

RECORD IMPOUNDED

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." 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-4231-14T2

IN THE MATTER OF THE CIVIL
COMMITMENT OF J.Z., SVP-342-03.

Argued October 3, 2017 — Decided November 6, 2017

Before Judges Yannotti and Mawla.

On appeal from Superior Court of New Jersey,
Law Division, Essex County, Docket No. SVP-
342-03.

Alan Dexter Bowman argued the cause for
appellant.

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

PER CURIAM

J.Z. appeals from an order entered by the Law Division dated March 18, 2015, which denied his motion to dismiss the order continuing his civil commitment pursuant to the Sexually Violent Predator Act (SVPA), N.J.S.A. 30:4-27.24 to -27.38. We affirm.

J.Z. has been committed pursuant to the SVPA since October 2003. He appealed from an order entered by the Law Division on June 2, 2005, which authorized his continued civil commitment and we affirmed the order. In re Civil Commitment of J.Z., No. A-6029-04 (App. Div. April 18, 2007). Following a review hearing, the trial court entered an order dated December 15, 2010, which continued J.Z.'s commitment. At the review hearing, J.Z. stipulated that the State had presented clear and convincing evidence showing that he remained a sexually violent predator in need of involuntary civil commitment under the SVPA.

In January 2012, J.Z. pled guilty to possession of an electronic communication device "while confined to a State correctional facility, secure juvenile facility, county correctional facility, or county juvenile detention facility," in violation of N.J.S.A. 2C:29-10(b). At the plea hearing, J.Z. admitted he had possessed a computer with Internet access while confined to the Special Treatment Unit (STU). The trial court sentenced J.Z. to four years of incarceration, with a two-year period of parole ineligibility. Thereafter, J.Z. appealed from the judgment of conviction.

In April 2012, J.Z. filed a motion in the trial court to dismiss the SVPA commitment order without prejudice upon his transfer to the correctional facility to serve the criminal

sentence. The judge denied the motion, noting on the record that continuation of the commitment order would not be inconsistent with the SVPA, which provides that the New Jersey Department of Corrections (NJDOC) must house persons committed under the SVPA in a safe and secure facility "separately from offenders in the custody of the [NJDOC]." N.J.S.A. 30:4-27.34(a).

The judge observed that J.Z. would be intermingled with other inmates while he was serving his criminal sentence, but this was the result of his status as a person convicted of a criminal offense, not the result of his civil commitment under the SVPA. The judge added that upon completion of his criminal sentence, J.Z. would be afforded a review hearing within twenty days to determine if he should still be committed under the SVPA.

Therefore, the judge entered an order dated April 20, 2012, releasing J.Z. to the custody of the NJDOC so that he could begin serving his criminal sentence. The order also provided that upon the completion of his criminal sentence, the NJDOC shall return J.Z. to the STU. J.Z. filed an appeal from the April 20, 2012 order.

J.Z. also appealed from the judgment of conviction entered by the Law Division as a result of his plea to possession of an electronic communication device while confined in a correctional facility. We later determined that the STU did not qualify as a

State or county correctional facility for purposes of N.J.S.A. 2C:29-10(b). State v. J.Z., No. A-4480-11 (App. Div. June 11, 2014) (slip op. at 8).

We concluded that in view of our interpretation of N.J.S.A. 2C:29-10(b), J.Z.'s plea and the conviction based on that plea must be set aside. Id. at 9. As a result of our decision in the criminal case, we decided that J.Z.'s challenge of the order of April 20, 2012, in the commitment case was moot. In re Civil Commitment of J.Z., No. A-4885-11 (App. Div. June 11, 2014) (slip op. at 4).

The NJDOC returned J.Z. to the STU on June 13, 2014. Shortly thereafter, Senior Deputy Attorney General (SDAG) Mark Singer advised J.Z.'s attorney that the State was prepared to proceed with the review hearing as soon as possible. On July 14, 2014, J.Z.'s counsel asked the court to clarify J.Z.'s status and determine whether the State had to file a new petition for J.Z.'s civil commitment. On July 22, 2014, SDAG Singer wrote to the court and stated that a new petition was not required and the matter should proceed to a hearing as soon as possible.

In anticipation of that hearing, the State obtained re-evaluations of J.Z. by Dr. Dean DeCrisce, a psychiatrist, and Dr. Tarmeet Sahni, a psychologist and member of the Treatment Process Review Committee. Dr. Sahni interviewed J.Z. on September 23,

2014, and thereafter issued a report dated November 21, 2014, finding that J.Z. met the criteria for commitment pursuant to the SVPA. J.Z. refused to be interviewed by Dr. DeCrisce. Nevertheless, on January 22, 2015, Dr. DeCrisce issued a report in which he also found that J.Z. satisfied the criteria for commitment pursuant to the SVPA. Dr. DeCrisce based that finding on his review of the records in J.Z.'s file.

The trial court scheduled the matter for a hearing on January 20, 2015, but it was adjourned at J.Z.'s request. On February 15, 2015, J.Z. filed a motion to dismiss the previously-entered civil commitment order. The State opposed the motion on the ground that the State had established probable cause for J.Z.'s continued commitment as a sexually violent predator.

On February 27, 2015, the trial court heard oral argument on the motion. The court entered an order dated March 18, 2015, denying the motion. The order stated that J.Z.'s attorney should contact the court on or before March 27, 2015, either to give notice of his intent to appeal the order or schedule a review hearing on the issue of J.Z.'s commitment under the SVPA.

The order also stated that in the event of an appeal, the order was stayed pending disposition of the appeal, and that at any time during the pendency of the appeal, J.Z. had the right to schedule a review hearing. We were advised at oral argument that

while this appeal was pending, J.Z. did not request a review hearing.

On appeal, J.Z. argues that the order continuing his commitment was nullified by his transfer to the general population of a correctional institution. He contends it was improper for the court to transfer him to a penal institution without first dismissing the commitment order because while he was in prison, he was not afforded the due process protections provided by the SVPA, specifically segregation from general prison inmates, treatment, and annual review hearings. In addition, J.Z. argues that the trial court should have dismissed the civil commitment order without prejudice.

"The scope of appellate review of a commitment determination 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)). "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)). Therefore, an 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).

So long as the trial court's findings are supported by "sufficient credible evidence present in the record," those findings should not be disturbed. State v. Johnson, 42 N.J. 146, 162 (1964). Nevertheless, when an appeal presents issues of law, the relevant standard of review is de novo, with no special deference. In re Civil Commitment of D.Y., 218 N.J. 359, 373 (2014) (citing Balsamides v. Protameen Chems., Inc., 160 N.J. 352, 372 (1999)).

Initially, we reject J.Z.'s contention that he was denied his due process rights under the SVPA because the trial court left the civil commitment order in place when he was transferred to the State correctional facility to serve his criminal sentence. Although the civil commitment order remained in effect, J.Z. was not incarcerated pursuant to that order. He was incarcerated pursuant to the judgment of conviction entered as a result of his guilty plea. Thus, while J.Z. was serving his criminal sentence, he had no rights under the SVPA, including the right to segregation from the general prison population, sex offender treatment, or annual review hearings.

We note that while J.Z.'s earlier appeal from the trial court's April 20, 2012 order was pending, the State filed a motion seeking a remand to the trial court so that it could move to dismiss the commitment order without prejudice. On appeal, the

State asserts that it filed the motion because upon further reflection, it believed it was inconsistent with the SVPA to keep J.Z.'s civil commitment order in effect while he was serving a criminal sentence.

Apparently, the State will not oppose the dismissal without prejudice of a civil commitment order when a person committed under the SVPA is transferred to a correctional facility to serve a criminal sentence. Therefore, it appears that the State agrees that when the individual has completed the criminal sentence, it must begin anew the process for the individual's civil commitment under the SVPA.

We note that the SVPA provides in pertinent part that "[w]hen it appears that a person may meet the criteria of a sexually violent predator . . . the agency with jurisdiction shall give written notice to the Attorney General" and "provide the Attorney General with all information relevant to a determination of whether the person may be a [SVP]." N.J.S.A. 30:4-27.27(a) and (b). Upon receiving such notice, the Attorney General may initiate a court proceeding to have the individual involuntarily committed . . . "by the submission to the court of two clinical certificates . . . at least one of which is prepared by a psychiatrist." N.J.S.A. 30:4-27.28(b) and (c).

The SVPA further provides that if the court finds that there is probable cause to believe the person is a sexually violent predator, it may issue a temporary commitment order. N.J.S.A. 30:4-27.28(g). Within twenty days after the date of the temporary commitment order, the person is entitled to "a court hearing with respect to the issue of continuing need for involuntary commitment as a sexually violent predator." N.J.S.A. 30:4-27.29(a).

Nevertheless, we are not convinced that the motion judge erred by denying J.Z.'s motion to dismiss the order that authorized J.Z.'s continued commitment pending a review hearing. Following his return to the STU, J.Z.'s commitment was authorized by the court's previously-entered commitment order, rather than a newly-issued temporary commitment order. The motion judge noted, however, that any perceived defect in the process would be cured at the review hearing, at which the State would be required to show by clear and convincing evidence that J.Z. still met the criteria for commitment under the SVPA. R.F., supra, 217 N.J. at 173 (citing N.J.S.A. 30:4-27.32(a)); see also In re Commitment of W.Z., 173 N.J. 109, 130 (2002). We agree.

There is no indication that the State would not have been able to obtain a temporary commitment order after J.Z.'s return to the STU. Indeed, J.Z. does not argue that the State could not show there was probable cause that he met the criteria for

continued commitment at that time. Furthermore, the State later obtained reports from Dr. DeCrisce and Dr. Sahni, who both found that J.Z. continued to meet the criteria for commitment under the SVPA. In addition, the court's April 20, 2012 order gave J.Z. the right to a review hearing within twenty days after his return to the STU.

We therefore conclude that the trial court's failure to dismiss the commitment order when J.Z. was transferred to the State correctional facility to serve his criminal sentence did not nullify the commitment order or result in the denial of J.Z.'s rights under the SVPA. We also conclude that J.Z. suffered no harm because the State did not commence a new action and obtain a temporary commitment order after he was returned to the STU.

The April 20, 2012 order provided that J.Z. could have a review hearing within twenty days after his return to the STU. J.Z. would have been entitled to a hearing in the same timeframe if the State had obtained a temporary commitment order. Thus, the trial court did not err by denying J.Z.'s motion to dismiss the order continuing his 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