

## RECORD IMPOUNDED

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Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0138-15T2

IN THE MATTER OF  
THE CIVIL COMMITMENT  
OF C.C., SVP-718-15.

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Submitted February 13, 2017 – Decided March 1, 2017

Before Judges Nugent and Haas.

On appeal from Superior Court of New Jersey,  
Law Division, Essex County, Docket No. SVP-  
718-15.

Joseph E. Krakora, Public Defender, attorney  
for appellant C.C. (Nancy C. Ferro, Designated  
Counsel, on the brief).

Christopher S. Porrino, Attorney General,  
attorney for respondent State of New Jersey  
(Melissa H. Raksa, Assistant Attorney General,  
of counsel; Amy Beth Cohn, Deputy Attorney  
General, on the brief).

PER CURIAM

C.C. appeals from a July 22, 2015 order, finding him to be a  
sexually violent predator and ordering that he be committed to the  
Special Treatment Unit ("STU") pursuant to the Sexually Violent  
Predator Act ("SVPA"), N.J.S.A. 30:4-27.24 to -27.38. We affirm.

The evidence was set forth at length in the thorough oral opinion of Judge James F. Mulvihill that accompanied the July 22, 2015 order. We briefly summarize that evidence here.

C.C. has a very long history of sexually assaulting women. In June 1984, when C.C. was nineteen years old, he forced a seventeen-year-old female, who was a stranger to him, into the bedroom of her home by threatening to shoot her. Once in the bedroom, C.C. pushed the victim down on a bed, pulled off her pants, and forced his mouth onto her vagina. When the victim resisted, C.C. hit her in the face and forced his penis into her vagina. C.C. was arrested the next day. In July 1986, a jury convicted him of rape, involuntary deviate sexual intercourse, indecent exposure, simple assault, terroristic threats, and corrupting a minor. The trial court sentenced C.C. to an indeterminate term of between forty-two months and seven years in prison, together with five years of probation.

In June 2003, C.C. raped a thirty-six-year-old woman in her bedroom in a county services center, where C.C. and the victim were both psychiatric patients. The victim had taken medication that made her sleepy and, during the night, C.C. entered the victim's room and attacked her while she slept. C.C. pled guilty to third-degree aggravated sexual contact and the trial court sentenced him to three years in prison and Community Supervision

for Life ("CSL"). The court also ordered C.C. to comply with the mandatory Megan's Law reporting requirements.

In June 2014, while C.C. was a patient at a behavioral health center, he exposed his penis to an adult female patient. On another occasion, he sexually assaulted the same woman by placing his hands down her pants and inserting his finger into the victim's vagina. C.C. subsequently attacked the victim again by going into her room while she was asleep, removing the victim's underwear, and performing oral sex on her. As a result of these incidents, C.C. pled guilty to fourth-degree criminal sexual contact and the trial court sentenced him to twelve months in prison.

In addition to these offenses, C.C. has a substantial non-sexual criminal history both as a juvenile and as an adult, including convictions for robbery, simple assault, theft, and drug offenses. C.C. has violated the terms of his probation four times, and the special conditions of his CSL on four other occasions. While incarcerated, C.C. was placed on suicide watch seven times. His attempts at suicide have included overdosing on prescription medication, cutting his wrists, and making a noose in his prison cell.

C.C. has been hospitalized for psychiatric conditions over fifty times. Over the years, he has been diagnosed with schizophrenia, personality disorder with antisocial and borderline

traits, and polysubstance dependence (alcohol, cannabis, and cocaine). As noted above, C.C. committed two of his sexual assaults against vulnerable female patients at psychiatric facilities where he was confined.

Shortly before C.C.'s scheduled release from prison on his criminal sexual contact conviction, the State sought to have him civilly committed to the STU pursuant to the SVPA. Judge Mulvihill conducted a hearing on July 21, 2015 and the State presented the testimony of an expert psychiatrist, Dr. Roger Harris, and the testimony of an expert psychologist, Dr. Jamie Canataro. C.C. did not testify and did not present any lay or expert witnesses on his behalf.

Both of the State's experts interviewed C.C., reviewed his records, and performed tests prior to formulating their opinions. Dr. Harris diagnosed C.C. with antisocial personality disorder ("ASPD"), alcohol and cannabis use disorders, other specified psychotic disorder, and borderline intellectual functioning. Although he did not diagnose a paraphilia, Dr. Katz found that C.C.'s ASPD alone predisposed him to sexual violence. Dr. Katz opined that the threat of legal consequences had no deterrent effect upon C.C., as evidenced by his lengthy criminal record. Dr. Katz stated that C.C. "demonstrates both an inability to control his sexual desire as well as an inability to control his

overall impulsivity." Thus, Dr. Katz concluded that C.C. was highly likely to sexually reoffend if not confined to the STU.

Dr. Canataro diagnosed C.C. with ASPD, schizoaffective disorder, and alcohol, cannabis and cocaine use disorders. Dr. Canataro also did not diagnose a paraphilia. However, she noted that C.C. had been committing sexual offenses for almost "three decades." Dr. Canataro found it significant that defendant "ha[d] identified vulnerable women in order to act on his deviant sexual arousal" and that he had "sexually offended while hospitalized in psychiatric care [and under] very high levels of community supervision, . . . includ[ing] Megan's Law registration and CSL." Dr. Canataro opined that C.C. demonstrated impaired impulse control, a reckless disregard for the safety of others, an ability to act on his sexual arousal despite his victims' protests or their inability to consent, and manipulative behaviors. Like Dr. Harris, Dr. Canataro concluded that it was highly likely that C.C. would reoffend if released into the community.

In his comprehensive oral opinion, Judge Mulvihill credited the uncontradicted testimony of Dr. Harris and Dr. Canataro. The judge found by clear and convincing evidence that C.C. had been convicted of sexually violent offenses; suffered "from a mental disability or personality disorder" predisposing him to commit acts of sexual violence; posed "a very high risk to the community

and to the health and safety of others"; and was "highly likely" to engage in acts of sexual violence if not placed in a secure facility for control, care, and treatment. This appeal followed.

On appeal, C.C. argues that the State "failed to prove by clear and convincing evidence that [he] is a sexually violent predator and that the risk of future recidivism is at a sufficiently high level to justify [his] commitment under the" SVPA. We disagree.

The governing law is clear. An involuntary civil commitment under the SVPA can follow an offender's service of a custodial sentence, or other criminal disposition, when he or she "suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for control, care and treatment." N.J.S.A. 30:4-27.26. As defined by the statute, a "mental abnormality" consists of "a mental condition that affects a person's emotional, cognitive or volitional capacity in a manner that predisposes that person to commit acts of sexual violence." Ibid. The mental abnormality or personality disorder "must affect an individual's ability to control his or her sexually harmful conduct." In re Commitment of W.Z., 173 N.J. 109, 127 (2002). A showing of an impaired ability to control sexually dangerous behavior will

suffice to prove a mental abnormality. Id. at 129; see also In re Commitment of R.F., 217 N.J. 152, 173-74 (2014).

At a commitment hearing, the State has the burden of proving under the SVPA that the offender poses a threat:

to the health and safety of others because of the likelihood of his or her engaging in sexually violent acts. . . . [T]he State must prove that threat by demonstrating that the individual has serious difficulty in controlling sexually harmful behavior such that it is highly likely that he or she will not control his or her sexually violent behavior and will reoffend.

[W.Z., supra, 173 N.J. at 132.]

The court must address the offender's present "serious difficulty with control over dangerous sexual behavior." Id. at 132-33. To commit the individual to the STU, the State must establish, by clear and convincing evidence, that it is highly likely that the individual will reoffend. Id. at 133-34; see also R.F., supra, 217 N.J. at 173.

As the Supreme Court emphasized in R.F., the scope of appellate review of judgments in SVPA commitment cases is "extremely narrow." R.F., supra, 217 N.J. at 174 (quoting In re D.C., 146 N.J. 31, 58 (1996)). "The judges who hear SVPA cases generally are 'specialists' and 'their expertise in the subject' is entitled to 'special deference.'" Ibid. (quoting In re Civil Commitment of T.J.N., 390 N.J. Super. 218, 226 (App. Div. 2007)).

On appeal, we must give deference to the judicial findings from the commitment hearing, not only in recognition of the SVPA judge's expertise, but also because the judge has "the 'opportunity to hear and see the witnesses and to have the "feel" of the case, which a reviewing court cannot enjoy.'" Ibid. (quoting State v. Johnson, 42 N.J. 146, 161 (1964)).

Applying these well-settled standards, we affirm the order committing C.C. to the STU, substantially for the cogent reasons detailed in Judge Mulvihill's oral decision. There is ample credible evidence in the record to support the judge's findings and C.C.'s arguments to the contrary are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(A) and (E).

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION