

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3616-15T5

IN THE MATTER OF THE CIVIL
COMMITMENT OF D.B., SVP-725-15.

Submitted January 24, 2018 – Decided February 15, 2018

Before Judges Nugent and Currier.

On appeal from Superior Court of New Jersey,
Law Division, Essex County, Docket No. SVP-
725-15.

Joseph E. Krakora, Public Defender, attorney
for appellant (Thomas G. Hand, Designated
Counsel, on the brief).

Gurbir S. Grewal, Attorney General, attorney
for respondent (Melissa H. Raksa, Assistant
Attorney General, of counsel; Kimberly Ann
Eaton, Deputy Attorney General, on the brief).

PER CURIAM

D.B. appeals from a December 29, 2015 judgment committing him under the Sexually Violent Predator Act (SVPA), N.J.S.A. 30:4-27.24 to -27.38, to the Special Treatment Unit (STU), the State facility designated for the custody, care, and treatment of sexually violent predators. He argues:

THE TRIAL COURT ERRED IN FINDING D.B. WAS PRESENTLY HIGHLY LIKELY TO COMMIT A SEXUAL OFFENSE BECAUSE THE TESTIMONY PRESENTED DID NOT PROVIDE A BASIS FOR A FINDING OF A MENTAL ABNORMALITY NOR DID IT PROVIDE A BASIS FOR A PRESENT RISK TO SEXUALLY REOFFEND.

We have found no clear mistake or error in either the trial court's factual determinations or its legal conclusions. To the contrary, the trial court's decision is amply supported by substantial credible evidence on the record. We therefore affirm.

These are the facts. On different dates between August 1988 and May 1989, throughout Essex and Union Counties, D.B. raped six women and attempted to rape a seventh. In each case, through either ruse or force, D.B. gained entry to the women's homes.

D.B. pled guilty to one count of aggravated sexual assault on each of two Union County indictments. The court sentenced him on each offense to serve an indeterminate term, not to exceed twenty years, with ten years of parole ineligibility, at the Adult Diagnostic and Treatment Center (ADTC) at Avenel. The sentences were concurrent.

On each of four Essex County indictments, D.B. pled guilty to one count of second-degree burglary and one count of first-degree aggravated sexual assault. On a fifth Essex County indictment, D.B. pled guilty to second-degree burglary and second-degree attempted sexual assault. For all offenses, the court

sentenced D.B. to an aggregate fifty-year prison term with twenty-five years of parole ineligibility.

D.B. served ten years at the ADTC and the remainder of his time before parole in state prison. Shortly before his release from state prison, the State filed a petition for D.B.'s civil commitment under the SVPA. The trial court issued an order for D.B.'s temporary civil commitment on July 1, 2015. Judge Philip M. Freedman held a hearing on November 19 and December 22, 2015.

At the hearing, the State presented two expert witnesses, and D.B. presented one expert witness. The first of the State's experts, Dr. Dean DeCrisce, MD, a psychiatrist, was asked explicitly, "Did you find that [D.B.] suffers from a mental abnormality or personality disorder that impacts his volitional, emotional or cognitive functioning so as to predispose him to engage in acts of sexual violence?" Dr. DeCrisce responded, "Yes, I did." Dr. DeCrisce testified his diagnosis included "coercive paraphilia," "antisocial personality disorder without evidence for conduct disorder as a youth," and a number of substance abuse diagnoses.

D.B.'s expert witness, Dr. Christopher Lorah, Ph.D., an expert psychologist, also testified at the November 2015 hearing. Dr. Lorah testified D.B. suffered from a paraphilic disorder but

not an antisocial personality disorder, and "all of his offending comes from the strength of the paraphilic disorder."

The State also offered the testimony of Dr. Jamie Canataro, Psy.D., an expert psychologist. Dr. Canataro diagnosed D.B. as exhibiting "sexual sadism provisionally, paraphilia [not otherwise specified], nonconsent, with elements of voyeurism, other specified personality disorder with antisocial features, and alcohol and cannabis use disorder, moderate." Dr. Canataro did not diagnose anti-social personality disorder because "the early onset of his personality disorder is not clear."

With regard to D.B.'s likelihood of reoffending upon his reentry into the community, Dr. DeCrisce testified he "believe[d] the diagnosis predisposes him to re-offend because of the nature of his offense history, the strength of the arousal and the history of his offenses." The doctor explained D.B.'s diagnosis affects him volitionally, cognitively, and emotionally. Also, when asked how he would "characterize [D.B.'s] current risk to . . . sexually re-offend if released into the community," Dr. DeCrisce believed "he would be highly likely" to sexually re-offend.

Dr. Lorah, however, testified D.B. could control his conditions if managed properly upon his return to the community.

Dr. Canataro, like Dr. DeCrisce, testified that D.B.'s paraphilia condition predisposes him to sexually re-offend.

Further, she explained D.B. had a high risk of sexually reoffending if released into the community because of "[h]is deviant sexual arousal patterns combined with his antisocial personality structure and the psychopathic personality traits."

On December 29, 2015, in an oral decision, Judge Freedman explained that after hearing the testimony of all three experts, he found by clear and convincing evidence D.B. "suffers from mental abnormalities, anti-personality disorder that [a]ffect him . . . emotionally, cognitively, and volitionally" and D.B. "would be highly likely . . . in the reasonably foreseeable future, to engage in acts of sexual violence." Further, the judge found D.B. is a dangerous person who poses a high risk to the community. He cited the testimony of both of the State's experts, stating he credited their testimony that none of the treatment had had any effect on D.B. and the "kind of arousal [he suffers from] does not go away." Judge Freedman granted the State's petition to civilly commit D.B. under the SVPA. This appeal followed.

The SVPA authorizes the Attorney General to initiate court proceedings for involuntary commitment of sexually violent predators. N.J.S.A. 30:4-27.28. Sexually violent predators include persons:

who ha[ve] been convicted, adjudicated delinquent or found not guilty by reason of insanity for commission of a sexually violent

offense . . . and suffer[] from a mental abnormality or personality disorder that makes [them] 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.]

Thus, to have a person committed under the SVPA, the State must prove by clear and convincing evidence three elements: the person has been convicted of a sexually violent offense; the person suffers from a mental abnormality or personality disorder; and, as a result of such mental abnormality or personality disorder, "it is highly likely that the [person] 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) (quoting In re Commitment of W.Z., 173 N.J. 109 at 130 (2002)).¹

"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)). We afford "special deference" to the


¹ The term "sexually violent offense" refers to offenses enumerated in the SVPA, including: aggravated sexual assault; sexual assault; aggravated criminal sexual contact; criminal sexual contact; and "any offense for which the court makes a specific finding on the record that, based on the circumstances of the case, the person's offense should be considered a sexually violent offense." N.J.S.A. 30:4-27.26. The term "'[m]ental abnormality' means 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.

expertise of judges who hear SVPA cases because they are generally "specialists" in that field. Ibid. (citing In re Civil Commitment of T.J.N., 390 N.J. Super. 218, 226 (App. Div. 2007)). A trial court's decision to commit an individual should be modified only when "the record reveals a clear mistake." Id. at 175 (quoting D.C., 146 N.J. at 58). "The appropriate inquiry is to canvass the significant amount of expert testimony in the record and determine whether the lower court['s] findings were clearly erroneous." D.C., 146 N.J. at 58-59 (citation omitted).

Having canvassed the expert testimony in the record, we have found no clear mistake or error. To the contrary, Judge Freedman's findings are amply supported by substantial credible evidence in the record. See State v. Locurto, 157 N.J. 463, 470-71 (1999). These findings satisfy the statutory elements required to civilly commit a sex offender under the SVPA. D.B.'s arguments to the contrary, which are mostly based on D.B.'s disagreement with the weight the judge gave to the evidence, are without sufficient merit to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(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