

## RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2218-13T2

IN THE MATTER OF THE  
CIVIL COMMITMENT OF G.T.G.  
SVP-382-04

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Submitted March 21, 2017 – Decided April 7, 2017

Before Judges Yannotti and Fasciale.

On appeal from Superior Court of New Jersey,  
Law Division, Essex County, Docket No. SVP-  
382-04.

Joseph E. Krakora, Public Defender, attorney  
for appellant G.T.G. (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; Victoria R. Ply, Deputy Attorney  
General, on the brief).

PER CURIAM

G.T.G. appeals from an order entered by the Law Division on  
May 14, 2013, which ordered his continued civil commitment pursuant  
to the Sexually Violent Predators Act (SVPA), N.J.S.A. 30:4-27.24  
to -27.38. We affirm.

I.

This appeal arises from the following facts. In July 1985, when G.T.G. was twenty-years old, he approached a twenty-one-year-old female as she was about to enter her car, which was parked at a mall. G.T.G. asked the female about the "for sale" sign she had placed on the car. The female agreed to give G.T.G. a test drive. The female began to drive the car, with G.T.G. at her side. G.T.G. produced a knife and stabbed the female in the right chest area.

The female was unable to keep driving, so G.T.G. took over driving. He threatened the victim and her family if she resisted him. He pushed his hand into her chest wound and said he wanted his victims to feel pain and humiliation. G.T.G. instructed the victim to perform fellatio on him. She complied. G.T.G. eventually stopped the car.

G.T.G. pulled the victim out of the car, and dragged her to a wooded area. He removed her pants and underwear and raped her. G.T.G. then dressed the victim and tied her to a tree, using her belt, and drove off with her car and purse. G.T.G. told the victim he would send her help and threatened to kill her if she told the police about the assault. The victim was able to free herself, and she flagged down a passing motorist for help.

The police apprehended G.T.G. later that day while he was still driving the victim's car. He claimed that during the

incident, he was under the influence of drugs and alcohol. He told the officers he believed his behavior was getting worse, and he feared he would kill someone in the future if he did not receive help. G.T.G. was charged with first-degree kidnapping, first-degree aggravated sexual assault, second-degree aggravated assault, first-degree robbery, and third-degree possession of a weapon for an unlawful purpose. He pled guilty to all charges.<sup>1</sup>

On May 15, 1987, G.T.G. was sentenced to an aggregate term of thirty years of incarceration, consisting of a twenty-year term in state prison, with ten years of parole ineligibility, and a consecutive ten-year term at the Adult Diagnostic and Treatment Center, with five years of parole ineligibility. In November 2004, the New Jersey State Parole Board granted G.T.G.'s application for parole, and he was scheduled for release.

On November 10, 2004, the Attorney General filed a petition for G.T.G.'s civil commitment pursuant to the SVPA. On November 17, 2004, the court ordered G.T.G.'s temporary commitment at New Jersey's Special Treatment Unit (STU), pending a final commitment hearing. On August 22, 2005, after the final hearing, the court

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<sup>1</sup> We note that in 1979, when he was a juvenile, G.T.G. was found guilty of having sexual intercourse with a female against her will, lewdness, and assault with an offensive weapon. He was committed to the Training School for Boys in Jamestown for an indefinite term, but released in September 1981.

entered an order finding that G.T.G. was a sexually violent predator requiring involuntary civil commitment at the STU for control, care, and treatment. G.T.G. appealed and we affirmed the initial commitment order. In re Civil Commitment of G.T.G., No. A-0668-05 (App. Div. March 19, 2008).

On May 14, 2013, G.T.G. appeared in court for his annual review hearing. His attorney advised the court that G.T.G. was willing to stipulate that he remained a sexually violent predator in need of civil commitment, but he wanted to be heard on the issue of furloughs. G.T.G. maintained he was ready to move to Phase 4 of Treatment, which includes discharge planning, and wanted to establish that he was ready for discharge by being permitted furloughs from the STU.

At the hearing, G.T.G. presented testimony from Dr. Timothy Foley, a psychologist. The State presented testimony from psychologist Dr. Rosemarie Vala Stewart. After the judge heard arguments by counsel, he placed an oral decision on the record.

The judge noted that all of the professionals who had evaluated G.T.G. had concluded that he suffers from paraphilia, not otherwise specified, because of his violent sexual assaults, sexual sadism, substance abuse, and anti-social personality disorder. The judge stated that this conclusion "is unrefuted by

any of the experts who have testified here today or who have testified previously."

The judge noted that Dr. Foley had testified that G.T.G. had only achieved Phase 3 of treatment, and he was depressed because he lacked any hope of eventual release from the STU. The judge stated that Dr. Foley had opined that a "series of furloughs" would be beneficial to G.T.G. and would allay the "sense of hopelessness" that G.T.G. feels. Dr. Foley noted, however, that furloughs also could have the opposite effect.

The judge observed that the STU had about 500 committed persons who are subject to a five-phase treatment regimen. Some committed individuals proceed through those phases faster than others, and some never complete the treatment phases. G.T.G. is in Phase 3 of treatment. The judge stated that the experts agreed that G.T.G. remains a sexually violent predator in need of confinement in a secure facility for care and treatment.

The judge refused to alter the STU's treatment regime for G.T.G. The judge noted that it was impractical for the STU to offer furloughs to all of the committed individuals who might want furloughs. The STU was not able to offer such furloughs, and they are not part of the recommended treatment program. The record did not support G.T.G.'s request for special treatment. The judge stated that G.T.G. should "first attempt to complete the

recommended treatment phases before attempting to modify those phases."

The judge therefore entered the order dated May 14, 2013, which provided that defendant's commitment pursuant to the SVPA would continue, and denied his request for furloughs. The judge scheduled another review hearing for April 30, 2014. This appeal followed.

On appeal, G.T.G. raises the following arguments:

POINT I:

THE STATE FAILED TO PROVE BY CLEAR AND CONVINCING EVIDENCE THAT RESPONDENT G.T.G. IS A SEXUALLY VIOLENT PREDATOR AND THAT THE RISK OF FUTURE RECIDIVISM IS AT A SUFFICIENTLY HIGH LEVEL TO JUSTIFY CONTINUED CIVIL COMMITMENT UNDER THE CURRENT TREATMENT PLAN.

POINT II:

G.T.G. SHOULD BE ALLOWED TO ENTER A PROGRAM INVOLVING THERAPY AND WHICH WOULD ALSO INVOLVE THE GRADUAL LESSENING OF HIS RESTRICTIONS THROUGH FURLOUGHS SO THAT HE COULD PROVE THAT HE HAS INCORPORATED THE THERAPY INTO HIS BEHAVIOR AND IS NOT A DANGER TO THE COMMUNITY.

II.

G.T.G. first argues that the State failed to establish that he is a sexually violent predator in need of continued commitment under the SVPA. He notes that Phase 4 of the treatment process includes discharge planning, and furloughs would commence in Phase 5. G.T.G. asserts that Dr. Foley opined that he should not be

required to achieve Phase 4 of treatment before he is eligible for furloughs.

G.T.G. notes that Dr. Stewart testified that he is appropriately placed in Phase 3 of treatment. G.T.G. argues that Dr. Stewart and the court placed undue emphasis on his Static-99R score. He contends that because there was conflicting testimony by the experts, the State failed to establish that he remained in need of commitment under the SVPA.

We note that the scope of our review of a trial court's commitment decision is "extremely narrow." In re Civil Commitment of R.F., 217 N.J. 152, 174 (2014) (quoting In re D.C., 146 N.J. 31, 58 (1996)). We must defer to the trial judge's findings of fact so long as they are supported by sufficient credible evidence in the record. Id. at 175 (citing State v. Johnson, 42 N.J. 146, 162 (1964)). Deference to the trial judge's factual findings is appropriate because the judge had the "opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy." Id. at 174 (quoting Johnson, supra, 42 N.J. at 161).

The SVPA permits the involuntary civil commitment of "'a person who has been convicted . . . of a sexually violent offense' who '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.'" Id. at 173 (quoting N.J.S.A. 30:4-27.26). To obtain an order of commitment under the SVPA, the State must establish the following:

1) that the individual has been convicted of a sexually violent offense; (2) that he suffers from a mental abnormality or personality disorder; and (3) that as a result of his psychiatric abnormality disorder, 'it is highly likely that the individual will not control his or her sexually violent behavior and will reoffend.'

[Ibid. (citations omitted) (quoting In re Commitment of W.Z., 173 N.J. 109, 130 (2002)).]

The State must prove "all three elements by clear and convincing evidence," N.J.S.A. 30:4-27.32(a), which is "evidence that produces 'a firm belief or conviction' that the allegations are true" and "is 'so clear, direct[,]. . . weighty and convincing' that the factfinder can 'come to a clear conviction' of the truth without hesitancy." R.F., supra, 217 N.J. at 173 (quoting In re Jobes, 108 N.J. 394, 407 (1987)).

Here, there is clear and convincing evidence to support the judge's finding that G.T.G. remains a sexually violent predator in need of confinement at the STU. The record does not support G.T.G.'s contention that the experts disagreed as to whether he is a sexually violent predator in need of continuing confinement.



As the judge recognized, both Dr. Foley and Dr. Stewart testified that G.T.G. was not presently in a position to be discharged from the STU.

Dr. Foley testified that while G.T.G had been responding well to certain aspects of his treatment, G.T.G. himself conceded that he was not ready for release. Even though Dr. Foley recommended that furloughs be added to G.T.G.'s treatment, he made that recommendation with the caveat that G.T.G. be committed for at least an additional three years.

Moreover, Dr. Foley and Dr. Stewart indicated that discharge planning for G.T.G. was premature, and that G.T.G. was not yet ready for that phase of treatment. The judge noted the uniformity of medical opinion on this issue, finding that all the experts had agreed that G.T.G. "remains a sexually violent predator in need of confinement for care and treatment." There is sufficient credible evidence in the record to support that finding.

G.T.G. argues that the reliance of the Static-99R test by Dr. Stewart and the judge was misplaced since G.T.G.'s score on that test did not change from the time he was admitted to sex offender treatment seventeen years earlier.

It is, however, well established that "actuarial risk assessment instruments may be admissible in evidence in a civil commitment proceeding under the SVPA when such tools are used in

the formation of the basis for a testifying expert's opinion concerning the future dangerousness of a sex offender." In re R.S., 173 N.J. 134, 137 (2002). Thus, "a testifying expert . . . may rely on actuarial as well as clinical information when formulating an opinion concerning future dangerousness," and the hearing court may use the assessment information as "a factor to consider . . . when engaging in the necessary factfinding under the SVPA." Ibid.

In this case, Dr. Stewart credited G.T.G's results on the Static-99R test when evaluating his future dangerousness, but she also took into consideration his treatment records, violations of parole, substance abuse history, and other information that calculated his risk factors. The judge acted within the scope of his discretion as fact-finder in accepting Dr. Stewart's testimony as support for his conclusion that defendant remains a sexually violent predator in need of confinement at a secure facility for care and treatment.

### III.

G.T.G. further argues that the judge erred by denying his request to add furloughs to his current treatment plan. G.T.G. acknowledges the practical problem of allowing all committed individuals to be released on furloughs, but he contends this concern should not have precluded the State from granting his

request for furloughs. He asserts that, in his case, furloughs would be a permissible, gradual lessening of the restraints on his liberty.

As noted, the judge refused to interfere with the STU's structured, five-phase treatment program. The record shows that the STU's treatment plan may eventually lead to a lessening of the restraints upon G.T.G.'s liberty. As noted, G.T.G. has achieved Phase 3 of treatment. Discharge planning will commence when he achieves Phase 4, and furloughs are a part of Phase 5. The record supports the judge's finding that there is no basis for altering the treatment regime for G.T.G.

Furthermore, Dr. Foley testified that while furloughs may be appropriate for G.T.G., he was not certain as to their efficacy. He stated that furloughs "may or may not work" or have "the intended effect." On the other hand, Dr. Stewart testified unequivocally that allowing G.T.G. to go out on furloughs presented a "very high risk" of backfiring, which would make things "much harder" for G.T.G. Dr. Stewart believed that the treatment plan that G.T.G. was already following was appropriate and in his best interests.

We are convinced that there is sufficient credible evidence in the record to support the judge's determination that furloughs would not be appropriate for G.T.G. at this time. The court's

decision has ample support in the expert testimony. The court's decision that G.T.G. should remain on his present treatment program, without the addition of furloughs at this time, is not an abuse of discretion.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION