IN THE COURT OF APPEALS OF IOWA

No. 8-250 / 07-1379
Filed June 25, 2008

IN RE THE DETENTION OF TERRANCE D. HILL,

TERRANCE D. HILL,
Respondent-Appellant.

Appeal from the Iowa District Court for Johnson County, Marsha M. Beckelman, Judge.

Terrance Duane Hill appeals his civil commitment as a sexually violent predator pursuant to Iowa Code chapter 229A (2005). **AFFIRMED.**

Mark C. Smith, State Appellate Defender, Michael H. Adams, Assistant Public Defender, and Amy Kepes, Civil Commitment Unit, for appellant.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson and Becky Goettsch, Assistant Attorneys General, Janet Lyness, County Attorney, and Robert Glaser, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Zimmer and Miller, JJ.

MILLER, P.J.

Terrance Duane Hill appeals his civil commitment as a sexually violent predator pursuant to Iowa Code chapter 229A (2005). We affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

In June 1983, at age twenty, Hill was convicted of sexual abuse in the second degree for sexually abusing his girlfriend's four-year-old daughter. He was sentenced to twenty-five years in prison. Hill was released from prison on March 1, 1994. Within two years of his release Hill was again sexually abusing children, including the mentally challenged eight-year-old son of one of his girlfriends. To lure the victim into engaging in sex acts Hill agreed to read the boy a bedtime story and give him a toy truck. During this same time period he was also having anal sex with the thirteen-year-old daughter of another girlfriend. Hill was apprehended when he burglarized the apartment of a woman and told her to "make [him] happy."[1] On January 2, 1997, Hill was convicted of two counts of sexual abuse in the third degree, burglary in the second degree, and assault with intent to commit sexual abuse. Hill was sentenced to a combined term of incarceration not to exceed twenty-two years for these crimes.

On August 24, 2006, the State filed a petition seeking to have Hill committed as a sexually violent predator pursuant to Iowa Code chapter 229A. The district court held a probable cause hearing and found probable cause to believe Hill was a sexually violent predator as defined in section 229A.2. Trial to the court was held on December 19, 2006.

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[1] Because the adult woman was not ultimately a victim of sexual abuse by Hill the district court here did not consider her for purposes of determining whether Hill is a pedophile and/or defining the ages of his victims.

The State retained Dr. Canton Roberts, Ph.D. to evaluate Hill and to give opinions as to whether Hill met the definition of a sexually violent predator under chapter 229A. Specifically, Roberts was to determine whether Hill suffers from a mental abnormality and whether that abnormality makes him more likely than not to commit sexually violent offenses if not confined in a secure facility.

Dr. Roberts diagnosed Hill as suffering from the mental abnormality of pedophilia, a disorder of sexual arousal marked by intense recurrent fantasies, impulses, or behaviors concerning sexual excitement and satisfactions related to prepubescent children. Dr. Roberts also acknowledged Hill had been diagnosed with several other disorders in the past, including antisocial personality disorder, schizophrenia, bipolar disorder, and schizoaffective disorder.

Based on Dr. Roberts's evaluation and diagnosis, he concluded that Hill is more likely than not to commit sexually violent offenses if not confined in a secure facility. In making this determination Dr. Roberts reviewed Hill's legal, medical, psychological, and corrections records, actuarial risk assessment instruments, effectiveness of any treatment provided, situational considerations unique to Hill, and personally interviewed him. Roberts also considered that Hill's past included periods of extended pedophilic contact with children and the fact Hill continued to experience fantasies or attraction to young children. While he agreed Hill met the criteria for schizoaffective disorder, he opined that pedophilia was at the heart of Hill's risk of reoffending.

Hill retained Dr. Craig Rypma, Ph.D. to evaluate him and give opinions in the same areas as Dr. Roberts was to give. Dr. Rypma disagreed with Dr.

Roberts's opinion that Hill suffers from pedophilia and that it caused Hill to be at risk for reoffending. Instead, Dr. Rypma testified Hill suffered from schizoaffective disorder that results in poor judgment and impulse control, which led to Hill's victimization of children. He concluded that Hill did not suffer from a mental abnormality that makes him more likely than not to commit sexually violent offenses if not confined in a secure facility. His opinion was based, in part, on the fact that historically when Hill takes medication for his condition his symptoms abate. Further, Rypma testified that since 2002 when Hill began taking the psychotropic medication Navane, he has not suffered any psychotic symptoms and that Hill stated he plans to continue taking the medication. Thus, Dr. Rypma opined that as long as Hill continues to receive and take his medication, his risk of making poor decisions, including committing sexual crimes, is significantly reduced.

On July 17, 2007, the trial court entered a ruling finding Hill to be a sexually violent predator and ordering his commitment. In doing so, the court concluded that Hill did suffer from a mental abnormality as defined in section 229A.2(5), including but not limited to pedophilia, and agreed with Dr. Roberts's conclusion that this mental abnormality makes Hill more likely than not commit a sexual offense if not confined in a secure facility.

Hill appeals, contending the district court erred in finding him to be a sexually violent predator because the State failed to prove he suffered from a mental abnormality and that such abnormality makes him more likely than not to engage in sexually violent offenses if not confined in a secure facility.

II. SCOPE AND STANDARDS OF REVIEW.

Hill’s challenge to the district court's order is directed toward the sufficiency of the evidence underlying the court's determination that he suffered from a mental abnormality and such abnormality made him more likely than not to commit sexually violent offenses if not confine in a secure facility. Our review of challenges to the sufficiency of the evidence is for correction of errors at law. *In re Detention of Swanson*, 668 N.W.2d 570, 574 (Iowa 2003). In determining whether the evidence presented was substantial, we consider “the entirety of the evidence presented in a ‘light most favorable to the State, including all legitimate inferences and presumptions which may be fairly and reasonably deduced from the record.’” *Id.* (quoting *State v. Lambert*, 612 N.W.2d 810, 813 (Iowa 2000)).

III. MERITS.

Under chapter 229A, a sexually violent predator is

> a person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality which makes the person likely to engage in predatory acts constituting sexually violent offenses, if not confined in a secure facility.

Iowa Code § 229A.2(11).[2] A person is “likely to engage in predatory acts of sexual violence” if that person

> more likely than not will engage in acts of a sexually violent nature. If a person is not confined at the time that a petition is filed, a person is “likely to engage in predatory acts of sexual violence” only if the person commits a recent overt act.

[2] Hill does not challenge the district court’s finding that he has been convicted of a sexually violent offense.

Id. § 229A.2(4). A mental abnormality is a condition that "predispos[es] that person to commit sexually violent offenses to a degree which would constitute a menace to the health and safety of others." *Id*. § 229A.2(5). "Menace" can be defined as "a threat or imminent danger." *In re Detention of Selby*, 710 N.W.2d 249, 253 n.2 (Iowa Ct. App. 2005) (citing *Beasley v. Molett*, 95 S.W.3d 590, 599-601 (Tex. App. 2002)).

Hill first appears to contend the district court erred in finding he suffered from a "mental abnormality" under section 229A.2(5) because such a finding may not be based upon a diagnosis of pedophilia. We disagree. First, chapter 229A does not limit the types of diagnoses that can serve to establish a mental abnormality, and due process does not require such a limitation. *In re Detention of Barnes*, 689 N.W.2d 455, 458 (Iowa 2004). "What is important is that the statute requires the condition to be congenital or acquired and to affect the emotional or volitional capacity of the person subject to commitment." *Id*. at 458-59. Furthermore, the mental abnormality does not have to be a condition that causes people *in general* to sexually offend, but must make the *particular individual* likely to commit sexually violent offenses. *Id*. at 460.

Furthermore, in *Kansas v. Hendricks*, 521 U.S. 346, 360, 117 S. Ct. 2072, 2081, 138 L. Ed. 2d 501, 514 (1997) the Supreme Court concluded a diagnosis of pedophilia qualified as a "mental abnormality" under the Kansas statute, a statute which is substantially similar to our chapter 229A. Accordingly, we conclude pedophilia may serve as the basis for commitment under chapter 229A provided it is shown to be an acquired or congenital condition that predisposes a

particular person, under his or her particular circumstances, to commit sexually violent offenses.

Here, there was substantial record evidence from which the district court could find Hill's pedophilic condition caused him to commit sexually violent offenses. Dr. Roberts testified that Hill's pedophilia affects his emotional and volitional capacity. He also noted that while Hill's pedophilic element was complicated by his other mental illnesses, including his schizoaffective disorder, his victimization of young children could not be explained by his other illnesses. There was no evidence that any voices or delusions associated with Hill's other illnesses commanded him to commit sexual offenses on children. Accordingly, the district court did not err in concluding Hill suffered from a mental abnormality as defined in section 229A.2(5), including but not limited to, pedophilia.

Hill next contends the State failed to prove he suffered from a mental abnormality that makes him more likely than not to engage in sexually violent offenses if not confined in a secure facility. More specifically, he argues the court erred in its reliance on Dr. Roberts's opinion because he relied almost entirely on the actuarial instruments to assess Hill's risk of recidivism, and such instruments did not show Hill is *presently* more likely than not to reoffend. We reject this contention.

The actuarial risk assessments used here by Dr. Roberts were just one factor in his clinical evaluation of Hill that led to his ultimate opinion that he suffers from a mental abnormality that predisposes him to commit sexually violent crimes. As noted above, Dr. Roberts used various assessment tools, in

addition to the actuarial instruments, in forming his opinion regarding Hill's likelihood to reoffend. These included: Hill's history of sexual offenses and criminal history, including the fact he reoffended after a lengthy period of incarceration; Hill's prior psychiatric, psychological, and/or treatment records; a consideration of Hill's diagnosis using both statutory criteria and the diagnostic and statistical manual of the American Psychiatric Association (DSM-IV-TR); and a personal interview with Hill. In addition, Roberts considered and took into account the fact Hill had been unsuccessfully discharged from the sex offender treatment program during his most recent incarceration. Thus, we believe the actuarial instruments relied on by Dr. Roberts were relevant to the overarching question of whether Hill is more likely than not to commit a sexually violent offense if not confined in a secure facility. Accordingly, we conclude Dr. Roberts's opinions did not rely too heavily on the actuarial instruments in question here. To the extent he did rely on them as one of several assessment tools, such reliance was founded.

Finally, we have previously determined the present tense language of chapter 229A requires "an individual must be both dangerous and possess a mental abnormality that makes the individual likely to engage in sexually violent predatory acts at the *time of commitment*." *Selby*, 710 N.W.2d at 253 (emphasis added). Specifically, under section 229A.2(5) a person must "currently be suffering from a mental abnormality that makes the person likely to engage in sexually violent predatory acts." *Id.* However, we do not read *Selby* to mean the State is required to show the individual will commit a sexually violent offense *at*

the present time if not confined in a secure facility. Nor is the State required to prove *when* the individual is more likely than not to reoffend. *See In re Ewoldt*, 634 N.W.2d 622, 624 (Iowa 2001) ("[T]he legislature did not intend to impose a burden upon the State to prove that alleged sexual predators are expected to reoffend within a specific time period. . . ."). Rather, the State must prove the individual has a *present mental abnormality* that makes him more likely than not to commit sexually violent offenses if not confined and therefore is *presently dangerous. See Selby*, 710 N.W.2d at 253. The actuarial instruments, while measuring *future* reoffending rates, nevertheless are properly used to assist in understanding the essential question of whether Hill is more likely than not to commit sexually violent crimes if not in confined in a secure facility.

Accordingly, on the basis of all the information presented, we conclude the district court did not err in relying, in part, on Dr. Roberts's opinion and concluding the State had met its burden to prove Hill has a *present* mental abnormality that makes him more likely than not commit a sexually violent offense if not confined in a secure facility.

IV. CONCLUSION.

For the reasons set forth above, we conclude the district court did not err in finding the State met its burden to prove, beyond a reasonable doubt, that Hill suffered from a mental abnormality as defined in section 229A.2(5), and that such abnormality makes him more likely than not to engage in sexually violent offenses if not confined in a secure facility.

AFFIRMED.