent's records from his time in the Department of Corrections.

¶ 8 According to Dr. Louck Davis, respondent suffered from pedophilic disorder nonexclusive and antisocial personality disorder with paranoid and borderline traits. Respondent had continued to demonstrate sexual interest in children measured by a penile plethysmography (PPG) examination as recently as 2018. Respondent indicated he had been working to address his sexual arousal issues but continued to experience sexual thoughts, urges, and fantasies involving children. As to respondent's antisocial personality disorder, Dr. Louck Davis indicated the disorder caused respondent difficulty following rules and dealing with authority. Dr. Louck Davis stated respondent's pedophilic disorder and antisocial personality disorder interact and impact his risk of reoffending. In addition to pedophilic disorder and antisocial personality disorder, the doctor diagnosed defendant with post-traumatic stress disorder (PTSD), which while not correlated with a risk for future sexual offending was still an important factor to consider in determining his readiness for conditional release.

¶ 9 Dr. Louck Davis performed a risk assessment on respondent every year. Most recently, she used the Static-99R and Static-2002R actuarial instruments when performing respondent's risk assessment. Respondent's score on the Static-99R was a "5", which was in the second highest risk category for sexually reoffending. Dr. Louck Davis indicated a person who scored a "5" would be more likely to sexually reoffend than 85% of the convicted sexual offenders in prison. However, she stated this does not mean respondent as an individual is 85% more likely to reoffend. On the Static-2002R assessment, respondent received a score of "7,"

which falls within the highest risk range for reoffending—the well above average range.

¶ 10 Dr. Louck Davis testified completing the two actuarial assessments was not the end of her analysis. The doctor described respondent's risk assessment as a "pie" with different pieces having different values. The actuarial risk assessment tools are only one piece of the "pie." Dr. Louck Davis indicated she also looks at empirical risk factors, protective factors, and any individual issues which may not fall under the other factors.

¶ 11 As for empirical risk factors, Dr. Louck Davis noted respondent had deviant sexual interests and the presence of a personality disorder. He also had childhood behavioral problems, childhood sexual abuse, was separated from his family at an early age, and lacked opportunities for "like adult healthy relating." According to Dr. Louck Davis, the presence of empirical risk factors increases the chance an individual will sexually reoffend.

¶ 12 Dr. Louck Davis indicated protective factors include a person's age, medical issues, and completion of sex offender treatment. The doctor noted respondent was past 40. According to Dr. Louck Davis, a person's sexual behavior tends to decrease after the age of 40. However, the doctor also stated respondent did not have any current medical conditions rendering him unable or less likely to reoffend. Regarding sex offender treatment, Dr. Louck Davis indicated respondent had only completed two of five phases of treatment and was no longer actively participating in treatment. Respondent stopped actively participating in sex offender treatment in October 2020.

¶ 13 Treatment providers at the facility made efforts to encourage respondent to reengage with treatment. During one such encounter in March 2021, respondent became emotional and did not want to engage in the conversation. Dr. Louck Davis indicated respondent was verbally aggressive, hostile, and made it known he was upset and felt he was not being given

the opportunities he believed he needed for treatment of his trauma. Respondent perceived he had been kicked out of the treatment group, people were against him, and people were laughing at his trauma. Dr. Louck Davis indicated this encounter exemplified some of respondent's ongoing issues, including his difficulty with authority, his perception issues, which included his feeling he had been kicked out of treatment as opposed to him saying he no longer wanted to attend the group, and his emotional dysregulation, which has led to him being hostile and verbally aggressive.

¶ 14 According to Dr. Louck Davis, the treatment respondent could receive on conditional release would be significantly less than what he could receive in the treatment and detention facility where respondent had around-the-clock care and programming to assist with his treatment. With regard to outpatient treatment, Dr. Louck Davis stated respondent would only receive an hour of individual treatment and an hour and a half of group treatment per week. During the vast majority of respondent's time on conditional release, he would be alone and would be expected to manage any risk with interventions developed through a relapse prevention plan. However, while respondent had started the process of developing a relapse prevention plan and may have done independent work with regard to a plan, he had not officially completed his relapse prevention plan.

¶ 15 As for respondent's failure to complete sex offender treatment, Dr. Louck Davis indicated respondent had made changes and learned a lot but had "not yet reached the point of opportunity to put everything into action that would make a difference in terms of reducing his risk for sexual reoffense." The doctor indicated respondent had done a lot of personal work and had made important changes regarding how he sees the world and himself. However, according to Dr. Louck Davis:

"The things that matter in terms of risk reduction for conditional release consideration, he's not yet completed those aspects. There is a lot of preliminary work that leads into it, and he has done [*sic*] a long time been working on that preliminary work. He hasn't had the opportunities yet, hasn't taken the opportunities in some cases, to get into the specifics that really impact the risk that make the difference and make this a risk-reducing factor."

¶ 16 According to Dr. Louck Davis, the determination whether someone has made sufficient progress in treatment to be eligible for conditional release is not simply a matter of checking off boxes to determine whether a respondent has made sufficient progress in treatment. Instead, an examiner is trying to determine whether the changes made by an offender reduce his risk of reoffending. Based on an examination of all the information available, Dr. Louck Davis opined respondent (1) had not progressed enough in his treatment where his risk of committing a future act of sexual violence was not substantially probable and (2) should remain at the residential treatment facility for further secure care and sex offense specific treatment.

¶ 17 Dr. Luis Rosell, a clinical and forensic psychologist and licensed evaluator for sex offenders in Illinois, was called to testify by respondent. Dr. Rosell indicated he met with respondent virtually for between 90 to 120 minutes, which is typical for his evaluations of sexually violent persons, as part of his evaluation of respondent. Dr. Rosell also determined respondent suffered from pedophilic disorder, antisocial personality disorder, and PTSD. Like Dr. Louck Davis, Dr. Rosell evaluated respondent with the Static-99R assessment tool. Respondent scored a "5," which placed him in the above average range for reoffending. According to Dr. Rosell, if followed for 5 years, an offender who scored a "5" would have a recidivism rate of 11.8 percent. If followed for 10 years, an offender who scored a "5" would

have a recidivism rate of 12.9 percent. According to Dr. Rosell, the majority of the individuals who score a "5" do not recidivate. Dr. Rosell found it significant respondent had been in sex offender treatment between 15 and 17 years and reached the third phase of treatment. According to Dr. Rosell:

> "So, if [respondent] would have just done let's say 22 years at [a prison] and never did a day of treatment, *** and he was 41, like he is, and didn't do a day of treatment, he would be a 5, he would have the same recidivism rate, but he is not the same person as somebody who didn't do a day of treatment. He has done a lot of treatment, had a treatment program for 17 years. And that is not even addressed in the actuarial instrument."

Other than the actuarial statistics, Dr. Rosell also took into consideration respondent's treatment and the fact respondent was open and honest about having thoughts about, interest in, and attraction to children. The doctor indicated this was unlikely to be eliminated. However, Dr. Rosell testified eliminating these thoughts should not be the standard for conditional release. According to Dr. Rosell:

> "The standard is to say is this individual able to manage and control and understand that you cannot engage in any of the behaviors that he engaged in the past. And we know based on research, these low recidivism rates, that people do not continue offending. We know that people who have attraction to children who—we know that because of all the child pornography cases we have had over the last 15 years, there are a lot of people who look at this stuff all the time, have an attraction and do not engage in the behaviors.
>
> So, all these things put together, to think that just because you have the

thoughts, that is going to automatically lead you to offending, that is incorrect. And none of the research demonstrates that."

¶ 18 Dr. Rosell indicated respondent could be brought back into detention if he did not follow the strict rules established for conditional release and noted he would have to continue treatment, both group and individual, while on conditional release. Dr. Rosell testified it was his opinion, within a reasonable degree of professional certainty, respondent was a suitable candidate for conditional release and respondent's disorders did not prohibit him from being successful on conditional release. Dr. Rosell noted countless people not in detention have an attraction to children but have not engaged in any criminal behavior based on that attraction. According to Dr. Rosell, defendant had done enough treatment to understand what he needs to do while on conditional release.

¶ 19 On cross-examination, Dr. Rosell stated the empirical risk factors Dr. Louck Davis included in her report only indicate a small increase in a sex offender's risk of reoffending. According to Dr. Rosell, if the average sex offender who scored the same as respondent on the actuarial assessment tool had a 12% chance of reoffending over 10 years with a slight increase based on empirical factors, the average sex offender still had a small chance of reoffending. However, Dr. Rosell indicated the results of the actuarial assessments are only based on 10 factors, which means the tests do not consider everything. Dr. Rosell admitted this is a limitation of the actuarial tools and experts are needed to conduct sex offender evaluations.

¶ 20 Dr. Rosell believed respondent would comply with required treatment on conditional release because he would not have a choice. However, he had to acknowledge respondent removed himself from treatment in October 2020 and was no longer participating in treatment. Dr. Rosell was unaware of an incident where a treatment team leader had recently

approached respondent and asked him to re-engage with treatment, but respondent refused. Dr. Rosell said this did not change his opinion because respondent would not forget everything he learned in treatment simply because he was not currently in treatment. Dr. Rosell acknowledged respondent had not completed the third phase of his treatment or developed or implemented a formal relapse prevention plan. Dr. Rosell also conceded he did not know respondent did not participate in treatment from 2006 to 2015.

¶ 21 On redirect examination, Dr. Rosell testified respondent's way of thinking—in terms of what he had done and what he would do in the future—had changed. The doctor testified respondent did not need to formally create a relapse prevention plan or complete sexual offender treatment to be successful on conditional release.

¶ 22 The circuit court denied the petition for conditional release and provided the following explanation. Respondent committed the serious offense which led to his detention when he was 18. Both experts agreed respondent had pedophilic disorder and antisocial personality disorder. Defendant also was in the second highest risk category on the Static-99R assessment and the highest risk category on the Static-2002R assessment. While respondent had done some good things in treatment, the court was troubled by respondent's failure to engage in treatment between 2006 and 2015 and since October 2020. The court stated respondent's current failure to engage in treatment made it difficult to find he had made sufficient progress. The court also found respondent's lack of a relapse prevention plan was significant.

¶ 23 This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 Pursuant to section 60(a) of the Act (725 ILCS 207/60(a) (West 2020)), a person committed to institutional care under the Act may petition the circuit court to modify the

commitment order by authorizing conditional release. Section 60(d) of the Act states:

> "The court, without a jury, shall hear the petition as soon as practical after the reports of all examiners are filed with the court. The court shall grant the petition unless the State proves by clear and convincing evidence that the person has not made sufficient progress in treatment to the point where he or she is no longer substantially probable to engage in acts of sexual violence if on conditional release. In making a decision under this subsection, the court must consider the nature and circumstances of the behavior that was the basis of the allegation in the petition under paragraph (b)(1) of Section 15 of this Act, the person's mental history and present mental condition, and what arrangements are available to ensure that the person has access to and will participate in necessary treatment." 725 ILCS 207/60(d) (West 2020).

"[I]t is within the province of the trier of fact, not the mental health professionals, to weigh all the evidence and witness credibility." *In re Commitment of Rendon*, 2014 IL App (1st) 123090, ¶ 32, 22 N.E.3d 1195.

¶ 26 The circuit court in this case found the State showed by clear and convincing evidence respondent had not made enough progress where respondent was no longer substantially probable to engage in acts of sexual violence if he was placed on conditional release. We will not disturb a circuit court's decision to deny a petition for conditional release unless the court's decision is against the manifest weight of the evidence. *In re Commitment of Sandry*, 367 Ill. App. 3d 949, 978, 857 N.E.2d 295, 318 (2006). A decision is against the manifest weight of the evidence if the opposite conclusion is clearly apparent. *Sandry*, 367 Ill. App. 3d at 978, 857 N.E.2d at 318.

¶ 27 Both experts in this case agreed respondent had pedophilic disorder and antisocial personality disorder. We note respondent admitted he was still attracted to children. Dr. Louck Davis, who had been assessing respondent for five years, opined it was still a substantial probability respondent would reoffend if he was placed on conditional release. Dr. Rosell, who was assigned by the circuit court to evaluate respondent, testified he spent between 90 minutes and 120 minutes with respondent in a virtual interview. Dr. Rosell opined it was not substantially probable respondent would reoffend if given conditional release.

¶ 28 Based on our review of the record, the trial court likely determined Dr. Rosell did not have a good grasp of the facts in this case. For example, Dr. Rosell indicated he was not concerned respondent had not completed sex offender treatment because he had been in treatment for 17 years. However, Dr. Rosell was not aware respondent had not engaged in treatment between 2006 and 2015. Dr. Rosell also indicated he believed respondent would engage in treatment on conditional release because he would not have a choice. Yet, Dr. Rosell was unaware respondent was not currently engaged in sex offender treatment or that he had refused to reengage in treatment when approached by a treatment team leader in March 2021.

¶ 29 Respondent argues the circuit court's decision was against the manifest weight of the evidence. Respondent's argument is primarily based on his scores on the actuarial assessment tools—the Static-99R and the Static-2002R. According to respondent, the State's own expert, Dr. Louck Davis, reported respondent's scores on the Static-99R and Static-2002R actuarial assessments predicted respondent's recidivism rate to be as low as 13.8% within 5 years and as high as 32.3% within 10 years. Respondent also points to the testimony of his own expert, Dr. Rosell, who testified respondent's recidivism risk was as low as 11.9% over 5 years and only as much as 12.9% over 10 years according to respondent's score on the Static-99R

actuarial assessment.

¶ 30 However, both experts in this case indicated the actuarial assessments were not the only factors to be considered in determining the risk of respondent reoffending on conditional release. As a result, the experts and the circuit court had to consider more information than just the results of the actuarial assessment tools. Dr. Rosell agreed this was why experts were needed to conduct sex offender evaluations.

¶ 31 The circuit court was presented with a situation where the two expert witnesses disagreed as to whether respondent was substantially probable to engage in acts of sexual violence if he was conditionally released. Based on our review of the record, the circuit court's denial of respondent's petition for conditional release was not against the manifest weight of the evidence because the opposite conclusion is not clearly apparent. Dr. Louck Davis testified it was her expert opinion that a substantial probability existed respondent would reoffend if placed on conditional release, both experts agreed respondent still suffered from pedophilic and antisocial personality disorders, respondent admitted he was still attracted to children, respondent did not have a formal relapse prevention plan, and respondent failed to even engage in sex offender treatment while seeking conditional release.

¶ 32 III. CONCLUSION

¶ 33 For the reasons stated, we affirm the circuit court's ruling denying respondent's petition for conditional release.

¶ 34 Affirmed.