2025 IL App (2d) 240448-U
No. 2-24-0448
Order filed March 10, 2025

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re COMMITMENT OF ERIK PAXTON	)	Appeal from the Circuit Court
	)	of Kane County.
	)	
	)	No. 14-MR-401
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Erik Paxton,	)	C. Thomas Hull III,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Jorgensen and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: Finding no issues of arguable merit for appeal, we grant appointed counsel's motion to withdraw, and we affirm the trial court's order civilly committing respondent as a sexually violent person.

¶ 2 Respondent, Erik Paxton, appeals from the judgment of the circuit court of Kane County committing him to the custody of the Department of Human Services (Department) under the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/1 *et seq.* (West 2012)). A private attorney was appointed to represent respondent in his appeal. She now moves to withdraw, contending that there is no arguably meritorious basis for appellate relief. We grant the motion and affirm the judgment.

¶ 3 I. BACKGROUND

¶ 4 On May 6, 2014, the Illinois Attorney General filed its commitment petition under the Act. According to the petition, respondent was convicted in February 2014 of child pornography (720 ILCS 5/11-20.1(a)(1)(vii) (West 2012)) and was evaluated in May 2014 by psychiatrist, Dr. Angeline Stanislaus, who found that respondent met the Act's definition of a "sexually violent person" (see 725 ILCS 207/5(f) (West 2012)). On June 12, 2014, the trial court held a probable cause hearing. See *id.* § 30. The record contains no report of that proceeding, but it appears that Stanislaus testified consistently with her report. The court determined that there was probable cause to believe that respondent was a sexually violent person. The court ordered that respondent be detained at a facility approved by the Department.

¶ 5 On February 25, 2015, respondent filed a motion under section 2-619(a)(9) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(9) (West 2014)) to dismiss the petition. He argued that, after the probable cause hearing, the State disclosed (1) a "Sex Offender Pre-Release Evaluation" prepared by the Department of Corrections (DOC) and (2) a report dated April 8, 2014, and prepared by Dr. Allison Schechter, who concluded that respondent was not a sexually violent person under the Act. Respondent attached a copy of Schechter's report, in which she found "no evidence to suggest that [respondent] [was] substantially probable [*sic*] to commit a hands-on sexual offense, given that he ha[d] no known history of engaging in this behavior." Respondent did not attach a copy of the "Sex Offender Pre-Release Evaluation," but he alleged this document concluded he was not substantially probable to commit further acts of sexual violence. Respondent claimed that Schechter's report was "withheld" from respondent until after the probable cause hearing. Respondent argued that, in light of the previously undisclosed materials, the State "abused its authority" by seeking to commit him under the Act. At the hearing

on the motion to dismiss, respondent additionally argued that the Act does not authorize the Attorney General to have a sex offender evaluated under the Act before filing a petition. The trial court denied the motion.

¶ 6 A trial on the petition commenced in February 2024. Stanislaus testified for the State as an expert in the field of clinical and forensic psychiatry, specifically the evaluation and risk assessment of sex offenders. She testified that the Attorney General hired her to evaluate whether respondent should be civilly committed under the Act. In forming her evaluation, she interviewed respondent and reviewed court records, police records, DOC records, and prior evaluations. She noted that, in interviews with police, respondent admitted to peeping into windows in the hope of seeing naked women or girls. On three separate occasions, he masturbated while spying on an 11-year-old girl, an undressed 13-year-old girl, and an adult woman. Respondent surreptitiously entered others' homes, some occupied and some vacant. He stole women's clothing, including undergarments, from homes. He was found in possession of an extensive collection of child pornography, as well as images depicting dead children, beheadings, and autopsies. His computer's browser history included searches for how to make chloroform at home. He told law enforcement officials that he was unable to have sex with a person unless he had rendered that person unconscious. He wanted to engage in sexual activity with children but did not want them to know he had done it. He considered accomplishing this by choking them. Respondent sought jobs that gave him access to children. For instance, he worked at the YMCA in a children's program. He developed a particular interest in two girls who were 10 and 11 years old. He traveled to their homes to peep at them, hoping to see them nude. He also reported becoming sexually aroused when lifting a five-year-old girl to help her use playground equipment. While in the

Department's custody, respondent participated in an "entry level" sex offender treatment but did not continue with a full treatment program.

¶ 7 Stanislaus opined to a reasonable degree of psychiatric certainty that respondent suffered from (1) "pedophilic disorder, sexually attracted to females, nonexclusive subtype," (2) "fetishistic *** disorder," (3) "voyeuristic disorder," and (4) "other specified paraphilic disorder, nonconsent." According to Stanislaus, the pedophilic and paraphilic disorders predisposed respondent to commit acts of sexual violence. In her opinion, respondent still suffered from them at the time of the trial. She explained that such disorders do not go away without treatment, and teaching subjects how to manage them is necessary. Respondent had not received sufficient treatment to manage the disorders. Stanislaus opined to a reasonable degree of psychiatric certainty that respondent met the criteria of a sexually violent person under the Act because he had committed one of the enumerated offenses (child pornography) and it was substantially probable, based on his disorders, that he would commit further acts of sexual violence. By "substantially probable," Stanislaus meant "[m]uch more likely than not."

¶ 8 David Suire testified as an expert in clinical psychology, specifically the evaluation and risk assessment of sex offenders. In 2014, the Department assigned Suire to evaluate respondent. Suire interviewed respondent and reviewed court records, police records, DOC records, and prior evaluations. Suire diagnosed respondent with "pedophilic disorder, sexually attracted to females, nonexclusive type; other specified paraphilic disorder, sexually attracted to nonconsenting persons and necrophilia; voyeuristic disorder; and fetishistic disorder; and finally schizotypal personality disorder." Suire described schizotypal personality disorder as "a subpsychotic pattern of odd thinking and social interaction difficulties." Suire also opined that respondent still suffered from these disorders at the time of the trial and that they predisposed him to engage in further acts of

sexual violence. Suire opined to a reasonable degree of psychiatric certainty that respondent met the criteria of a sexually violent person under the Act because he had committed one of the enumerated offenses (child pornography) and it was substantially probable that he would commit further acts of sexual violence.

¶ 9 Luis Rosell testified for respondent as an expert "in the field[s] of clinical and forensic psychology, specifically the evaluation, diagnosis, and risk assessment of sex offenders." Since 2015, Rosell met with respondent in person on five occasions and remotely on two occasions to determine whether he met the criteria for being a sexually violent person. Rosell opined to a reasonable degree of psychological certainty that respondent did not meet those criteria. Rosell explained that respondent's criminal history showed no charge or conviction of a "hands-on" offense. Rosell added, "[W]hen I think of sexual [*sic*] violent individuals, I think, like most people do, that it usually involves sexual [*sic*] violent act on someone, towards someone that may or may not inflict pain; but either way, they've crossed a boundary of an assault in some manner." Rosell also found it significant that, aside from an instance of masturbation, respondent engaged in no "problematic" conduct while confined.

¶ 10 The trial court found that the State proved beyond a reasonable doubt that respondent was a sexually violent person under the Act. The court ordered him committed to the custody of the Department in a secure institutional setting. This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 Appellate counsel moves to withdraw per *Anders v. California*, 386 U.S. 738 (1967), and *People v. Jones*, 38 Ill. 2d 384 (1967). In her motion, counsel states that she read the record and found no issue of arguable merit. Counsel's motion provides a statement of facts and an argument

as to why this appeal presents no issue of arguable merit. We advised respondent that he had 30 days to respond to the motion. That time has passed, and respondent has not responded.

¶ 13 Under the Act, a "sexually violent person" is, *inter alia*, one who (1) has been convicted of an enumerated offense, including child pornography (see 725 ILCS 207/5(e) (West 2022)); and (2) "is dangerous because he or she suffers from a mental disorder that makes it substantially probable that the person will engage in acts of sexual violence." *Id.* § 5(f). The Attorney General or the State's Attorney of the county in which an offender was convicted may file a petition alleging that the offender is a sexually violent person. *Id.* § 15(a). The State has the burden of proving the allegations of the petition beyond a reasonable doubt. *Id.* § 35(d). If the trier of fact finds that the offender is a sexually violent person, the trial court shall enter an order committing the offender to the Department's custody "for control, care and treatment until such time as the person is no longer a sexually violent person." *Id.* § 40(a). The order shall specify either institutional care in a secure facility or conditional release. *Id.* §§ 35(f), 40(b)(2).

¶ 14 Counsel explains that she considered several potential issues for appeal but concluded that each lacks arguable merit. We agree.

¶ 15 Counsel first considered arguing that the trial should have granted respondent's motion under section 2-619(a)(9) of the Code to dismiss the State's petition. Section 2-619 of the Code provides that a party may seek dismissal of an action "based upon certain defects or defenses" (735 ILCS 5/2-619 (West 2022)), including, under subsection (a)(9), that "the claim asserted *** is barred by other affirmative matter avoiding the legal effect of or defeating the claim" (*id.* § 2-619(a)(9)). Respondent's motion to dismiss was based on the theories that the Attorney General (1) lacked authority to have respondent evaluated before filing its petition and (2) failed to disclose evidence favorable to respondent before the probable cause hearing. We fail to see how this

alleged misconduct on the part of the Attorney General either avoided the legal effect of or defeated its claim that respondent was a sexually violent person.

¶ 16 Counsel next considered arguing that respondent's trial counsel was constitutionally ineffective for not requesting discovery before the probable cause hearing. Because proceedings under the Act are of a civil nature, the discovery rules for civil proceedings apply. See 725 ILCS 207/20 (West 2022). However, only defendants in criminal prosecutions are constitutionally entitled to the assistance of counsel (U.S. Const., amend. VI), which the United States Supreme Court has construed as the right to the "reasonably effective" assistance of counsel (see *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). Counsel submits that even *if* (1) respondent had the right to the effective assistance of counsel *and* (2) respondent had the right to discovery before the probable cause hearing, trial counsel was not ineffective. We agree.

¶ 17 Claims of ineffective assistance of counsel require a showing that counsel's performance "fell below an objective standard of reasonableness" and that the deficient performance was prejudicial in that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 688, 694. Counsel's failure to request discovery could not have caused prejudice within the meaning of *Strickland*. Discovery might indeed have revealed Schechter's report reaching a different conclusion than Stanislaus's on whether respondent met the Act's definition of a sexually violent person. However, a probable cause hearing under the Act is " 'not a proper forum to choose between conflicting facts or inferences.' " *In re Detention of Hardin*, 238 Ill. 2d 33, 48 (2010) (quoting *State v. Watson*, 595 N.W.2d 403, 420 (Wis. 1999)). Accordingly, there is no reasonable probability that discovery of Schechter's report would have changed the outcome of the probable cause hearing.

¶ 18 Finally, counsel considered whether the trial court's finding that respondent was a sexually violent person could successfully be challenged by arguing that respondent was convicted only of an offense that did not involve physical contact. Counsel concluded, and we agree, that such an argument would be meritless because child pornography is one of the enumerated offenses that makes an offender eligible for commitment under the Act (see 725 ILCS 207/5(e), (f) (West 2022)).

¶ 19 After examining the record and the motion to withdraw, we agree with counsel that this appeal presents no issue of arguable merit.

¶ 20 III. CONCLUSION

¶ 21 For the reasons stated, we grant the motion to withdraw and affirm the judgment of the circuit court of Kane County.

¶ 22 Affirmed.