

## RECORD IMPOUNDED

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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-3302-15T5

IN THE MATTER OF THE  
CIVIL COMMITMENT OF  
T.T., SVP-226-02.

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Submitted May 3, 2018 – Decided May 10, 2018

Before Judges Haas and Rothstadt.

On appeal from Superior Court of New Jersey,  
Law Division, Essex County, Docket No. SVP-  
226-02.

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

Gubir S. Grewal, Attorney General, attorney  
for respondent State of New Jersey (Melissa  
H. Raksa, Assistant Attorney General, of  
counsel; Jacqueline R. D'Alessandro, Deputy  
Attorney General, on the brief).

PER CURIAM

T.T. appeals from an April 11, 2016 order, finding him to be a sexually violent predator and ordering that he continue to be committed to the Special Treatment Unit (STU), pursuant to the New Jersey Sexually Violent Predator Act (SVPA), N.J.S.A. 30:4-27.24 to -27.38. We affirm.

We begin by referencing the essential background facts concerning T.T.'s history of committing sexually violent acts as set forth in our most recent opinion reviewing his commitment status. In re Civil Commitment of T.T., No. A-1030-12 (App. Div. Feb. 9, 2015) (slip op. at 1-4). T.T. committed his first sexual assault in 1976. Id. at 1. At that time, T.T. "approached a six-year old child in an apartment hallway, put his hand over her mouth, told her to be quiet, and carried into an abandoned apartment." Ibid. T.T. then removed the child's "clothing and inserted two fingers and then his penis into her vagina." Id. at 1-2.

After the assault, T.T. returned the victim to her apartment and she reported the incident. Id. at 2. "[A] medical examination revealed that [the child's] genitals were swollen and a discharge was coming out of her vagina." Ibid. T.T. was later convicted of carnal abuse and sentenced to five years in prison. Ibid.

While on probation for a possession of a weapon offense in 1992, T.T. violently attacked a thirty-seven year old female in her apartment. T.T. "stabbed her with a pair of scissors and hit her in the head with a bat, causing her to lose consciousness." Id. at 3. When the victim regained consciousness, she "discovered [T.T.] was shaving her pubic hair." Ibid. T.T. then sexually assaulted the victim "repeatedly, slapping her on the head as he

did so. [T.T.] also forced the victim to perform oral sex upon him, stabbed her with a screwdriver and tried to smother her with a pillow." Ibid.

"The victim survived this horrific attack and contacted the police." Ibid. T.T. later pled guilty to first-degree aggravated sexual assault, second-degree aggravated assault, and third-degree terroristic threats. Ibid. The trial court sentenced him to an aggregate fifteen-year term in prison. Ibid.

T.T. was committed to the STU in 2002 and, by the time of the March 28, 2016 hearing in this case, he had been in the STU for over fourteen years. During that entire period, T.T. has consistently refused all treatment offered to him by facility staff.

At the March 28, 2016 hearing, the State presented the testimony of an expert psychiatrist, Dr. Howard Gilman, M.D., and the testimony of an expert psychologist, Dr. Paul Dudek, Ph.D. T.T. briefly testified at the hearing, and stated he had not committed any institutional infractions while in prison or the STU. T.T. did not present any lay or expert witnesses on his behalf.

Dr. Gilman diagnosed T.T. with the following mental conditions: (1) Alcohol Use Disorder in Institutional Remission; (2) Cannabis Use Disorder in Institutional Remission; and (3)

Antisocial Personality Disorder. Dr. Gilman stated in his report that T.T. continued "to be at high risk to sexually reoffend due to his history of repeated sexual assaults, his history of untreated substance dependence, his history of Antisocial Personality Disorder, and his history of untreated sex offending behavior."

Dr. Dudek diagnosed T.T. with the following mental abnormalities: (1) Other Specified Paraphilic Disorder (non-consent and pedophilic features); (2) Alcohol Use Disorder, Severe, In a Controlled Environment; (3) Cannabis Use Disorder, Severe, In a Controlled Environment; and (4) Other Specified Personality Disorder with Antisocial Features. Dr. Dudek opined that T.T. had "not made any appreciable progress towards lowering his risk to reoffend via treatment effect. Given both static and dynamic factors, [T.T] remains highly likely to reoffend sexually if not confined to a secure facility such as the STU."

Following the hearing, the trial judge rendered a short, but legally sufficient, oral opinion, concluding that T.T. should remain committed at the STU. In so ruling, the judge credited the uncontradicted testimony of Dr. Gilman and Dr. Dudek. The judge found by clear and convincing evidence that T.T. had been convicted of sexually violent offenses, and "suffer[ed] from a mental abnormality and personality disorder that does not spontaneously

remit[;] . . . that affects him emotionally, cognitively[, ] and volitionally," and that "predisposes him to sexual violence[.]" Therefore, the judge concluded that T.T. was "highly likely to sexually reoffend" if not placed in a secure facility for custody, care, and treatment. This appeal followed.

On appeal, T.T. argues that "the State failed to prove by clear and convincing evidence that [he] 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." We disagree.

The governing law is clear. An involuntary civil commitment under the SVPA can follow an offender's service of a custodial sentence, or other criminal disposition, when he or she "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.

As defined by the statute, a "mental abnormality" consists of "a mental condition that affects a person's emotional, cognitive or volitional capacity in a manner that predisposes that person to commit acts of sexual violence." Ibid. The mental abnormality or personality disorder "must affect an individual's ability to control his or her sexually harmful conduct." In re Commitment

of W.Z., 173 N.J. 109, 127 (2002). A showing of an impaired ability to control sexually dangerous behavior will suffice to prove a mental abnormality. Id. at 129; In re Civil Commitment of R.F., 217 N.J. 152, 173-74 (2014).

At a commitment hearing, the State has the burden of proving under the SVPA that the offender poses a threat:

to the health and safety of others because of the likelihood of his or her engaging in sexually violent acts. . . . [T]he State must prove that threat by demonstrating that the individual has serious difficulty in controlling sexually harmful behavior such that it is highly likely that he or she will not control his or her sexually violent behavior and will reoffend.

[W.Z., 173 N.J. at 132.]

The court must address the offender's "present serious difficulty with control over dangerous sexual behavior." Id. at 132-33. To commit the individual to the STU, the State must establish, by clear and convincing evidence, that it is highly likely that the individual will reoffend. Id. at 133-34; see also R.F., 217 N.J. at 173.

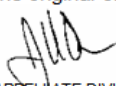
As the Supreme Court emphasized in R.F., the scope of appellate review of judgments in SVPA commitment cases is "extremely narrow." R.F., 217 N.J. at 174 (quoting In re D.C., 146 N.J. 31, 58 (1996)). "The judges who hear SVPA cases generally are 'specialists' and 'their expertise in the subject' is entitled

to 'special deference.'" Ibid. (quoting In re Civil Commitment of T.J.N., 390 N.J. Super. 218, 226 (App. Div. 2007)). On appeal, we must give deference to the judicial findings from the commitment hearing, not only in recognition of the SVPA judge's expertise, but also because the judge has "the 'opportunity to hear and see the witnesses and to have the "feel" of the case, which a reviewing court cannot enjoy.'" Ibid. (quoting State v. Johnson, 42 N.J. 146, 161 (1964)).

Applying these well-settled standards, we affirm the order committing T.T. to the STU. There is ample credible evidence in the record to support the judge's findings and T.T.'s arguments to the contrary are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(A) and (E).

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION