

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2998-15T5

IN THE MATTER OF THE
CIVIL COMMITMENT OF A.H.,
SVP-731-15.

Submitted December 13, 2017 – Decided January 25, 2018

Before Judges Currier and Geiger.

On appeal from Superior Court of New Jersey,
Law Division, Essex County, Docket No. SVP-
731-15.

Joseph E. Krakora, Public Defender, attorney
for appellant A.H. (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; Tasha Bradt, Deputy Attorney
General, on the brief).

PER CURIAM

Appellant A.H. appeals from the March 2, 2016 Law Division judgment involuntarily committing him to the Special Treatment Unit (STU) as a sexually violent predator pursuant to the Sexually Violent Predator Act (SVPA), N.J.S.A. 30:4-27.24 to -27.38. We affirm.

An involuntary commitment can follow service of a sentence, or other criminal disposition, when the offender "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." N.J.S.A. 30:4-27.26; see also N.J.S.A. 30:4-27.25. To civilly commit an individual, the State must prove 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 R.F., 217 N.J. 152, 173 (2014) (citations omitted).]

The first two elements derive directly from the statute. In order to "comport with substantive due process concerns, [the] Court interpreted the third statutory element as requiring the State to show that a person is 'highly likely,' not just 'likely,' to sexually reoffend." Ibid. (quoting In re Commitment of W.Z., 173 N.J. 109, 130 (2002)).

In order to be considered a sexually violent predator, an individual must have committed a sexually violent offense. N.J.S.A. 30:4-27.26. Sexual assault is considered a sexually violent offense. Ibid. With this legal framework in mind, we

will now consider the facts that led to A.H.'s commitment under the SVPA.

On October 13, 1989, A.H., then age twenty-eight, kidnapped three adolescent girls to whom he had given a ride. A.H. made sexual advances towards them and violently, sexually assaulted one of the girls. The other two girls had escaped earlier. The incident ended when a police officer, who was flagged down by the two girls who escaped, discovered A.H.'s parked car and physically pulled A.H. off of the victim he was actively sexually assaulting and choking. On June 24, 1991, a jury found A.H. guilty of three counts of first-degree kidnapping, N.J.S.A. 2C:13-1(b), and he was sentenced to an aggregate thirty-five-year prison term, subject to a twenty-five-year period of parole ineligibility.

On January 30, 1988, A.H., then age twenty-seven, abducted a woman who he subsequently physically assaulted and forced to submit to sexual intercourse. The incident ended when the victim was able to escape. On January 4, 1993, A.H. pled guilty to first-degree sexual assault, N.J.S.A. 2C:14-2(a). He was sentenced to a twenty-year prison term, subject to a ten-year period of parole ineligibility, to run concurrent to his existing sentence.¹

¹ The record reflects that on July 7, 1989, A.H. confronted a man he believed to be tailgating him. The police broke up the argument. Later that day, A.H. returned to the man's home to slash one of

An Adult Diagnostic and Treatment Center (ADTC) evaluation of A.H. in 1991 found "no evidence to indicate a pattern of repetitive or compulsive sexual behavior." The evaluation concluded the 1989 kidnapping was "most likely . . . due to antisocial and situational factors, including poor impulse control, physical aggression, and exploitation of others, rather than driven by compulsive sexual urges." A.H. was found not eligible for sentencing under the New Jersey Sexual Offender Act, N.J.S.A. 2C:47-1 to -10.

On September 11, 2015, the State filed a petition seeking A.H.'s involuntary commitment under the SVPA. Judge James F. Mulvihill conducted a two-day commitment hearing at which a psychiatric expert, Roger M. Harris, M.D., and a psychological expert, Jamie R. Canataro, Psy.D., testified for the State. A psychological expert, Timothy P. Foley, Ph.D., A.K.S., A.H.'s fiancé, and Pastor Kenton A. Matthew testified on behalf of A.H.

Dr. Harris interviewed A.H. on September 29, 2015 and February 8, 2016, and issued a forensic psychiatric assessment report on February 12, 2016. Dr. Harris testified that in addition to the

the man's tires. When the man and his brother discovered what A.H. was doing, A.H. stabbed both men. On December 14, 1990, A.H. was charged and convicted of several crimes and sentenced to a five-year prison term.

sexual assaults, A.H. "has demonstrated a pattern of criminal behaviors" and

a profound disregard for the rights of others. Failure to conform to social norms, deceitfulness, conning others for personal profit or pleasure. Impulsivity or failure to plan ahead. Irritability and aggressiveness. Reckless disregard for the safety of others. Consistent irresponsibility and lack of remorse. Or rationalizing having hurt, mistreated or stolen from another.

Dr. Harris diagnosed A.H. with Antisocial Personality Disorder (ASPD) and Alcohol and Stimulant Substance Use Disorders. He opined that A.H.'s ASPD "put him at a high risk to sexually reoffend if placed in a less-restrictive setting than the STU."

Dr. Harris further testified that A.H. "has a long pattern of volitional deficits, where he is unable to control his aggression and his sexual aggression, specifically." He concluded that A.H. has not experienced sufficient treatment to mitigate his risk of reoffending.

Dr. Harris testified that A.H. scored a "four" on the STATIC-99R² actuarial instrument, indicating that he fell within the

² The STATIC-99R is an actuarial test used to estimate the probability of sexually violent recidivism in adult males previously convicted of sexually violent offenses. See Andrew Harris et al., Static-99 Coding Rules Revised-2003 5 (2003). Our Supreme Court has explained that actuarial information, including the Static-99, is "simply a factor to consider, weigh, or even reject, when engaging in the necessary factfinding under the SVPA."

moderate to high range to reoffend. He then opined that "the dynamic factors being his antisocial attitudes and behaviors, his impulsive lifestyle, his poor cognitive problem solving, and his poor self-regulation, and his resistance to supervision, I think all increase his risk to sexually reoffend." Dr. Harris concluded that A.H. is "highly likely to sexually offend without being placed in a setting like the STU."

Dr. Canataro interviewed A.H. on February 9, 2016, and issued a forensic psychological evaluation. She testified that A.H. "is an individual who will go to extreme lengths to have his sexual needs met." She noted that he has acted violently towards males and females and kidnapped and abducted victims to satisfy his sexual urges. She characterized him as a "violent individual."

Dr. Canataro also recounted A.H.'s substance abuse history, noting he began using marijuana at age thirteen, occasionally used LSD in his teenage years, and began using cocaine at age twenty-five. He also reported occasional alcohol use. Dr. Canataro concluded "substance use played . . . a disinhibiting role towards [A.H.'s] sexual arousal." She noted that A.H. had not completed substance abuse treatment while incarcerated.

R.F., 217 N.J. at 164 n.9 (quoting In re Commitment of R.S., 173 N.J. 134, 137 (2002)).

Dr. Canataro further noted that intelligence testing during A.H.'s two ADTC evaluations placed him in the borderline range for I.Q., indicating his I.Q. "falls somewhere between a 70 and a 79." A.H. displayed "concrete thinking and inflexibility with his thinking" during his interview, which "plays a large part with antisocial personality structure." Dr. Canataro found that A.H. "consistently utilized cognitive distortions that . . . are frequently found among sexual offenders."

Dr. Canataro diagnosed A.H. with ASPD, Substance Abuse Disorder for alcohol, cocaine and marijuana, and a provisional diagnosis of Other Specified Paraphilic Disorder (non-consent). She found a "pervasive pattern of disregard for and violation of the rights of others." Even during his interview, Dr. Canataro saw his "antisociality seeping out, the frustration, the impulse control, [and] the aggression." She further testified that A.H.'s "antisociality also comes out from his inability to learn from past behaviors."

Dr. Canataro also discussed the impact of A.H.'s ASPD:

Well, for many individuals, the antisociality will not reflect a high risk to sexually reoffend, but for [A.H.], it does. And when you combine that with a possibility of a paraphilic sexual arousal towards non-consent, this further exacerbates his risk to sexually reoffend. So, [A.H.], he does not feel constrained by law, he does not feel constrained by empathy or remorse, and . . .

he is acting on his sexual arousal and . . . his offenses show the great lengths that he will go to, to satisfy his sexual urges.

Dr. Canataro performed a risk assessment of A.H. She testified that he scored a "four" on the STATIC-99R, placing him in the "moderate-high risk category." She noted that all of A.H.'s victims were strangers, a dynamic which "makes monitoring him in the community more difficult." Dr. Canataro also noted the violent nature of his sexual assaults and his "total lack of empathy."

Dr. Foley testified on behalf of A.H. He too diagnosed A.H. with ASPD, Cocaine Abuse Disorder, and possible Alcohol Use Disorder. Dr. Foley noted A.H.'s history of violence. He pointed out that A.H. had committed only one institutional infraction while incarcerated. Dr. Foley also scored A.H. with a "four" on the STATIC-99R evaluative instrument. According to Dr. Foley, ASPD without paraphilia is a weak indicator of sexual recidivism. Although conceding that antisocial attitudes persist across a lifetime, Dr. Foley opined the resulting antisocial behaviors and personality will lessen with age. He stated there was no evidence that A.H. was still exhibiting ASPD behaviors. Dr. Foley perceived that A.H. was "less than highly likely" to reoffend if not confined to the STU. He characterized A.H. as "an aging rapist" with twenty-seven years of "behavioral stability."

The judge found the testimony of Dr. Harris to be very credible and forthright, including his conclusions that A.H. was highly likely to reoffend and that aging was not an applicable factor for A.H., who was fifty-four at the time of the hearing. The judge found the testimony of Dr. Canataro to be "extremely credible, very forthright," and her report to be "very well prepared."

Although he found the testimony of Dr. Foley to be credible and forthright, the judge rejected Dr. Foley's opinion that A.H. was less than highly likely to sexually reoffend. The judge noted that Dr. Foley also diagnosed A.H. with ASPD and Alcohol Use Disorder.

The judge found that the credible evidence demonstrated A.H. suffers from a mental abnormality and personality disorder that affect him emotionally, cognitively, and volitionally, predisposing him to sexual violence, and making him highly likely to reoffend if not confined in a secure facility. The evidence further demonstrated A.H. suffers from ASPD, a condition that does not spontaneously remit. He concluded that A.H. has serious difficulty controlling his sexually violent behavior, has not undergone significant sex offender therapy that would mitigate his risk, and is a threat to the health and safety of others at this time.

"The scope of appellate review of a commitment determination is extremely narrow." R.F., 217 N.J. 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. (citation omitted). "The final decision whether a person previously convicted of a sexually violent offense is highly likely to sexually reoffend lies with the courts, not the expertise of psychiatrists and psychologists. Courts must balance society's interest in protection from harmful conduct against the individual's interest in personal liberty and autonomy." Ibid. (citations omitted). "A trial judge is 'not required to accept all or any part of [an] expert opinion[].' The ultimate determination is 'a legal one, not a medical one, even though it is guided by medical expert testimony.'" Ibid. (alterations in original) (quoting D.C., 146 N.J. at 59, 61). We should not modify the judge's determination "unless 'the record reveals a clear mistake.'" Id. at 175 (quoting D.C., 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." Ibid. (quoting State v. Johnson, 42 N.J. 146, 162 (1964)).

Governed by these standards, we discern no basis to disturb the judge's decision. First, it is not necessary that an

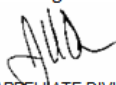
individual suffer from a mental abnormality to be deemed a sexually violent predator under the SVPA. A personality disorder alone may be used as a basis to conclude that one has a predisposition to sexually reoffend. See N.J.S.A. 30:4-27.26 (defining a "sexually violent predator," in part, as a person 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") (emphasis added); see also W.Z., 173 N.J. at 129 (2002). It is also not necessary that an individual have a sexual compulsion, such as paraphilia, or a complete or total loss of control over his or her behavior to be deemed a sexually violent predator under the SVPA. W.Z., 173 N.J. at 129 (citing Kansas v. Hendricks, 521 U.S. 346, 359 (1997)). Rather, the individual must be unable to control his or her sexually violent behavior. Ibid.

The documentary evidence and testimony of Dr. Harris and Dr. Canataro, which Judge Mulvihill found credible, amply support the judge's findings that A.H. is a sexually violent predator who presently suffers from a personality disorder that makes him highly likely to engage in acts of sexual violence if not confined to the STU for treatment. Even though A.H. was not formally diagnosed with a form of paraphilia, the State's experts diagnosed him with ASPD that affects him emotionally, cognitively, or volitionally

and predisposes him to engage in acts of sexual violence. The State's experts opined, credibly, that as a result of his personality disorder, it was highly likely that A.H. would sexually reoffend if not confined to a secure facility for control, care, and treatment.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION