

Illinois Official Reports

Appellate Court

People v. Hardig, 2025 IL App (3d) 220444

Appellate Court
Caption

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v.
CHARLES D. HARDIG, Defendant-Appellant.

District & No.

Third District
No. 3-22-0444

Filed

March 31, 2025

Decision Under
Review

Appeal from the Circuit Court of Will County, No. 02-CF-140; the
Hon. Kenneth Zelazo, Judge, presiding.

Judgment

Affirmed in part and reversed in part.

Counsel on
Appeal

Michael J. Renzi, Public Defender, of Joliet (Jason Strzelecki and
Madeline Utter, Assistant Public Defenders, of counsel), for appellant.

James W. Glasgow, State's Attorney, of Joliet (Patrick Delfino,
Thomas D. Arado, and Gary F. Gnidovec, of State's Attorneys
Appellate Prosecutor's Office, of counsel), for the People.

Panel

JUSTICE HOLDRIDGE delivered the judgment of the court, with
opinion.
Justices Davenport and Anderson concurred in the judgment and
opinion.

OPINION

¶ 1 The defendant, Charles D. Hardig, was accused of killing his father in 2002. However, he was remanded to the custody of the Department of Human Services (DHS) following a finding of unfitness. After several years of involuntary custodial treatment, DHS recommended the defendant be conditionally released, and the defendant was transferred to a private facility for continued medical care and mental health treatment. The State then moved to impose additional conditions on the defendant's conditional release, and the court granted the State's motion, barring contact between the defendant and his aunt and preventing the defendant from accessing the Internet. The defendant appealed, arguing the conditions were without sufficient basis and against the manifest weight of the evidence.

¶ 2 I. BACKGROUND

¶ 3 On September 6, 2006, the defendant was convicted of the murder of his father in 2002 and sentenced to 52 years in the Illinois Department of Corrections. The defendant's conviction was reversed based on irregularities in the jury deliberation process. *People v. Hardig*, 391 Ill. App. 3d 1132 (2009) (table) (unpublished order under Illinois Supreme Court Rule 23). On remand, the defendant was found unfit to stand trial, and he was transferred to the custody of DHS. The circuit court held a discharge hearing pursuant to section 104-25(d) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/104-25(d) (West 2014)) on March 4, 2015, at which the defendant claimed he was not guilty by reason of insanity. The court found that the defendant was "not not guilty" and remanded the defendant for further treatment for a period of five years. See *id.* § 104-25(d)(2). We affirmed the court's judgment. *People v. Hardig*, 2017 IL App (3d) 150292-U, ¶ 50.

¶ 4 On March 5, 2020, the State initiated a discharge hearing under the Mental Health and Developmental Disabilities Code (405 ILCS 5/1-100 *et seq.* (West 2020)) to determine whether the defendant was subject to involuntary commitment or whether he posed a serious threat to public safety. See 725 ILCS 5/104-25(g)(2) (West 2020). At that hearing, the court heard testimony concerning the defendant's ongoing unfitness, which stemmed from the defendant's diagnosis of schizophrenia. Dr. Timothy Cummings, a psychologist representing DHS who was familiar with the defendant's ongoing treatment, testified that the defendant continued to suffer from delusions and needed a "structured, regulated" environment. Based on the defendant's progress in treatment, the treatment team recommended his conditional release to Lake Park Center, a private treatment facility. Dr. Cummings described Lake Park Center as a "very, very structured facility" with "a lot of group programming available and a lot of classes that *** compliment [*sic*] the ones that we present to our patients." The court determined that the defendant was mentally ill and subject to involuntary commitment and required the defendant to move separately for conditional release.

¶ 5 Accordingly, the defendant filed a motion seeking conditional release to Lake Park Center. The court held a hearing on the motion, and, after hearing testimony from additional witnesses, including Lake Park Center's admissions director, the court granted the defendant's request for transfer. On October 9, 2020, the court entered an order stating that the defendant was "conditionally released to Lake Park Center, subject to any requirements of the Department of Human Services."

¶ 6 In 2021, the defendant began to experience medical issues, which could not be treated at Lake Park Center, and he was transferred to another private facility for treatment of those issues. However, that facility was unable to treat the defendant's mental health condition, so the defendant was transferred a third time to another private facility, Forest Edge, on September 7, 2022. Shortly thereafter, the State filed a motion requesting that the court set additional conditions for the defendant's conditional release. Specifically, the State requested that the defendant be prohibited from accessing the Internet, including Facebook, and that he be prohibited from having contact with Bernie Hardig.

¶ 7 A hearing was held on the State's motion on September 26, 2022. At that hearing, the State explained that Bernie Hardig was the defendant's aunt, and the defendant had attempted to contact her through Facebook. Bernie Hardig declined the defendant's request and instead contacted the State, requesting that he be prohibited from contacting her further. The court granted the State's motion over the defendant's objection, barring the defendant from (1) contacting Bernie Hardig and (2) accessing the Internet. The defendant filed a motion to reconsider, which was denied. The defendant appealed.

¶ 8 II. ANALYSIS

¶ 9 On appeal, the defendant challenges the imposition of additional conditions of his conditional release. He claims the court erred when it imposed those conditions "without sufficient reasoning or evidence presented" and complains the conditions restrict his rights under the First Amendment. U.S. Const., amend. I.

¶ 10 Following a finding that a defendant is "not not guilty" of murder, the Code authorizes the court to remand a defendant to the custody of DHS for treatment for a period of up to five years. 725 ILCS 5/104-25(d) (West 2022). After that time has elapsed, the Code authorizes the court to conduct an additional hearing to determine "whether [the defendant] is subject to involuntary admission under the Mental Health and Developmental Disabilities Code or constitutes a serious threat to the public safety." *Id.* § 104-25(g)(2). The statute provides three options. The defendant may be (1) found fit, and the matter set for trial (*id.* § 104-25(g)(1)), (2) found unfit, and subjected to involuntary admission (*id.* § 104-25(g)(2)), or (3) released (*id.* § 104-25(g)(3)). If the defendant is involuntarily committed, he must be "treated in the same manner as a civilly committed patient for all purposes, except that the original court having jurisdiction over the defendant shall be required to approve any conditional release or discharge of the defendant." *Id.* § 104-25(g)(2). Further, the defendant must be "placed in a secure setting unless the court determines that there are compelling reasons why such placement is not necessary." *Id.*

¶ 11 As a threshold matter, the State disputes whether the defendant was ever conditionally released. In the State's view, the defendant's relocation from DHS custody to Lake Park Center was not a conditional release but a "transfer" or a "move" to a "less restrictive inpatient setting." However, the defendant remained subject to all DHS restrictions "as if he were still in a DHS facility."

¶ 12 We find the State's position unpersuasive for two reasons. First, the record reflects the court's intention to conditionally release the defendant. At the defendant's discharge hearing, Dr. Cummings specifically recommended conditionally discharging the defendant to Lake Park Center. The defendant later petitioned the court for conditional release, and, following a separate hearing and testimony from the staff at Lake Park Center, the motion was granted.

The court ruled that the defendant was to be conditionally released, and its order on the matter reflected that ruling. Second, the statute does not contemplate a defendant's transfer from a DHS-controlled facility except through either conditional release or discharge. See *id.*; *People v. Cooper*, 132 Ill. 2d 347 (1989) (despite failing to use the words "conditional release," the court intended to grant conditional release, and the statute contemplates no other remedies). We find, therefore, that the defendant was conditionally released.

¶ 13 The parties cite no cases reviewing the imposition of conditions of release, following a finding of prolonged unfitness. However, the State and the defendant agree we should review the circuit court's ruling under the manifest weight of the evidence standard. *People v. Cross*, 301 Ill. App. 3d 901, 911-12 (1998). A decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented. *People v. Deleon*, 227 Ill. 2d 322, 332 (2008).

¶ 14 There are many circumstances wherein a court may be called upon to impose conditions of release. When a defendant is detained pretrial, the court must weigh, *inter alia*, the nature and circumstances of the offense, the evidence against the defendant, the defendant's history and characteristics, any potential threat the defendant may pose to the community or to a specific person, and whether the defendant might attempt to obstruct the criminal justice process before the court determines whether detention is warranted or whether to impose conditions of release. 725 ILCS 5/110-5(a) (West 2022). When a defendant is placed on probation, the court can impose a broad range of conditions "in addition to other reasonable conditions relating to the nature of the offense or the rehabilitation of the defendant as determined for each defendant in the proper discretion of the Court." 730 ILCS 5/5-6-3(b) (West 2022). After a person who has been deemed sexually violent reaches "a certain point in treatment so that he can be safely managed in the community," he may be conditionally released, subject to a list of restrictions set by the court and the rules of DHS. *In re Commitment of Rendon*, 2014 IL App (1st) 123090, ¶ 25; 725 ILCS 207/40(b)(4), (5) (West 2022). Regardless of the circumstance, in deciding on the propriety of a particular condition to be imposed, "whether explicitly statutory or not, the overriding concern is reasonableness." *In re J.W.*, 204 Ill. 2d 50, 78 (2003).

¶ 15 We find the circumstances of release here closely analogous to conditional release from DHS custody following acquittal by reason of insanity. See 730 ILCS 5/5-2-4(a) (West 2022). When a defendant is found not guilty by reason of insanity, he or she may be remanded to the custody of DHS on an inpatient basis and placed in a secure setting. *Id.* When that person is no longer suited for inpatient care but still in need of mental health services, the court may conditionally release the person "under such conditions as the Court may impose which reasonably assure the defendant's satisfactory progress in treatment or habilitation and the safety of the defendant, the victim, the victim's family, and others." *Id.* § 5-2-4(a-1)(D). The statute provides a nonexhaustive list of possible conditions, including, *inter alia*, "that the defendant not contact the victim of the offense that resulted in the finding or verdict of not guilty by reason of insanity or any other person." *Id.*

¶ 16 Here, the court imposed two conditions, prohibiting the defendant from (1) contacting his aunt and (2) using the Internet, including social media. We analyze each condition in turn.

¶ 17 The no-contact condition was imposed following the State's proffer that the defendant had attempted to contact the alleged victim's sister, the defendant's aunt, and she requested the restriction. The court was called on to weigh the defendant's interest in contacting a family member against that family member's expressed interest not to be contacted by the defendant,

and the court ordered the defendant not to have further contact with his aunt. We find this condition was reasonably related to the goal of furthering the safety of the victim's family and tailored to the conditions of the defendant's conditional release. Moreover, while the defendant's freedom to communicate was affected by the condition, a defendant does not generally maintain a significant interest in associating with the victims of his alleged crimes prior to trial. See *People v. Deleon*, 2020 IL 124744, ¶ 31. The no-contact condition was thus not against the manifest weight of the evidence.

¶ 18 By contrast, the order prohibiting the defendant from accessing the Internet implicated broad first amendment rights.

“While in the past there may have been difficulty in identifying the most important places (in a spatial sense) for the exchange of views, today the answer is clear. It is cyberspace—the ‘vast democratic forums of the Internet’ in general, *Reno v. American Civil Liberties Union*, 521 U.S. 844, 868 *** (1997), and social media in particular.” *Packingham v. North Carolina*, 582 U.S. 98, 104 (2017).

The United States Supreme Court in *Packingham* struck down a North Carolina law banning registered sex offenders from using social media. *Id.* at 108. In 2019, the Illinois Supreme Court, applying *Packingham*, struck down a lower court's imposition of a similar restriction as a condition of probation. *People v. Morger*, 2019 IL 123643, ¶ 59. In *Morger*, our Supreme Court announced that when a condition of probation restricts a constitutional right, it must be narrowly drawn and reasonably related to a compelling interest in reformation and rehabilitation. *Id.* ¶ 46. Considerations that bear upon the reasonableness of such a condition

“include (1) the nature of the offense, (2) the rehabilitation of the defendant, (3) whether the condition of probation reasonably relates to the rehabilitative purpose of the legislation, (4) whether the value to the public in imposing the condition of probation manifestly outweighs the impairment to the probationer's constitutional rights, and (5) whether there are any alternative means that are less subversive to the probationer's constitutional rights but still comport with the purposes of conferring the benefit of probation.” *Id.* ¶ 47.

¶ 19 Here, the defendant was not on probation. However, as noted above, we find the court's goals broadly analogous to the goals articulated by the statute governing defendants found not guilty by reason of insanity. The goal of the court under such circumstances is to “reasonably assure the defendant's satisfactory progress in treatment or habilitation and the safety of the defendant, the victim, the victim's family, and others.” 730 ILCS 5/5-2-4(a-1)(D) (West 2022). The court in this case identified no connection between these goals and the restriction of the defendant's right to communicate through or access the Internet. The court's ban was also broader than the one challenged in *Packingham* and *Morger*, since it included not only all social media sites, but the entire Internet. We must therefore find that it was not narrowly tailored or reasonably related to any public interest, and its imposition was against the manifest weight of the evidence because it was both unreasonable and unrelated to the evidence presented. *Deleon*, 227 Ill. 2d at 332.

¶ 20 Accordingly, we affirm the court's imposition of the condition prohibiting contact between the defendant and his aunt but vacate the condition barring the defendant's use of the Internet.

¶ 21

III. CONCLUSION

¶ 22

The judgment of the circuit court of Will County is affirmed in part and reversed in part.

¶ 23

Affirmed in part and reversed in part.