

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1791-14T2

IN THE MATTER OF THE CIVIL
COMMITMENT OF A.F., SVP-689-14.

Submitted December 12, 2016 – Decided March 2, 2017

Before Judges Haas and Currier.

On appeal from the Superior Court of New
Jersey, Law Division, Essex County, Docket No.
SVP-689-14.

Joseph E. Krakora, Public Defender, attorney
for appellant A.F. (Nancy C. Hayes, 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

Appellant A.F. appeals from the September 30, 2014 order that
continued his commitment to the Special Treatment Unit (STU) in
Avenel pursuant to the Sexually Violent Predator Act (SVPA),
N.J.S.A. 30:4-27.24 to -27.38. Appellant contends that the State
has failed to prove by clear and convincing evidence that he is a
sexually violent predator, and that the risk of future recidivism

is of a sufficiently high level to justify continued civil commitment. After a review of appellant's arguments in light of the record and applicable legal principles, we disagree and affirm.

Appellant is a forty-two-year-old man with a significant history of committing sexually violent acts. In 1993, appellant was charged in New York with sexual assault for the molestation and rape of his three-year-old female cousin until she was six years old. At the time, appellant was age fifteen to seventeen years of age. He stated that he raped his cousin "every chance he had." He was sentenced to a prison term and was paroled in 1995. Appellant is registered as a convicted sex offender in New York.

In 1998, appellant was convicted of armed robbery and sentenced to five years in prison. Although he was released on parole in 2002, it was subsequently revoked in 2003 and he returned to prison.

In 2008, appellant was charged with sexual assault for the sexual abuse of the eight-year-old son of his live-in girlfriend, which began when the child was six years old. Appellant pled guilty to sexual assault and to Violation of Registration and Community Notification Law (Megan's Law). In May 2008, he was sentenced to an aggregate term of eight years in prison with a parole ineligibility period of six years and nine months, and

Parole Supervision for Life, which was to be served in the Adult Diagnostic Treatment Center (ADTC) in Avenel.

On April 17, 2014, the State filed a petition for civil commitment under the SVPA. Upon review of the supporting clinical physician certificates, the Law Division judge found there was "probable cause to believe that [appellant] suffers from a mental abnormality or personality disorder that makes him likely to engage in acts of sexual violence if not confined to a secure facility for control, care and treatment." As such, the court ordered that he be committed temporarily to the STU pending a final hearing.

Appellant's initial commitment hearing was held on September 2 and 29, 2014. Roger Harris, M.D., and Jamie Canataro, Psy.D., presented expert testimony for the State. James Reynolds, Ph.D., testified as an expert for appellant.

Dr. Harris, a psychiatrist, testified that appellant's test scores corresponded to a high risk of recidivism in the context of violent sexual crimes. He diagnosed appellant with pedophilic disorder with non-exclusive attraction to boys and girls and with an antisocial personality. Based on these findings, Dr. Harris opined that appellant "would be highly likely to sexually reoffend" as he has a "strong arousal [to children] and an inability to control acting on that arousal." Dr. Harris noted appellant had "demonstrated fairly limited therapeutic progress" despite several

years in treatment. He stated that "[appellant] being in an outpatient treatment would [not] keep the community safe at this moment" as "he is unable to control his sexual aggression at this point."

Dr. Canataro, a psychologist, also testified that appellant had a pedophilic disorder, with non-exclusive attraction to males or females. She noted that even when "[appellant] had an age-appropriate consenting partner . . . he still chose to sexually offend . . . and has acknowledged sexually fantasizing about this victim while sexually engaging with the wife. So it does appear likely that his pedophilic arousal is his primary arousal." Dr. Canataro stated that appellant's test scores placed him in the moderate range of psychopathic tendencies, and put him in a group of sexual offenders with a moderate to high risk to reoffend. Dr. Canataro testified: "[Appellant] understood the consequences to his behaviors, understood what he was facing – conviction, incarceration – and despite the negative consequences, he was unable or unwilling to control the sexual urges."

Dr. Canataro also diagnosed appellant with moderate alcohol use disorder. She noted that "intoxication for someone with underlying deviant arousal . . . serves as a behavioral disinhibitor. So it will assist one in acting on urges that they could have otherwise resisted. . . . [H]is substance abuse does

not appear to be treated at this time, so this is an additional risk factor for him." She opined that she did "not feel that community supervision is adequate at this time."

Dr. Reynolds, a psychologist, testified on behalf of appellant. His evaluation suggested that appellant's recidivism risk was low to moderate. Despite reaching a different conclusion than the other two experts, Dr. Reynolds agreed with the test scores as noted by the State's experts. He also agreed with the diagnoses of Drs. Harris and Canataro of pedophilia and an antisocial personality disorder. When questioned about appellant's statement in an interview that he no longer experienced sexual arousal to children, Dr. Reynolds noted that "[i]t would be surprising for an individual who does experience and has a history of sexual arousal to children . . . to simply go into a full sustained remission."

On September 29, 2014, Judge James F. Mulvihill rendered a thorough oral decision in which he reviewed the history of appellant's commitment and his previous offenses, as well as the evidence adduced at earlier hearings that led to the continuation of commitment, the current expert reports regarding his mental health and their recommendations for continued commitment.

The judge found the State's experts, Drs. Harris and Canataro to be credible; the judge did not find Dr. Reynolds to be credible

as he did not reach a conclusion as to appellant's diagnosis and solely relied on one test. The judge noted that Dr. Reynolds "did not do a diagnosis [of appellant] and he . . . really is not . . . exercising any clinical judgment. So he . . . is not much help . . . to the Court, in terms of risk." Judge Mulvihill concluded that

the state has proven by clear and convincing evidence that [appellant] has been convicted of sexually violent offenses . . . that he suffers from a mental abnormality or personality disorder, two of them, pedophilia personality disorder that do not spontaneously remit, affect him cognitively, volitionally, emotionally . . . that he has not had sufficient treatment to mitigate his risk and presently he's highly likely to engage in further acts of sexual violence if not confined in a secure facility for control, care and treatment. The state has demonstrated that [appellant] is a substantial risk or a threat to the health and safety of others, because of a high likelihood of his engaging in sexual violent acts if he's released from the STU.

On September 30, the judge entered an order that appellant continue his commitment in the STU.

Our review after a trial court's decision following a commitment hearing is extremely narrow. See In re Commitment of J.P., 339 N.J. Super. 443, 459 (App. Div. 2001) (citing State v. Fields, 77 N.J. 282, 311 (1978)). The trial court's decision "should be accorded 'utmost deference' and modified only

where the record reveals a clear abuse of discretion." Ibid. (quoting State v. Fields, supra, 77 N.J. at 311). "The judges who hear SVPA cases generally are specialists and their expertise in the subject is entitled to special deference." In re Civil Commitment of R.F., 217 N.J. 152, 174 (2014) (citation and internal quotation marks omitted). In assessing the credibility of experts, "[a] trial judge is 'not required to accept all or any part of an expert opinion.'" Ibid. (quoting In Re D.C., 146 N.J. 31, 61 (1996)). "The ultimate determination is a 'legal one, not a medical one, even though it is guided by medical expert testimony.'" Id. at 174 (quoting D.C., supra, 146 N.J. at 59).

Under the SVPA, the State must establish three elements by clear and convincing evidence to involuntarily commit a person. The State must show:

(1) that the individual has been convicted of a sexually violent offense, N.J.S.A. 30:4-27.26; (2) that he suffers from a mental abnormality or personality disorder, ibid.; and (3) that as a result of his psychiatric abnormality or disorder, "it is highly likely that the individual will not control his or her sexually violent behavior and will reoffend," In Re Commitment of W.Z., 173 N.J. 109, 130 (2002).

[In re Civil Commitment of R.F., supra, 217 N.J. at 173.]

Applying our standard of review and the applicable law, we are satisfied that the expert testimony supports the judge's

factual findings and his conclusion that appellant continues to be a danger to the community and that he should remain involuntarily committed. Our review of the record demonstrates that the trial judge appropriately determined that appellant satisfies all three elements to warrant civil commitment.

At the hearing, the State presented two experts who detailed appellant's serious difficulty controlling his sexual behavior and his high likelihood of re-offending. There was no dispute that appellant suffers from an antisocial personality disorder or pedophilia as all three experts agreed on those diagnoses. Judge Mulvihill made credibility determinations regarding the competing experts' opinions as to whether it was "highly likely" that appellant would not control his sexually violent behavior and reoffend. The trial court expressly credited Drs. Harris and Canataro's opinions that appellant's disorder and past behavior demonstrated that he was highly likely to engage in acts of sexual violence unless he was confined. The trial court rejected Dr. Reynolds' contrary opinion. See In re Civil Commitment of R.F., supra, 217 N.J. at 174 ("[a] trial judge is not required to accept all or any part of an expert opinion.") All three experts, however, arrived at the same conclusion from the test scores, that appellant possesses a moderate to high likelihood of reoffending.

Having reviewed the record, we find no basis to disturb the trial court's factual and legal conclusions. We, therefore, affirm substantially for the reasons expressed in Judge Mulvihill's comprehensive oral decision as to the need for appellant's continued commitment.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION