

# RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3003-22

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

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Submitted May 13, 2024 – Decided May 29, 2024

Before Judges Chase and Vinci.

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

Jennifer Nicole Silletti, Public Defender, attorney for  
appellant (Andrew R. Burroughs, Designated Counsel,  
on the briefs).

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

PER CURIAM

K.W. appeals from a February 2022 order continuing his civil  
commitment to the State's 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.<sup>1</sup>

We affirm.

K.W. 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 sexual assault. He was first committed to the STU in 2010, after completing his last criminal sentence, and has remained there since. We have previously affirmed K.W.'s commitment three times: In re Commitment of K.W., No. A-5491-09 (App. Div. Jan. 16, 2014); In re Commitment of K.W., No. A-0952-14 (App. Div. Aug. 10, 2016); In re Commitment of K.W., No. A-3133-20 (App. Div. May 26, 2022).

In April 2023, the court conducted a periodic review hearing pursuant to N.J.S.A. 30:4-27.35. The parties stipulated to two of the three elements necessary for civil commitment, namely that K.W. had been convicted of a sexually violent offense and was therefore subject to the SVPA and that K.W. suffers from a mental abnormality or personality disorder, specifically antisocial personality disorder. The only issue before the court was the third element,

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<sup>1</sup> We use initials to refer to K.W. because records pertaining to civil commitment proceedings under the SVPA are deemed confidential under N.J.S.A. 30:4-27.27(c) and are excluded from public access pursuant to Rule 1:38-3(f)(2).

whether K.W. was highly likely to sexually reoffend and therefore in need of continued confinement at STU.

Three expert witnesses testified at the review hearing. The State presented Roger Harris, M.D., an expert in forensic psychiatry, and Kelly Kovack, Ph.D., an expert in psychology. Dr. Kovack is a member of the Treatment Progress Review Committee ("TPRC") at STU that conducted its annual review of K.W.'s treatment course. Christopher Lorah, Ph.D., K.W.'s expert in forensic psychology, also testified.

Dr. Harris testified that after interviewing K.W. and reviewing K.W.'s treatment and progress records, he determined K.W. suffers from "other specified paraphilic disorder coercion, anti[social] personality disorder," and substance abuse disorder specifically involving alcohol, cannabis, and cocaine. Dr. Harris testified he graded K.W. a six on the Static-99R test,<sup>2</sup> which categorizes K.W. as a "well above average risk to sexually reoffend" when released from prison. Dr. Harris concluded appellant continues to meet the criteria for civil commitment under the SVPA and poses a high risk to sexually

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<sup>2</sup> "The Static-99[R] is an actuarial test used to estimate the probability of sexually violent recidivism in adult males previously convicted of sexually violent offenses." In re Civil Commitment of R.F., 217 N.J. 152, 164 n.9 (citing Andrew Harris et al., Static-99 Coding Rules Revised-2003 5 (2003)).

reoffend if placed in a less restrictive setting. The doctor testified K.W. is still not able to control his impulses and is in need of additional treatment. The court found Dr. Harris to be credible, knowledgeable, prepared, honest, and direct in his testimony.

The State next presented Dr. Kovack. She stated K.W. declined to meet with the TRPC. She reviewed appellant's treatment and progress notes with another doctor on the TPRC. As a result of this review, the TPRC and Dr. Kovack recommended K.W. remain in his current phase of treatment. K.W. had previously advanced to the second phase of core treatment, known as therapeutic community ("TC"), but had signed himself out. Dr. Kovack explained residents of the STU can apply for membership in TC at any time and that this would be indicated for K.W. before discharge from STU. She testified that before return to TC would be appropriate for K.W., he needed to process his arousal challenges and some of his feelings and resentment about TC.

Dr. Kovack reviewed appellant's Static-99R score and agreed K.W. was a well above average risk of being charged or convicted of another sexual offense. Dr. Kovack further testified K.W. fluctuates in treatment and at times shows signs of improvement "and then backtrack[s] a little bit." Dr. Kovack expressed concerns about how K.W. would react to aggressive behaviors exhibited by

others if he were to reenter the community, and K.W. was predisposed to commit acts of sexual violence in the foreseeable future. She agreed with Dr. Harris's diagnosis.

Dr. Kovack explained K.W. would need to "continue to meaningfully participate in his treatment, show an improved ability to take accountability for his actions, and [demonstrate] a deeper insight into his behavioral patterns." The court found her testimony to be thoughtful and intelligent, without bias, and presented in a professional and direct manner. The court further found Dr. Kovack to be fair and credible in her analysis of K.W.

The State rested, and K.W. called Dr. Lorah. Dr. Lorah testified he conducted a clinical interview with K.W. Like the State's experts, Dr. Lorah diagnosed K.W. with other specified paraphilic disorder, nonconsent, and antisocial personality disorder. However, Dr. Lorah opined K.W.'s treatment at the STU lowered his risk for sexual recidivism below the level of highly likely. Dr. Lorah stated K.W. completed sufficient treatment at STU to mitigate his risk in a secure setting and K.W. was highly likely to comply with conditional discharge if closely monitored in the community.

Dr. Lorah disagreed with the TRPC's recommendation for K.W. to first complete TC before discharge because Dr. Lorah questioned the effectiveness

of TC. Dr. Lorah further expressed if K.W. is not discharged, he should be advanced to the next phase of treatment and discharge planning should commence immediately. At the conclusion of his testimony, the court found Dr. Lorah was prepared and knowledgeable about the information in his report and ultimately found Dr. Lorah's testimony inherently believable.

In delivering his findings on the record, the court found "each expert produced a viable, cognizable opinion," relying on "appropriate factors in weighing the evidence and reaching a conclusion," and testifying in a manner which avoided providing a net opinion to the court. The court found the State proved appellant remained highly likely to reoffend if released into the general community and highlighted its decision was not reached through heavy reliance on the data assembled by the parties' experts since he did not find such data to be determinative; rather, it was merely a factor considered in the totality of the circumstances presented. The court found the State had established by clear and convincing evidence K.W. remained in need of confinement at the STU.

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

POINT I.

AS THE STATE HAD FAILED TO DEVELOP A  
PLAN TO DE-ESCALATE K.W.'S RESTRAINTS  
AND IT HAD FAILED TO PROVE BY CLEAR AND  
CONVINCING EVIDENCE THAT K.W.

PRESENTED A RISK TO THE COMMUNITY IF HE WAS CLOSELY SUPERVISED AND MONITORED WHEN DISCHARGED, THE TRIAL COURT ERRED WHEN IT DENIED K.W.'S REQUEST THAT A DISCHARGE PLAN BE DEVELOPED.

"The scope of appellate review of a commitment determination is extremely narrow and should be modified only if the record reveals a clear mistake." In re D.C., 146 N.J. 31, 58 (1996). "The scope of appellate review of a commitment" under the SVPA is also "extremely narrow." In re Civil Commitment of R.F., 217 N.J. at 174 (2012) (quoting D.C., 146 N.J. at 58). See also In re Commitment of J.S., 467 N.J. Super. 291, 302 (App. Div. 2021). "[A]n appellate court should not modify a trial court's determination either to commit or release an individual unless 'the record reveals a complete mistake.'" R.F., 217 N.J. at 175 (quoting D.C., 146 N.J. at 58). Further, the judges who hear these cases "generally are 'specialists' and 'their expertise in the subject' is entitled to 'special deference.'" Id. at 174 (citing In re Civil Commitment of T.J.N., 390 N.J. Super. 218, 226 (App. Div. 2007)).

The SVPA permits the State to involuntarily commit a person if, by clear and convincing evidence, the State can establish:

- (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."

[R.F. 217 N.J. at 173 (internal citations omitted) (quoting In re Commitment of W.Z., 173 N.J. 109, 130 (2002)).]

See also N.J.S.A. 30:4-27.26 (defining "likely to engage in acts of sexual violence" as "the propensity of a person to commit acts of sexual violence . . . [to] such a degree as to pose a threat to the health and safety of others").

"The [SVPA] sets up a regime of annual reviews of a committed individual to assess his or her need for continued commitment or conditional discharge." W.Z., 173 N.J. at 120 (citing N.J.S.A. 30:4-27.35). To be eligible for conditional discharge, a person must no longer "be likely to engage in acts of sexual violence because the person is amenable to and highly likely to comply with a plan to facilitate the person's adjustment and reintegration into the community," and "the court may order that the person be conditionally discharged in accordance with such plan." N.J.S.A. 30:4-27.32(c)(1).

K.W. argues the State failed to prove by clear and convincing evidence he presented a risk to the community if released from the STU and closely monitored in the community. He rebuts Dr. Kovack 's recommendation he reenter the TC phase before discharge, explaining such a plan would be



counterintuitive given his poor experience and lack of response with that specific treatment. K.W. explains his experience in TC should have led the trial court to conclude discharge was more appropriate and posits the State's insistence he complete TC unfairly inhibits his chances for discharge.

We are convinced sufficient credible evidence in the record supports the court's determination that discharge with strict conditions would not be appropriate. The court's decision was amply supported by the expert testimony. The court's decision that K.W. should remain on his present treatment program and go to TC when ready is not an abuse of discretion.

K.W. further argues the State failed to meet its burden to produce a plan to de-escalate appellant's restraints, and because of its failure, the court should have attributed considerably more weight to Dr. Lorah's discharge plan. K.W. asks for the matter to be remanded to allow the State to develop and present a plan for de-escalation of restraints and discharge.

K.W. has not shown any notable progress to justify Dr. Lorah's recommendation of any plan beyond remaining in his current phase of treatment. K.W. has not yet shown any improvements in his behaviors to suggest he has reflected on and appreciates the wrongfulness of his actions. Further, his lack of success in TC exemplifies why K.W. cannot be considered for a plan that

would progress toward discharge, because he still poses a risk to the community. K.W. has been provided recommendations on how he could improve during treatment, and he failed to do so. To now argue the State is unfairly depriving him of a plan for de-escalation and discharge is belied by the facts in the record. The State articulated a treatment plan for K.W., one that may ultimately lead to discharge and close monitoring; it is K.W. who has refused to follow this path. The State is not obligated to present a treatment plan to K.W.'s liking. The trial court gave due consideration and weight to the evidence presented by both parties, and nothing in the record suggests its determination was mistaken.

To the extent we have not otherwise addressed K.W.'s arguments, they are without sufficient merit to warrant 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