

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4870-14T2

IN THE MATTER OF THE
CIVIL COMMITMENT OF K.M.,
SVP-710-15.

Submitted January 10, 2017 – Decided March 23, 2017

Before Judges Messano and Espinosa.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Docket No. SVP-710-15.

Joseph E. Krakora, Public Defender, attorney for appellant K.M. (Alison Perrone, 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; Stephen Slocum, Deputy Attorney General, on the brief).

PER CURIAM

K.M. appeals from the June 3, 2015 order 1) committing him to the Special Treatment Unit (STU), the secure custodial facility designated for the treatment of persons in need of involuntary civil commitment pursuant to the Sexually Violent Predator Act (the SVPA), N.J.S.A. 30:4-27.24 to -27.38; and 2) setting May 4,

2016, as the date for an annual review. We glean the following facts from the record.

After K.M. pled guilty to first-degree aggravated sexual assault, the judge sentenced him on March 6, 2008, to a ten-year term of imprisonment subject to an 85% period of parole ineligibility pursuant to the No Early Release Act, N.J.S.A. 2C:43-7.2. In January 2015, prior to K.M.'s release, the State filed its petition for involuntary commitment under the SVPA.

At the hearing before Judge Philip M. Freedman, the State introduced relevant documents regarding the 2008 conviction, and an earlier 1995 conviction for first-degree aggravated sexual assault. In that case, the judge sentenced K.M. as a second-degree offender to an eight-year term of imprisonment. The State also introduced the 1995 and 2008 reports from the Adult Diagnostic and Treatment Center (ADTC), the September 17, 2014 SVPA Risk Assessment Report, which demonstrated K.M.'s Static-99R Score was +5, placing him in the "Moderate-High" range for risk to reoffend, and the clinical certificates from two psychiatrists that provided probable cause for K.M.'s initial commitment.

Judge Freedman considered these documents, as well as the testimony of Dr. Roger Harris, a forensic psychiatrist, Dr. Zachary Yeoman, a psychologist employed at the STU, and Dr. Timothy Foley, a psychologist, who testified on behalf of K.M.

Dr. Harris, who examined K.M. and authored a report admitted into evidence, noted that in addition to the two sexual crimes, K.M. had a significant criminal record and was incarcerated nearly continuously between 1980 and 2006. Dr. Harris concluded that K.M. suffered from "antisocial personality disorder," abused drugs and alcohol, and was "unable to inhibit or control his aggression, whether it be sexual or nonsexual." Because K.M. had not been in treatment or therapy while incarcerated, Dr. Harris lacked sufficient information to rule out that K.M. suffered from a "paraphilic disorder for coercion." The doctor concluded that K.M. was "highly likely to reoffend if placed in a less restrictive setting."

Dr. Yeoman also evaluated K.M. and authored a report admitted into evidence. Like Dr. Harris, he diagnosed K.M. with an antisocial personality disorder, substance abuse disorders and borderline intellectual functioning. The doctor opined that K.M. was "highly likely" to sexually reoffend.

Dr. Foley testified regarding his evaluation of K.M. and his report was also admitted into evidence. The doctor agreed that K.M.'s history of substance and alcohol abuse was "pervasive," he suffered from an antisocial personality disorder and his intellectual functioning was borderline. However, Dr. Foley

stated that K.M. did not suffer from a "paraphilic disorder" and was not "predispose[d] . . . to sexually violent acts[.]"

In his oral opinion, Judge Freedman set forth the legal standards for commitment under the SVPA. The judge meticulously sifted through the documentary evidence and the testimony of the experts, noting all three essentially agreed on their diagnoses. However, Judge Freedman rejected Dr. Foley's conclusion that "just because [K.M. was] likely to commit another crime doesn't mean he's highly like to commit a sexually violent offense." He reasoned that although the SVPA did not define the term "predisposition," the facts in this case, specifically that K.M. committed two sexually violent crimes widely separated in time, clearly and convincingly demonstrated that K.M. was predisposed to commit sexually violent acts. Judge Freedman concluded that K.M. suffered from a "mental abnormality in the form of . . . severe substance abuse disorders . . . [and] antisocial personality disorder." The judge concluded this combination predisposed K.M. to engage in sexually violent acts, and, if released, K.M. would "have serious difficult[y] controlling his sexually violent behavior and would be highly likely within the foreseeable future to engage in . . . sexually violent conduct."

K.M. contends the State failed to prove by clear and convincing evidence that he suffers from a mental condition that

predisposes him to commit acts of sexual violence. Having reviewed the record in light of applicable legal principles, we disagree and affirm.

The Court has explained:

The SVPA imposes upon the State the burden to prove three elements by clear and convincing evidence:

(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 In re Civil Commitment of R.F., 217 N.J. 152, 173 (2014)).]

"An inability to control one's sexually violent behavior is the very essence of the SVPA." In re Commitment of W.Z., 173 N.J. 109, 129 (2002). "Inherent in some diagnoses will be sexual compulsivity (i.e., paraphilia). But, the diagnosis of each sexually violent predator susceptible to civil commitment need not include a diagnosis of 'sexual compulsion.'" Ibid.

In this case, there was no dispute that K.M. was convicted of a predicate sexually violent crime and suffered from serious personality disorders. The critical issue was whether the State

proved by clear and convincing evidence that, because of those disorders, K.M. was highly likely to commit another sexually violent offense. See R.F., supra, 217 N.J. at 177.

Judge Freedman concluded the evidence was clear and convincing, noting K.M.'s score on the Static 99-R, his entrenched anti-social behavior and substance abuse, and, most significantly, the commission of two violent sexual assaults. Many years separated the two, but, notably, the second occurred during an infrequent period when K.M. was not actually in custody.

In R.F., the Court reversed the Appellate Division's judgment, reinstating the trial judge's order of release. Id. at 183. In so doing, the Court clearly explained "[t]he scope of appellate review of a commitment determination is extremely narrow." Id. 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)). In short, "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). We find no clear mistake in this case.

Affirmed.

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

