

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3133-20

IN THE MATTER OF THE
CIVIL COMMITMENT OF
K.W., SVP-559-10

Submitted May 16, 2022 – Decided May 26, 2022

Before Judges Sabatino and Mayer.

On appeal from the Superior Court of New Jersey, Law
Division, Monmouth County, Docket No. SVP-559-10.

Joseph E. Krakora, Public Defender, attorney for
appellant (Catherine Reid, Designated Counsel, on the
briefs).

Matthew J. Platkin, Acting Attorney General, attorney
for respondent (Melissa H. Raksa, Assistant Attorney
General, of counsel; Stephen Slocum, Deputy Attorney
General, on the brief).

PER CURIAM

Appellant K.W. is a resident of the Special Treatment Unit ("STU"), the
secure custodial facility designated for the treatment of persons in need of civil
commitment pursuant to the Sexually Violent Predator Act ("SVPA"), N.J.S.A.

30:4-27.24 to -27.38. He appeals the trial court's May 27, 2021 decision continuing his confinement at the STU after a periodic review hearing.

Appellant has been convicted of three prior sexual offenses: a 1983 sexual assault on an intoxicated woman, a 1985 sexual touching of his ten-year-old niece, and a 1999 conviction for another sexual assault. He was committed to the STU in 2010 after his last criminal sentence ended.

Appellant was age fifty-five at the time of the review hearing. He has been at the STU for over eleven years.

It is well established that under the SVPA, an involuntary civil commitment can follow an offender's 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(b). The statute defines a mental abnormality as "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." N.J.S.A. 30:4-27.26.

To support civil commitment, the offender's mental abnormality or personality disorder "must affect an individual's ability to control his or her sexually harmful conduct." In re Civil Commitment of W.Z., 173 N.J. 109, 127

(2002). A finding of a total lack of control is not necessary to commit the offender. Id. at 126-27. Rather, the State bears the burden to prove 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 . . . 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." Id. at 132; accord In re Civil Commitment of R.F., 217 N.J. 152, 173 (2014). The court must address "his or her present serious difficulty with control over dangerous sexual behavior," and the State must establish, by clear and convincing evidence, that it is highly likely that the individual will reoffend. Id. at 132-34; see also N.J.S.A. 30:4-27.32.

After initially committing an SVPA offender, a court must conduct an annual review hearing to determine whether the offender should be released or remain in treatment, unless the hearing is waived. N.J.S.A. 30:4-27.35. The offender may petition for discharge at any time. N.J.S.A. 30:4-27.36(d).

The State also maintains the burden of demonstrating by clear and convincing evidence that the committed person "needs continued involuntary commitment as a sexually violent predator[.]" N.J.S.A. 30:4-27.32(a). "Once committed under the SVPA, an individual should be released when a court is

convinced that he or she will not have serious difficulty controlling sexually violent behavior and will be highly likely to comply with [a] plan for safe reintegration into the community." W.Z., 173 N.J. at 130; see also R.F., 217 N.J. at 173 (reaffirming the "highly likely to reoffend" standard for SVPA commitment and re-commitment); In re Commitment of E.D., 183 N.J. 536, 540, 551 (2005) (same).

Given the civil liberties at stake, "[t]he court must not confine an individual indefinitely when the individual with reasonable assurance could live safely in the community with support and supervision." In re Commitment of J.J.F., 365 N.J. Super. 486, 502 (App. Div. 2004) (citing State v. Carter, 64 N.J. 382, 389 (1974)). Nonetheless, "if after a fair chance to produce evidence, a conditional discharge from SVPA confinement cannot be granted without undue risks to society," the commitment should be continued "until the prospects for release are more optimistic." Ibid.

In the present case, the State presented two expert witnesses at the review hearing: Dr. Roger Harris, M.D., and Dr. Nafisa Mandani, Psy.D. Among other things, Dr. Harris noted on the basis of his reports and appellant's treatment record that appellant "was hostile towards women . . . didn't assume responsibility for his behaviors[,]" and that appellant's behavior and statements

during therapy indicate his "cognitive distortions . . . remain active to this day." Dr. Harris agreed that appellant "suffers from a mental abnormality or personality disorder . . . [that] predispose[s] him to sexual violence and reoffense[.]" In addition, Dr. Harris opined that appellant "would be highly likely to sexually reoffend if placed in a less restrictive setting." Dr. Mandani testified that on the basis of appellant's treatment notes from the year prior to the hearing and consultations with appellant's treatment team, he "tends to lack accountability and responsibility for his behaviors[.]" and "demonstrates impulsivity and irresponsibility and reckless disregard for the safety of others." Dr. Mandani agreed with Dr. Harris's conclusion that appellant "would be highly likely to reoffend if not confined to a restrictive setting such as the STU."

Appellant presented testimony from Dr. Christopher Lorah, who also examined him. Dr. Lorah offered more optimistic views about appellant's risk factors. Among other things, Dr. Lorah opined that, contrary to Dr. Harris and Dr. Mandani's assessments, appellant in fact "has an understanding of relapse prevention techniques . . . and understands victim empathy." Dr. Lorah also stated that he and Dr. Harris "ultimately disagree . . . that more treatment is necessary at the STU in order to lower [appellant's] risk for sexual recidivism below the highly likely level." Indeed, Dr. Lorah opined that "[appellant] is

prepared to enter the community and be safe[,] and "recommend[ed] a conditional discharge which includes outpatient treatment, both substance abuse and sex offender specific."

After thoroughly describing and considering the expert testimony and other records, the trial court concluded that appellant continues to pose a high risk of sexual re-offense and is not eligible for release under the statute. The oral opinion explained multiple reasons for that conclusion:

[T]he [c]ourt found [appellant] to be intentionally evasive, both on direct and cross . . . [w]hen discussing his experiences in the [treatment community], [] specifically . . . with female staffers, his statements were made with a noticeable vitriol.

. . .

[C]onsider[ing] the balancing test from W.Z. . . . the [c]ourt takes careful note . . . [that] [appellant's] history of sexual offenses is quite serious . . . [and] apparent[ly] compulsi[ve][.]

. . .

What is most compelling to the [c]ourt is that the behaviors that underlie [appellant's] sexual offense cycle appear to be very much still present. While Dr. Lorah concluded that [appellant] has done enough at the STU to lower his risk below the highly likely mandate by addressing issues related to the cognitive, emotional and volitional aspects of his reoffending, the documents submitted and [appellant's] own testimony seemed to demonstrate just the opposite.

. . .

[Appellant's] testimony was significant for this [c]ourt as he demonstrated a continued and obvious disdain for female staffers at STU.

The court also found the opinions of the State's experts more persuasive than those of Dr. Lorah.

On appeal, K.W. raises the following argument in his brief:

POINT I

THE TRIAL COURT ERRED IN CONCLUDING THAT THE STATE MET THE HEIGHTENED BURDEN OF PROOF REQUIRED FOR CONTINUED DEPRIVATION OF LIBERTY.

Having considered these arguments. We affirm.


The scope of appellate review of civil commitment judgments is extremely narrow. We only "reverse a commitment for an abuse of discretion or lack of evidence to support it." In re Civil Commitment of T.J.N., 390 N.J. Super. 218, 225 (App. Div. 2007); accord R.F., 217 N.J. at 174. An appellate court should give the "utmost deference" to the reviewing judge's determination of the appropriate balancing of societal interests and individual liberty. In re J.P., 339 N.J. Super. 443, 459 (App. Div. 2001) (quoting State v. Fields, 77 N.J. 282, 311 (1978)). The trial court's determination will be subject to modification only where the record reveals a clear abuse of discretion. Ibid. "The appropriate inquiry is to canvass the . . . expert testimony in the record and determine

whether the lower courts' findings were clearly erroneous." In re D.C., 146 N.J. 31, 58-59 (1996).

Applying these principles, we affirm K.W.'s continued commitment substantially for the reasons stated by the trial court. We do note that it is disturbing that appellant's progress within the STU recently declined. He had advanced to category "Level 3B" within the STU, but then regressed to "Level 3A" because of his displayed antagonistic attitude. His antagonism, particularly as to female staff members, became more evident when he testified at the hearing.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION