SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3766-20

IN THE MATTER OF THE
CIVIL COMMITMENT OF R.L.,
SVP-813-20.

Argued December 13, 2022 – Decided August 17, 2023

Before Judges Gilson, Rose and Gummer.

On appeal from the Superior Court of New Jersey, Law Division, Hunterdon County, Docket No. SVP-813-20.

Michael Mangels, Assistant Deputy Public Defender, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Susan Remis Silver, Assistant Deputy Public Defender, of counsel and on the briefs).

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

PER CURIAM

Following the completion of his prison sentence for endangering the welfare of a six-year-old child by sexual conduct, R.L. was civilly committed to

the Special Treatment Unit (STU), pursuant to the New Jersey Sexually Violent Predator Act (SVPA or Act), N.J.S.A. 30:4-27.24 to -27.38. On appeal, R.L. challenges three Law Division orders: (1) an April 9, 2020 order of temporary commitment; (2) a May 5, 2020 order[1] denying his motion to dismiss the petition and continuing the initial commitment hearing; and (3) an August 11, 2021 judgment of initial commitment. After reviewing the contentions advanced on appeal in light of the facts and relevant law, we affirm.

I.

We summarize the pertinent facts and procedural history from the record. The predicate offense for R.L.'s civil commitment occurred on July 24, 2015, when R.L., age twenty-nine, was caring for his girlfriend's six-year-old daughter, M.R. The child reported R.L. vaginally and anally penetrated her. Thereafter, R.L. was charged in a two-count Cumberland County indictment with second-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a)(1), and two counts of second-degree sexual assault, N.J.S.A. 2C:14-2(b).

In July 2016, pursuant to the terms of a negotiated plea agreement, R.L. pled guilty to the endangering charge and the State agreed to dismiss the

[1] The filing date of the order provided on appeal is illegible; we use the date the order was signed by the trial judge.

remaining charges. During his plea colloquy, R.L. acknowledged that while babysitting M.R. he "pulled [his] penis out and had her rub i[t] . . . for [his] own sexual gratification." In December 2016, R.L. was sentenced to a seven-year prison term, subject to Megan's Law, parole supervision for life (PSL), and a Nicole's Law restraining order. In May 2017, R.L. was transferred to the Adult Diagnostic Treatment Center (ADTC) in Avenel, after he volunteered to participate in sex offender specific treatment pursuant to N.J.S.A. 2C:47-3(h)(2) and (3).

In March 2020, about one month before R.L. "was scheduled to max out of his sentence," the Attorney General petitioned for R.L.'s involuntary civil commitment. The petition identified R.L.'s prior criminal history, including sexual offenses, and asserted his predicate offense "was the result of the commission of a sexually violent offense as defined in [the SVPA]." The petition included the clinical certificates of two psychiatrists, who evaluated R.L. in March 2020 and identified him as a sexually violent predator eligible for civil commitment.

R.L.'s assigned counsel opposed the petition, contending the State failed to present prima facie proof that his endangering offense satisfied the Act's definition of a sexually violent offense. Because the petition was not supported

by the transcript of his July 2016 guilty plea, R.L. argued the State failed to provide "competent evidence, despite its availability" that would establish the factual basis for his predicate offense.

After considering the parties' submissions, the trial court rejected R.L.'s contentions and issued a written statement of reasons that accompanied the April 9, 2020 order. The court recognized N.J.S.A. 30:4-27.26 enumerated sexually violent offenses under subsection (a), and other offenses could constitute a sexually violent offense under subsection (b), provided the underlying circumstances convinced the court that the "conduct is substantially equivalent to the sexually violent conduct encompassed by the offenses enumerated in [subsection (a)]." Considering the circumstances presented in this case, the judge found:

> The presentence report makes clear that [R.L.] committed a sexually violent offense in that [R.L.] inserted his penis into the vagina and anus of his girlfriend's six-year-old daughter, M.R., while he was babysitting her. [R.L.] pled guilty to [e]ndangering [s]exual [c]onduct with [c]hild by [c]aretaker. The title of this offense, which is listed on the judgment of conviction, explicitly includes a component for sexual conduct. Moreover, [R.L.]'s sentence requires him to comply with the provisions of PSL and Megan's Law, which are exclusively used to monitor individuals who are convicted of sexual offenses. Additionally, six months into his prison sentence, [R.L.] requested, and did in fact serve the remaining portion of his sentence

> at the ADTC, a treatment center for sex offenders. Given all of these circumstances, the [c]ourt finds that the State has established that [R.L.] was convicted of a sexually violent offense.

The matter was assigned to another judge for an initial commitment hearing, which commenced on April 29, 2020, via telephone pursuant to the pandemic-related restrictions on in-person hearings. Although R.L. had not filed a motion to dismiss the petition, R.L.'s counsel argued the State could not satisfy its burden of proof because it had not provided the transcript of R.L.'s July 2016 guilty plea. Counsel further stated that R.L. did not waive his right to be present at the hearing. See N.J.S.A. 30:4-27.31(b) (affording persons "subject to involuntary commitment as a sexually violent predator" certain rights, including "the right to be present at the court hearing").

The State opposed R.L.'s oral application to dismiss the litigation. The deputy attorney general explained that her paralegal had ordered the transcript, but its receipt was delayed because of logistics related to the pandemic.

Noting the STU was not yet equipped to enable SVPA committees to attend virtual court hearings, the judge found the initial commitment hearing had begun within the twenty-day period mandated under the Act. The judge then carried the hearing to permit R.L. to attend virtually when the technology was available at the STU. In addition, the judge instructed R.L. to determine,

upon receipt and review of the plea transcript, whether he would withdraw his objection to the State's proofs. If not, a testimonial hearing would "abide the technological development at the STU." The judge entered the May 5, 2020 order consistent with his oral decision. We denied R.L.'s ensuing motion for leave to appeal on June 8, 2020; the Supreme Court denied R.L's motion for leave to appeal on September 9, 2020.

The testimonial hearing proceeded on four non-consecutive days between December 10, 2020 and May 26, 2021. The State presented the testimony of Dr. Indra Cidambi, M.D., a psychiatrist, and Dr. Kelly Kovack, Psy.D., a psychologist. R.L. did not testify or present any evidence.

Qualified as an expert in the field of psychiatry and performing evaluations and risk assessments under the SVPA, Dr. Cidambi detailed R.L.'s sexual offense history, which began when R.L. was a juvenile. In September 1999, thirteen-year-old R.L was charged with criminal sexual contact. The charge was subsequently dismissed. In August 2003, R.L. was charged in family court with aggravated sexual assault of a sixteen-year-old female, when he attempted to pull her shorts down, touch her thigh area, and place his fingers inside her vagina. That charge also was dismissed.

The following month, in September 2003, R.L. was involved in the sexual assault of an intoxicated peer-aged victim, who was given marijuana by R.L. and his friends. R.L. was charged with endangerment, abuse and neglect, and sexual assault. R.L. was sentenced to forty-five days in a youth detention center for the endangerment conviction.

In June 2004, R.L. was eighteen years old and serving a term of probation when he entered his ex-girlfriend's vehicle and asked her to engage in sexual relations while their baby was in the rear seat. The victim denied R.L.'s request. Armed with a gun, R.L. "threatened to take her and the baby," then sexually assaulted the victim, stole money from her purse, and fled on foot. R.L. pled guilty to third-degree terroristic threats and fourth-degree aggravated assault with a firearm and was sentenced to a five-year prison term, with an eighteen-month parole disqualifier.

Dr. Cidambi therefore concluded R.L. had a "long-standing" criminal history, which began "very early in his life." The doctor also noted R.L. made self-contradictory statements, which demonstrated he was "minimizing his offenses" and "in denial."

Dr. Cidambi opined that R.L.'s response to treatment was minimally successful, and he would have "serious difficulty controlling his sexual

offending behavior if he were released at this point." Noting R.L. had not had "enough adequate treatment at this point in time," Dr. Cidambi testified that he "ha[d] an antisocial lifestyle and . . . [a] problem with cooperating with supervision." Further, R.L. had "an intimacy deficiency and interpersonal instability," using "sex as a coping mechanism."

Dr. Cidambi diagnosed R.L. with other specified paraphilic disorder, non-consent; antisocial personality disorder (ASPD); and cannabis, opioid, and stimulant use disorders. According to the doctor, the combined diagnoses of other specified paraphilic disorder and ASPD increased R.L.'s risk to sexually reoffend. Dr. Cidambi concluded R.L. was highly likely to sexually reoffend if he were released from custody.

Dr. Kovack was qualified as an expert in the field of psychology with a concentration in risk assessments for sexually violent predators committed under the SVPA. Dr. Kovack evaluated R.L. twice and prepared a report and supplemental report.[2] Dr. Kovack noted R.L.'s "lengthy history," which "escalated[d] in severity" over time. According to the doctor, R.L.'s entire criminal history, including dismissed offenses, was pertinent to his evaluation:

[2] Because the recording of Dr. Kovack's evaluation was indiscernible, during the January 20, 2021 commitment hearing, the judge granted R.L.'s counsel's request for a reevaluation of R.L.

"[W]hen you are conducting risk assessments there are several parts of it that we look at and part of [it] is the chances that someone will sexually reoffend as well as the consequences or the outcome if he were to reoffend." Dr. Kovack testified that the multiple restraining orders filed against R.L. by former partners illustrated his "hostility and aggression towards women." The doctor described those relationships as "very chaotic and abusive."

Similar to Dr. Cidambi, Dr. Kovack diagnosed R.L. with other specified paraphilic disorder, non-consent, ASPD, and multiple substance use disorder. Pending further exploration, Dr. Kovack provisionally diagnosed pedophilic disorder. According to the doctor, the combination of the paraphilia disorder and ASPD increases an individual's risk to sexually reoffend.

On August 11, 2021, the judge entered a judgment committing R.L. to the State's custody, care, and treatment. In an oral opinion rendered that day, the judge agreed with the opinions of the State's experts, finding their testimony "highly credible." The judge found the State demonstrated through clear and convincing evidence that R.L. "suffer[ed] from a mental abnormality, a personality disorder that affects his emotional, cognitive and/or volitional functions and capacities to such a degree that he is predisposed to commit acts of sexual violence." Although the judge indicated he "applied the balancing test

that is set forth in the W.Z.[3] case," the judge ultimately found R.L. "would have serious difficulty controlling his sexually violent behavior to such a degree that he would be highly likely within the reasonably foreseeable future to engage in acts of sexual violence." The judge concluded the State proved by clear and convincing evidence that R.L. should be committed and scheduled the next review hearing. This appeal followed.

R.L. now raises three arguments for our consideration: (1) the temporary commitment order was issued without probable cause that R.L. was convicted of a sexual offense within the meaning of the SVPA because the State failed to provide the transcript of R.L.'s guilty plea; (2) the trial judge erroneously denied R.L.'s motion to dismiss the petition because the State failed to provide the plea transcript within twenty days of the temporary commitment order; and (3) the trial judge's decision to commit R.L. was based on an incorrect legal standard.[4]

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[3] In re Commitment of W.Z., 173 N.J. 109 (2002).

[4] Prior to oral argument before us, R.L. withdrew his fourth point from consideration: "THE TRIAL COURT FAILED TO DETERMINE THAT R.L. WAS 'HIGHLY LIKELY' TO SEXUALLY REOFFEND, A COMMITMENT PREREQUISITE, AND THE TRIAL RECORD CONTAINS NO EVIDENCE THAT R.L. HAS A SEXUAL RECIDIVISM RISK OF OVER [FIFTY PERCENT]." We therefore confine our review to R.L.'s remaining three points.

II.

Well-established principles guide our review. The Legislature's purpose in enacting the SVPA was "to protect other members of society from the danger posed by sexually violent predators." In re Commitment of J.M.B., 197 N.J. 563, 570-71 (2009) (citing N.J.S.A. 30:4-27.25). Courts are thus empowered to involuntarily commit any person deemed a sexually violent predator within the meaning of the Act. See N.J.S.A. 30:4-27.32(a). As used in the SVPA, "[s]exually violent offense" includes:

> (a) aggravated sexual assault; sexual assault; aggravated criminal sexual contact; kidnapping pursuant to [N.J.S.A. 2C:13-1(c)(2)(b)]; criminal sexual contact; felony murder pursuant to [N.J.S.A. 2C:11-3(a)(3)] if the underlying crime is sexual assault; an attempt to commit any of these enumerated offenses; or a criminal offense with substantially the same elements as any offense enumerated above, entered or imposed under the laws of the United States, this State or another state; or
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> (b) 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.
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> [N.J.S.A. 30:4-27.26 (emphasis added).]

In addressing subsection (b) of the provision, the Supreme Court has focused on the legislative history behind the enactment of the SVPA. See

J.M.B., 197 N.J. at 572-75. Thus, in addition to the enumerated "sexually violent offenses" contained in subsection (a), "the Legislature also included the authorization in subsection (b) for a court to make its own 'finding on the record, based on the circumstances of the case,' that a 'person's offense should be considered a sexually violent offense.'" Id. at 573 (quoting N.J.S.A. 30:4-27.26(b)). Accordingly, subsection (b) authorizes a court "to identify a person as a sexually violent predator even when he or she has not been convicted of an offense that fits precisely, or with substantial equivalence, the elements of the crimes encompassed in subsection (a)'s listing." Id. at 574. "'[T]he demonstrated conduct must be in the nature of the type of sexual offenses enumerated'" in subsection (a). Id. at 576 (quoting In re Commitment of J.P., 393 N.J. Super. 7, 17 (App. Div. 2007)).

"When it appears that a person may meet the criteria of a sexually violent predator . . . the agency with jurisdiction shall give written notice to the Attorney General" and "provide the Attorney General with all information relevant to a determination of whether the person may be a sexually violent predator." N.J.S.A. 30:4-27.27(a) and (b). After receiving such notice, the Attorney General may initiate a court proceeding to have the individual involuntarily

committed "by the submission to the court of two clinical certificates . . . at least one of which is prepared by a psychiatrist." N.J.S.A. 30:4-27.28(b) and (c).

If the State establishes probable cause that the person is a sexually violent predator, the trial court shall issue a temporary commitment order. N.J.S.A. 30:4-27.28(g). Within twenty days thereafter, the person is entitled to "a court hearing with respect to the issue of continuing need for involuntary commitment as a sexually violent predator." N.J.S.A. 30:4-27.29(a).

The SVPA requires the State to prove three elements at the civil commitment hearing:

> (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.
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> [In re P.D., 243 N.J. 553, 566 (2020) (quoting In re Civ. Commitment of R.F., 217 N.J. 152, 173 (2014)) (internal quotation marks omitted); see also W.Z., 173 N.J. at 127-34.]

"The State bears the burden of proving all three elements by clear and convincing evidence." In re Civ. Commitment of W.W., 245 N.J. 438, 450 (2021) (quoting R.F., 217 N.J. at 173). "Clear and convincing evidence is evidence that produces a firm belief or conviction that the allegations are true;

it is evidence that is so clear, direct and weighty and convincing that the factfinder can come to a clear conviction of the truth without hesitancy." Ibid. (quoting R.F., 217 N.J. at 173) (internal quotation marks omitted).

"'Given the statutory definition of a "sexually violent predator," expert witnesses in the fields of psychiatry and psychology routinely play leading roles in SVPA commitment hearings.'" Ibid. (quoting In re Civ. Commitment of D.Y., 218 N.J. 359, 382 (2014)). Indeed, the SVPA requires the State present an expert psychiatrist's testimony based on the doctor's personal examination of the potential committee at the hearing. Id. at 451. "'If the court finds by clear and convincing evidence that the person needs continued involuntary commitment as a sexually violent predator, it shall issue an order authorizing . . . involuntary commitment.'" Id. at 451 (quoting N.J.S.A. 30:4-27.32(a)).

When reviewing a trial court's commitment determination, our standard of review 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 judges who hear SVPA cases generally are 'specialists' and 'their expertise in the subject' is entitled to 'special deference.'" R.F., 217 N.J. at 174 (quoting In re Civ. Commitment of T.J.N., 390 N.J. Super. 218, 226 (App. Div. 2007)). As trial judges, they have 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)). When an appeal presents issues of law, however, the relevantstandard of review is de novo, with no special deference. D.Y., 218 N.J. at 373.

III.

Against that legal backdrop, we first consider R.L.'s challenges to the temporary commitment order. Citing In re Commitment of M.G., 331 N.J. Super. 365, 383-86 (App. Div. 2000), R.L. argues the plea transcript "was the only documentation that would demonstrate that [he] had a qualifying offense under the SVPA." R.L.'s reliance on our decision in M.G. is misplaced.

In M.G., we held an initial temporary commitment pursuant to the SVPA must be on notice to the alleged sexually violent predator and subject to a probable cause hearing, "limited to an inquiry as to whether the documentation provided to the judge satisfies the statutory requirements for commitment." Id. at 383-84. We explained "the State must establish that the person has been convicted, adjudicated delinquent or found not guilty by reason of insanity [(NGRI)] of a sexually violent offense, as defined by N.J.S.A. 30:4-27.26." Id. at 384. "To satisfy this statutory burden, the State must present the judgment or

order" underlying the conviction, adjudication of delinquency, or NGRI finding. Id. at 384-85 (citing N.J.S.A. 30:4-27.28; N.J.S.A. 30:4-27.26).

As the trial court correctly noted in this case, however, endangering the welfare of a child "is not an enumerated offense in subsection (a) of N.J.S.A. 30:4-27.26." Nonetheless, the court was satisfied the documentation that accompanied the State's petition clarified the "underlying circumstances of the qualifying conviction." That documentation included: the presentence report, describing vaginal and anal penetration; the judgment of conviction, stating the offense involved "sexual conduct," and the sentence included PSL and Megan's Law consequences; and information that at his request, R.L. "serve[d] the remaining portion of his sentence at the ADTC."

Based on our review of the applicable law, we reject R.L.'s contention that the plea transcript was necessary to establish probable cause for his temporary commitment. Although we part company with the court's reliance on those portions of the presentence report that referenced conduct R.L. had not admitted, i.e., vaginal and anal penetration, we are satisfied the remaining documentation established probable cause that R.L. committed an offense that "should be considered a sexually violent offense" under N.J.S.A. 30:4-27.26(b).

As one notable example, the court correctly recognized R.L. elected to serve the remainder of his sentence at the ADTC, which is "a treatment center for sex offenders." See In re Civil Commitment of W.X.C., 204 N.J. 179, 198 (2002) (stating "the treatment provided at the ADTC is particularized and is designed to meet the needs of the specific population of sex offenders"). We therefore conclude the plea transcript, although preferable, was not necessary to establish probable cause in this case.

IV.

Little need be said regarding R.L.'s contention that the judge erroneously denied his application to dismiss the petition based on the State's failure to produce R.L.'s guilty plea transcript prior to the first day of the commitment hearing. Because R.L. was not present, he further contends the judge erroneously concluded the April 29, 2020 telephonic hearing constituted the commencement of the initial hearing.

In accordance with N.J.S.A. 30:4-27.29(a), R.L.'s initial commitment commenced on April 29, 2020, within twenty days of the April 9, 2020 temporary commitment order. Due to circumstances substantially related to the pandemic, the plea transcript had not yet been received and defendant could not appear virtually on the first day of the initial commitment hearing. In view of

these highly unusual complications – which occurred at the onset of the pandemic – we conclude the trial judge adequately protected R.L.'s rights.

V.

Nor are we persuaded the trial judge's reference to the balancing test discussed in W.Z. warrants reversal of the August 11, 2021 judgment of initial commitment. More particularly, R.L. contends the judge improperly weighed his "propensity to reoffend" against "the seriousness of the acts he tends to commit." We are not persuaded.

In W.Z., the trial court determined W.Z. was a sexually violent predator under the SVPA, finding there was "clear and convincing evidence that W.Z. was unable to control his dangerous sexual behavior and that he was likely to commit additional sexual offenses in the reasonably foreseeable future." 173 N.J. at 117. On appeal, we rejected W.Z.'s argument that the SVPA's "clear and convincing evidence standard [requires] an offender must be 'substantially likely' to reoffend." Ibid. (quoting In re Commitment of W.Z., 339 N.J. Super. 549, 577 (App. Div. 2001)). We stated:

> [T]o determine whether a person is "likely to engage in acts of sexual violence," the trial court must find clear and convincing evidence that the person has a propensity, inclination, or tendency to commit acts of sexual violence. After finding clear and convincing evidence of a sex offender's propensity, inclination, or

> tendency to commit acts of sexual violence, the trial court must then weigh that propensity against the seriousness of the sexual crimes the person has committed to determine the extent of the threat he poses if released.
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> [Id. at 118 (quoting W.Z. 339 N.J. Super. at 580).]

We concluded W.Z. was "highly likely to reoffend in the reasonably foreseeable future." W.Z., 339 N.J. Super. at 581.

On certification granted, the Court held "the State must prove by clear and convincing evidence that the individual has serious difficulty controlling his or her harmful sexual behavior such that it is highly likely that the person will not control his or her sexually violent behavior and will reoffend." 173 N.J. at 133-34; see J.M.B., 197 N.J. at 571 (adopting W.Z.'s clear and convincing standard). The Court remanded the matter to the trial court to apply the applicable standard. Ibid.

R.L.'s contention that the judge committed "reversible legal error" by applying the balancing test discussed in W.Z. lacks merit. At the outset of his decision, the trial judge set forth the applicable law, recognizing the State must, among other things, prove through clear and convincing evidence that R.L. was "highly likely in the foreseeable future to sexually reoffend if he was not committed to the custody, care and for treatment at the [STU]." The judge

further found that "[i]f released, [R.L.] would have serious difficulty controlling his sexually violent behavior to such a degree that he would be highly likely within the reasonably foreseeable future to engage in acts of sexual violence." The judge then "note[d] for the record" that he applied the balancing test to further support his determination.

Although the trial judge erroneously referenced the balancing test, any error was harmless because the judge applied the applicable standard to conclude the State met its burden of proof. See R. 2:10-2 (noting "[a]ny error or omission shall be disregarded by the appellate court unless it is of such a nature as to have been clearly capable of producing an unjust result"). We therefore discern no basis to disturb the judgment of commitment, which is amply supported by the record evidence. See R.F., 217 N.J. at 174.

Affirmed.