

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3956-14T2

IN THE MATTER OF THE CIVIL
COMMITMENT OF R.R., SVP-560-10.

Submitted December 20, 2016 – Decided March 28, 2017

Before Judges Espinosa and Suter.

On appeal from the Superior Court of New
Jersey, Law Division, Essex County, Docket No.
SVP-560-10.

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

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

PER CURIAM

R.R. appeals from an order entered March 10, 2015, which
continued his involuntary civil commitment at the State of New Jersey
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.

We previously affirmed the finding that R.R. is a sexually violent predator who requires involuntary civil commitment. See In re Civil Commitment of R.R., No. A-3964-13 (App. Div. Jan. 5, 2015).¹ Our prior opinion recounted in detail R.R.'s lengthy history of sexual offenses. We set forth a portion of that opinion to give context to our decision here.

The predicate sexual offense of this appeal concerns appellant's sexual assaults of A.G. (age 16), A.M. (age 15), and C.K. (age 13).

In November 2003, C.K. reported to police that appellant groped her breasts, inner thighs, and attempted to touch her vagina but did not force intercourse on her. A.G. separately reported that appellant sexually assaulted her.

A.M. reported being sexually assaulted four times by appellant. The first sexual assault occurred when she was using the bathroom. Appellant entered the bathroom, ignored her protestations, shoved a washcloth in her mouth, pinned both of her arms behind her back with his other hand, and forcibly penetrated her vagina from behind. The washcloth started tearing the sides of her mouth, and her attempts to struggle free were unsuccessful. A.M. told appellant that he had "hurt her pretty bad"; appellant laughed in response.

The other three rapes of A.M. occurred in the apartment building's laundry room. Appellant would offer to escort A.M. to the laundry room "for her safety," grab her by the wrist, hold her arms behind her back, force her into the corner behind the door, loosen her clothing,

¹ We cite to an unpublished opinion only because it concerns the same individual, R.R.

and forcibly penetrate her vagina. After about five minutes of penetration, appellant would ejaculate behind the dryers. A.M. also reported several incidents of appellant grabbing her vagina over her clothing and threatening to grab her breasts.

Although appellant initially denied the allegations, he cried and confessed when confronted with proof that his DNA was recovered by police from the area behind the dryers indicated by the victim.

Appellant pled guilty to a single count of second-degree sexual assault. Appellant was sentenced in March 2006 to eight years in state prison and parole supervision for life (PSL). On June 25, 2007, appellant's PSL was changed to community supervision for life.

Prior to these events, in 1997 R.R. pled guilty to third-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a), after he had nonconsensual sexual intercourse with both a thirteen-year-old girl and her fifteen-year-old sister, and then sexually assaulted their younger sister who was twelve. While he was on probation for that charge in 1998, he impersonated an emergency medical technician (EMT) and also a security guard at a local high school in order to gain access to female students. He was sentenced to 120 days in jail for criminal trespass.

R.R.'s annual review hearing under the SVPA was held on March 10, 2015 before Judge James F. Mulvihill. Dr. Roger Harris, a psychiatrist, testified that he conducted a forensic evaluation of R.R. His testimony detailed R.R.'s past history of sexual

offenses, including nonconsensual sexual intercourse with a number of teenaged girls, his impersonation of an EMT and a security guard to gain access to other teenaged girls and his history of nonsexual offenses.

Dr. Harris testified that since R.R.'s placement at STU, his treatment had not progressed.

He is currently in treatment refusal status. He was placed on treatment probation . . . in May of this past year. He was put on treatment refusal in June of this past year. He is going to the treatment orientation process group, but he is . . . not progressing in treatment.

He is seen as argumentative, defensive, sarcastic, unreceptive to feedback and blaming others for his problems, and he has done little to discuss his sexual offenses, period.

Dr. Harris agreed that R.R. suffers from a "mental abnormality or personality disorder that impacts his volitional, emotional or cognitive functioning . . . and predisposes him to engage in acts of sexual violence."

Q: And what are your diagnoses?

A: He has a paraphilia[,] which is an arousal to teenage girls, and he has an antisocial personality disorder in which he has shown an [sic] pervasive pattern for the disregard and violation of the rights of others. He has failed to conform to social norms, he has . . . been deceitful, conning others, misrepresenting himself, . . . we see that in a number of areas.

He's impulsive, failing to plan ahead,
. . . acts aggressively, disregards the
safety of others. He . . . meets many
of the criteria.

Although Dr. Harris testified that R.R.'s antisocial personality disorder itself did not predispose R.R. to sexually reoffend, it "lowers his threshold to act on his sexual deviant arousal, and . . . given that he has the antisocial personality disorder, there aren't many breaks for him to have internally to really inhibit his sexual drive." Dr. Harris testified that R.R.'s score on a test used to predict sexual re-offense, the Static-99R, was a "4," placing him at "moderate to high risk to sexually reoffend." Dr. Harris's opinion was that R.R. was "highly likely" to sexually reoffend.

Q: Do you feel that the moderate to high risk category is appropriate for [R.R.]?

A: No, . . . I think a full estimate addressing dynamic factors places him at higher risk. The fact that he has the deviant arousal, strong antisocial attitudes and behaviors, violated supervision, has poor cognitive problem solving and poor self-regulation I think increase his risk to sexually reoffend.

Q: And how do you categorize his current risk to reoffend?

A: I think he would be highly likely to sexually reoffend if placed in a less restrictive setting.

Dr. Harris testified that it was only through treatment that R.R.'s diagnoses might "remit," but at the time of the hearing, R.R. was refusing to engage in treatment.

Dr. Zackery Yeoman, a psychologist, testified as a member of the Treatment Progress Review Committee (TPRC), which annually evaluates R.R.'s continued commitment. Dr. Yeoman testified R.R. suffers from an "antisocial personality disorder." In explaining that this diagnosis was a change from the TPRC review report, Dr. Yeoman stated that in the report, he "may have been overly rigid regarding the criteria for antisocial personality disorder." However, given "the pervasiveness of [R.R.'s] adult antisociality and his first criminal charge being at 16[,] . . . [the doctor amended his] diagnosis to a full antisocial personality disorder."

Dr. Yeoman testified that R.R. was "in Phase 2" of treatment, but that he had failed many of the modules in that program. At the time of the hearing, R.R. was refusing treatment. He was "overall very oppositional to the treatment, unreceptive, not forthcoming about his offenses, had difficulty regulating his emotions, is seen as . . . not being a truthful individual, fabricating things about his past, about his offenses, things like that." Dr. Yeoman testified that "overall . . . I don't think he's really addressed anything to any significant degree."

R.R. did not complete any of his "programmatic requirements." He scored in a "high range of psychopathy." Dr. Yeoman testified that he diagnosed R.R. with "other specified paraphilic disorder, nonconsent," and with "other specific paraphilic disorder, hebephiliac," meaning that "he experiences essentially just a very strong drive to engage in sexual activity with nonconsenting and/or [pubescent] females." His victims were between twelve and fifteen, and he used a significant amount of physical force in the sexual assaults. R.R.'s antisocial personality disorder diagnosis together with the diagnosis of paraphilia means that

while other people without an antisocial personality disorder or high psychopathy might have some allegiance or - - to society or other people or feel like it's important to follow the rules or - - or be just scared of getting in trouble, [R.R.] doesn't have those things. So, what it does is I think it makes him more likely to act on those paraphilic disorders.

He recommended R.R. meaningfully engage in treatment. However, because R.R. had not "experienced significant treatment," Dr. Yeoman testified R.R. was "highly likely" to sexually reoffend if released, at his current level of progress.

In his decision to continue R.R.'s involuntary civil commitment, Judge Mulvihill reviewed the testimony of Doctors Harris and Yeoman, finding both to be "very credible," and noting, although R.R. was refusing treatment, now that his appeal of the

2014 commitment was completed, he asked to recommence treatment. In evaluating the requirements of the SVPA, the court found that R.R. was "convicted of sexual violent offenses" and that he continued to "suffer from a mental abnormality or personality disorder," that the disorder would not "spontaneously remit" and that these conditions affected him "emotionally, cognitively or volitionally." The court found R.R. had reoffended after having sanctions imposed and was "highly likely to engage in further acts of sexual violence if not confined to a secure facility for control, care and treatment." The judge found that R.R. remained "a danger to the community" and that there was a "high likelihood of his engaging in sexual violent acts." The court concluded that R.R. "is an untreated sex offender."

On appeal, R.R. contends the court erred in continuing his involuntary civil commitment, arguing the State failed to prove he is a sexually violent predator or that his risk of recidivism was sufficient to continue commitment. R.R. contends there were discrepancies with the State's proofs of the offenses and of his diagnoses. He requested to be placed in a program with therapy, but with lessening restrictions.

Our review of a trial court's judgment in a civil commitment proceeding under the SVPA is "extremely narrow." In re Commitment of R.F., 217 N.J. 152, 174 (2014) (quoting In re D.C., 146 N.J.

31, 58 (1996)). "[A]n appellate court should not modify a trial court's determination either to commit or release an individual unless 'the record reveals a clear mistake.'" Id. at 175 (quoting D.C., supra, 146 N.J. at 58). "The appropriate inquiry is to canvass the . . . expert testimony in the record and determine whether the [trial court's] findings were clearly erroneous." D.C., supra, 146 N.J. at 58-59 (citing State v. Fields, 77 N.J. 282, 311 (1978)). "So long as the trial court's findings are supported by 'sufficient credible evidence present in the record,' those findings should not be disturbed." R.F., supra, 217 N.J. at 175 (quoting State v. Johnson, 42 N.J. 146, 162 (1964)).

The State must satisfy three requirements to classify a person as a sexually violent predator in need of involuntary commitment:

(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 or disorder, 'it is highly likely that the individual will not control his or her sexually violent behavior and will reoffend.'

[In re Civil Commitment of D.Y., 218 N.J. 359, 380-81 (2014) (quoting R.F., supra, 217 N.J. at 173).]


The review hearing is to be conducted in the same manner as the commitment hearing. N.J.S.A. 30:4-27.35.

We are satisfied from our review of the record that the court's findings were supported by substantial credible evidence. R.R. was convicted in 2005 of second-degree sexual assault, which satisfied the definition of a sexually violent offense under the SVPA. See N.J.S.A. 30:4-27.26. Both doctors testified that R.R. suffered from a mental abnormality or personality disorder, specifically paraphilia and an anti-social personality disorder. This evidence satisfied the second requirement for commitment. R.R. did not refute these diagnoses. Both doctors testified that together R.R.'s sexual compulsion (paraphilia) and his antisocial personality disorder made it highly likely he would sexually reoffend. This satisfied the third requirement for commitment.

R.R.'s diagnoses required treatment and will not spontaneously remit. However, during the period of review, he refused to engage in treatment. The record did not reveal any discrepancies regarding the State's proofs or R.R.'s diagnoses as R.R. alleged. Therefore, the court did not abuse its discretion in determining to continue R.R.'s involuntary civil commitment based on its finding, supported by the testimony of two doctors, that R.R. was highly likely not to control his sexually violent behavior and to reoffend. Given his status as a sexually violent predator, a conditional discharge was barred. N.J.S.A. 30:4-27.32(a).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION