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).

2023 IL App (4th) 210469-U

NO. 4-21-0469

FILED
March 21, 2023
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re THE COMMITMENT OF KEVIN W. STANBRIDGE, a Sexually Violent Person	)	Appeal from the Circuit Court of Adams County No. 05MR45
(The People of the State of Illinois, Petitioner-Appellee, v. Kevin W. Stanbridge, Respondent-Appellant).	)	Honorable John C. Wooleyhan, Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Turner and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's dismissal of respondent's section 2-1401 petition because the claims (1) could have been raised earlier and (2) lacked merit.

¶ 2 In May 2005, the State filed a petition to commit respondent, Kevin W. Stanbridge, to the Illinois Department of Human Services pursuant to the Sexually Violent Persons Commitment Act (Act). 725 ILCS 207/15 (West 2004). In October 2007, a jury found respondent to be a sexually violent person (SVP). *Id.* § 5(f). Respondent appealed, and in November 2008, this court affirmed the trial court's judgment. *In re the Detention of Kevin W. Stanbridge*, No. 4-08-0163 (2008) (unpublished order under Illinois Supreme Court Rule 23).

¶ 3 In April 2020, respondent, while represented by counsel, filed a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2010)), in which he argued he was denied effective assistance of counsel and

suffered due process violations in both his original criminal trial and in his commitment proceedings. The trial court initially struck the *pro se* petition but reinstated it in June 2021 after granting respondent's motion to represent himself.

¶ 4 In July 2021, the trial court dismissed respondent's section 2-1401 petition because (1) his claims related to his original criminal conviction were barred by collateral estoppel and (2) his claims related to the proceedings under the Act were barred by the applicable statute of limitations.

¶ 5 Respondent appeals, arguing the trial court erred by dismissing his April 2020 section 2-1401 petition because all of his claims, attacking both his original criminal conviction and the SVP determination, were newly discovered and therefore not barred by any statute of limitations. We disagree and affirm.

¶ 6 I. BACKGROUND

¶ 7 A. Respondent's Detention

¶ 8 In November 1999, the State charged respondent with aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 1998)). Following a jury trial, respondent was convicted and later sentenced to seven years in prison. In May 2004, this court reversed respondent's conviction and remanded the case for a new trial. *People v. Stanbridge*, 348 Ill. App. 3d 351, 810 N.E.2d 88 (2004). Following an April 2005 retrial, a jury convicted respondent of aggravated criminal sexual abuse. Respondent appealed, and this court affirmed that conviction. *People v. Stanbridge*, No. 4-05-0585 (2007) (unpublished order under Illinois Supreme Court Rule 23).

¶ 9 In May 2005, the State petitioned the trial court to detain respondent pursuant to the Act. In July 2005, the court appointed Betsy Bier as counsel for respondent in the commitment proceedings.

¶ 10 Following an October 2007 trial on the State's petition, a jury adjudicated respondent an SVP as defined by section 5(f) of the Act (725 ILCS 207/5(f) (West 2004)). In February 2008, the trial court ordered respondent committed to a secure facility for institutional care until "such time as [r]espondent is no longer a sexually violent person."

¶ 11 Later in February 2008, respondent appealed, and the trial court appointed Todd Eyler to represent him on appeal. During the pendency of the appeal, Bier represented respondent in all proceedings under the Act in the trial court.

¶ 12 In November 2008, this court affirmed the trial court's judgment on direct appeal, concluding that "the State overwhelmingly demonstrated that respondent was a sexually violent person beyond a reasonable doubt." *In re the Detention of Kevin W. Stanbridge*, No. 4-08-0163 (2008) (unpublished order under Illinois Supreme Court Rule 23).

¶ 13 B. Respondent's *Pro Se* Filings

¶ 14 In February 2010, respondent filed a *pro se* petition for relief from judgment pursuant to section 2-1401 of the Code, in which he argued he was denied effective assistance of counsel on direct appeal. As part of his petition, respondent requested the trial court appoint counsel to represent him on that petition. Bier never adopted the *pro se* petition, and the court never took any action on it.

¶ 15 In September 2011, respondent filed a *pro se* motion seeking a ruling on his section 2-1401 petition. Respondent asked the trial court to enter a final order on the petition so that he could appeal the court's decision. Respondent also requested the court appoint Bier to represent him on the petition. Bier did not adopt the motion, nor did the court take any action on it.

¶ 16 In October 2016, respondent filed another *pro se* motion, seeking a judgment on his section 2-1401 petition and requesting Bier be appointed as his counsel. Respondent

explained that he had filed a petition for a writ of *habeas corpus* in federal court and the court had denied his petition because his section 2-1401 petition was still pending in state court. See *Stanbridge v. Scott*, No. 15-3300, 2016 WL 5858978 (C.D. Ill. Oct. 5, 2016), vacated by *Stanbridge v. Scott*, No. 16-3642, 2017 WL 4574501 (7th Cir. Mar. 24, 2017).

¶ 17 In June 2017, the trial court entered a written order striking respondent's *pro se* section 2-1401 petition and his subsequent *pro se* motions. The court found the pleadings were improperly filed because respondent was represented by counsel and was barred from filing pleadings *pro se*. The court also noted that Bier had not adopted any of the pleadings and found that Bier was appointed to represent respondent generally and not solely at the periodic hearings required under the Act.

¶ 18 Respondent appealed, and this court ultimately dismissed the appeal. *In re Commitment of Stanbridge*, 2018 IL App (4th) 170822-U, ¶ 36. We concluded that (1) the trial court properly struck respondent's *pro se* filings because he was represented by counsel and (2) striking respondent's *pro se* filings did not constitute a final and appealable order.

¶ 19 C. The Proceedings on Remand

¶ 20 In April 2020, respondent filed a *pro se* petition for relief from judgment, asserting several claims of ineffective assistance of counsel, both in his criminal case and his SVP case. Specifically, respondent claimed his criminal conviction was improperly obtained because (1) certain trial judges were biased against him and (2) the prosecutor tainted the jury with public statements and inflammatory arguments. Regarding his SVP case, respondent claimed that Bier and Eyler were ineffective for failing to assert claims that (1) the State retaliated against him for successfully appealing his initial 2002 criminal conviction; (2) the State conspired with the Illinois attorney general, Illinois Department of Corrections (DOC), and the trial court to civilly

commit respondent as an SVP in violation of the Act's provisions; and (3) he could not have raised those claims earlier because he discovered evidence of the conspiracy in 2007 while reviewing discovery in the SVP case with Bier. In September 2020, the trial court struck the *pro se* petition.

¶ 21 In October 2020, respondent filed a motion requesting the trial court (1) terminate Bier's representation as his counsel, (2) reinstate his April 2020 section 2-1401 petition, and (3) allow respondent to proceed *pro se* on that petition.

¶ 22 In March 2021, the trial court conducted a hearing on respondent's motion to proceed *pro se*. At that hearing, respondent's counsel stated the following:

> "Your Honor, I think [the motion to terminate counsel] is appropriate. As the Court and Counsel know, I am in the process of retiring and significantly reducing my case load. I've had some health issues, my family has had some health issues, so I'm no longer able to attend to [respondent's] case and really feel like I haven't been able to do that effectively for quite some time. So, it would be appropriate for him to represent himself."

¶ 23 The trial court granted respondent's motion and permitted counsel to withdraw. The court reserved ruling on respondent's motion to reinstate his April 2020 petition for relief from judgment.

¶ 24 In June 2021, the trial court reinstated respondent's April 2020 petition. Later that month, the State file a motion to dismiss the petition, arguing, among other things, that respondent's claims were untimely, barred by collateral estoppel, and barred by *res judicata*. Also in June 2021, respondent filed an objection to the State's motion in which he asserted that his claims could not have been discovered earlier.

¶ 25 In July 2021, the trial court conducted a hearing on the State's motion to dismiss. The court took the matter under advisement and subsequently entered a written order granting the State's motion. In its order, the court agreed with the State's arguments that respondent's claims were untimely and barred by the statute of limitations because they could have been raised earlier and were not raised within two years of the final judgment.

¶ 26 This appeal followed.

¶ 27 II. ANALYSIS

¶ 28 Respondent appeals, arguing the trial court erred by dismissing his April 2020 section 2-1401 petition because all of his claims, attacking both his original criminal conviction and the SVP determination, were newly discovered and therefore not barred by any statute of limitations. We disagree and affirm.

¶ 29 A. Respondent's Claims Concerning His Criminal Conviction Are Barred

¶ 30 To the extent respondent's claims attack his criminal conviction, he lacks an avenue to do so. Because respondent completed his prison sentence and any period of mandatory supervised release, he is not "imprisoned" for the purposes of the Post-Conviction Hearing Act. See 725 ILCS 5/122-1(a) (West 2018); *People v. Stavenger*, 2015 IL App (2d) 140885, ¶ 8, 36 N.E.3d 1011; *People v. Carrera*, 239 Ill. 2d 241, 253, 940 N.E.2d 1111, 1118 (2010) (a defendant who has fully served his or her underlying sentence before filing a postconviction petition no longer has standing to file a petition). Further, respondent cannot maintain a claim pursuant to section 2-1401 of the Code (735 ILCS 5/2-1401(c) (West 2018)) because such claims must be filed within two years of the judgment. Respondent has not presented any evidence that would excuse the untimeliness of his claims, such as fraud or incapacity. *Id.*

¶ 31 In addition, respondent does not present any evidence of actual innocence or

misconduct by the State in obtaining his conviction. Respondent's complaints pertain only to sentencing and not the conviction itself. Specifically, respondent's main contention is that time stamps on copies of the sentencing order show that it was faxed to the attorney general's office before the sentencing hearing took place. To the extent respondent claims that he only discovered the copies of the sentencing order with the fax information on them in 2007, we note that the copy of the SVP petition contained in the record before this court, which was filed in the trial court in May 2005, contains the fax information and is identical to the document respondent says he did not see until 2007. Respondent was at all times represented by counsel in both his criminal case and his SVP case. Respondent's counsel never asserted respondent's arguments, and Bier even expressly declined to adopt them during the SVP proceedings. Given this context, the sentencing order could not be considered "newly discovered" for the purposes of excusing the two-year statute of limitations.

¶ 32 B. Respondent's SVP Claims Are Untimely

¶ 33 To the extent respondent's claims attack the validity of his SVP designation, his claims are barred because they could have been raised in prior proceedings. A jury found respondent was an SVP in October 2007. As we have just explained, any claims of misconduct or statutory violations of the State were actually discovered by respondent in early 2007. Because these claims could have been raised in the SVP proceedings or on direct appeal, they are barred from being relitigated in a collateral proceeding.

¶ 34 C. Respondent's Claims Also Fail on the Merits

¶ 35 Alternatively, respondent's claims fail on their merits. Respondent argues that (1) the State improperly conspired to have respondent declared an SVP before he was convicted of a sexually violent offense on retrial; (2) the state's attorney made public statements and

inflammatory arguments during the SVP proceedings to taint the jury; (3) the State failed to comply with the deadlines for evaluating respondent and filing a petition under the Act; and (4) Bier provided, and admitted to providing, ineffective assistance of counsel.

¶ 36 1. *The State Did Not Act Improperly by Initiating SVP Proceedings Before Retrial*

¶ 37 Respondent's main claim of error is that the State acted improperly by taking all the steps it could to have respondent declared an SVP before he was convicted of a sexually violent offense in 2005. First, respondent complains that the State retaliated against him for successfully appealing his 2002 conviction when it contacted the attorney general's office after this court vacated his conviction in 2004. The assistant state's attorney who prosecuted respondent wrote a letter to the attorney general that, in so many words, (1) lambasted this court's decision as clearly erroneous, (2) explained that this court's ruling would be reversed by the Illinois Supreme Court, and (3) maintained respondent was such a dangerous criminal that he needed to be removed from society.

¶ 38 Respondent presents no evidence the State's actions were in retaliation for his filing an appeal. The State was free to petition the Illinois Supreme Court to review this court's decision and ask the supreme court to overrule this court's decision. The State was also free to characterize this court's decision as it liked. Further, given that respondent could only receive a seven-year sentence after a new trial and respondent would receive sentence credit for time already served, the State was certainly aware that it had a limited amount of time to comply with the deadlines in the Act. Accordingly, the State did not act improperly by performing work in advance to be prepared if (1) a conviction was obtained at retrial and (2) it had mere days to comply with the statutory deadline for filing the SVP petition. The fact that the prosecutor believed respondent was a bad actor who needed to be locked up to protect the community is

unremarkable—such is the State's posture in many prosecutions. And civil commitment under the Act cannot occur unless the State proves beyond a reasonable doubt that a respondent is substantially likely to commit another act of sexual violence. 725 ILCS 207/35(d)(1), 5(f) (West 2004).

¶ 39 2. *The Jury Was Not Tainted*

¶ 40 Respondent also makes various arguments that the State tainted the jury pool by talking to newspaper reporters during trial, who then published stories on the case. Respondent's claims do not merit serious discussion. Jurors are instructed to not read or watch news stories about the case they are hearing, and we presume jurors follow these instructions. Respondent makes no factual allegations that remotely suggest that a juror was exposed to any information, much less that it affected the jury's verdict.

¶ 41 3. *The State Did Not Violate the Deadlines in the Act*

¶ 42 Respondent next makes various claims that the State violated the timelines set forth in the Act when it (1) prepared an evaluation of respondent's potential SVP status and (2) filed its SVP petition. A plain reading of the statute demonstrates that an evaluation may be conducted anytime a person *may* meet the criteria for being an SVP. *Id.* § 10(b) (West 2004). Further, what respondent characterizes as a "restriction" on DOC is in fact a mandatory obligation imposed on DOC whenever it believes a person may satisfy the qualifications. *Id.* The Act says nothing about whether any other entity may seek to evaluate a person for an SVP commitment; and the Act itself makes clear that DOC must notify the attorney general as soon as possible within 90 days of a person's release and must provide a full evaluation at that time. *Id.* § 10(b)-(c). To comply with the Act's mandate, DOC must be permitted—and nothing in the Act forbids DOC—to evaluate persons for SVP status prior to the 90-day notice period. See *id.*

Respondent's contentions are simply not constraints under the Act.

¶ 43 Moreover, respondent seems to suggest that the State was prohibited from performing any work to prepare a petition pursuant to the Act until respondent was convicted on retrial. We disagree.

¶ 44 The State filed its petition on May 4, 2005, and served it on respondent later that same day, a mere two hours—by his own admission—after he was placed in a DOC facility. The Act requires the State to file a petition no more than 90 days before a person's release from imprisonment and no later than 30 days after the person's placement on mandatory supervised release. *Id.* § 15(b-5). Because respondent fully admits that he was sentenced on May 3, 2005, following his conviction at trial in April 2005, the State fully complied with the Act when it filed its SVP petition on May 4, 2005.

¶ 45 In addition, respondent does not offer any explanation of how he was prejudiced by the State's actions. To the contrary, the record demonstrates that the State met the deadline, and respondent was found to be an SVP by a jury after a full trial with the assistance of able counsel. This court affirmed the jury's finding, concluding the evidence against him was "overwhelming." In the present appeal, this court has extensively reviewed and analyzed the record but has not located any suggestion of improper conduct or statutory violations by the State, much less an impropriety warranting reversal.

¶ 46 The Act contains robust protections against wrongful civil commitments, including periodic reviews of a respondent's likelihood of reoffending. Nothing in the record or respondent's brief suggests that the Act's requirements have not been fully met in his case.

¶ 47 4. *Ineffective Assistance of SVP Counsel*

¶ 48 Last, respondent claims Bier admitted she rendered ineffective assistance of

counsel when, at the hearing on respondent's motion to terminate her representation, counsel stated, "I'm no longer able to attend to [respondent's] case and really feel like I haven't been able to do that effectively for quite some time." Bier's comment was not a confession of ineffective assistance. Counsel was speaking about her health and ability to devote her full time and energy to respondent's case as she previously had, which the record confirms. She was neither making a legal argument nor conceding that she provided ineffective assistance of counsel.

¶ 49 We conclude counsel provided effective assistance to respondent. Her statements are nothing more than an observation that, given her age and other circumstances, she could no longer continue to vigorously represent respondent as she had in the past.

¶ 50 We note that respondent repeatedly requested the trial court to appoint or retain Bier to represent him during the trial proceedings. Indeed, even on appeal, respondent goes out of his way, and appropriately so, to avoid suggesting that Bier did anything less than she could during her representation of him. The record demonstrates that Bier provided able counsel far above the minimum required under the *Strickland* standards—and respondent recognized as much. See *Strickland v. Washington*, 466 U.S. 668 (1984).

¶ 51 Far from an admission of deficient performance, Bier's statement was a show of admirable candor that permitted respondent to proceed on his multitude of claims—claims that we have determined are meritless—which merely reinforces Bier's decision not to advance them below.

¶ 52 III. CONCLUSION

¶ 53 For the reasons stated, we affirm the trial court's judgment.

¶ 54 Affirmed.