Supreme Court No. 89937-1
COA No. 30639-9-III

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE DETENTION OF:

STANFORD ANDERSON

Petitioner.

PETITION FOR REVIEW

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TABLE OF AUTHORITIES

A. IDENTITY OF PETITIONER

Petitioner Stanford Anderson, the appellant below, asks this Court to review the decision of the Court of Appeals referred to in section B.

B. COURT OF APPEALS DECISION

Anderson seeks review of Division Three's unpublished opinion in *In re Detention of Stanford Anderson*, 30639-9-III (Slip Op. filed January 16, 2014). A copy of the opinion is attached hereto.

C. ISSUE PRESENTED FOR REVIEW

A person may not be committed pursuant to the Sexually Violent Predators Act (SVPA), chapter 71.09 RCW, in the absence of proof beyond a reasonable doubt that the person is presently dangerous RAP 13.4(b)(3); RAP 13.4(b)(4).

D. STATEMENT OF THE CASE

The procedural and substantive facts are set forth in detail in the briefing to the Court of Appeals and not repeated here.[1] See Brief of Appellant, at 10.

Anderson argued on appeal that the State failed to prove

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[1] This motion refers to the verbatim report of proceedings in the same manner employed in the Court of Appeals.

beyond a reasonable doubt that the appellant would likely engage in predatory acts of sexual violence unless confined to a secure facility. Brief of Appellant at 10. The Court rejected Anderson's argument. For the reasons set forth below, he seeks review.

E. ARGUMENT

1. THE COURT OF APPEALS ERRED IN FINDING THAT THE TRIAL COURT DID NOT VIOLATE MR. ANDERSON'S RIGHT TO DUE PROCESS AND THAT THE COURT DID NOT RELIEVE THE STATE OF ITS BURDEN TO ESTABLISH THAT MR. ANDERSON WAS PRESENTLY DANGEROUS BY PROOF BEYOND A REASONABLE DOUBT.

The Fourteenth Amendment provides that no State "shall deprive any person of life, liberty, or property without due process of law." U.S. Const. amend XIV. Involuntary civil commitment is a "massive curtailment of liberty." *In re Harris*, 98 Wn.2d 276, 279, 654 P.2d 109 (1982) (quoting *Humphrey v. Cady*, 405 U.S. 504, 509, 92 S.Ct. 1048, 31 L.Ed.2d 394 (1972)). Procedural due process requires the State to prove that a respondent is both mentally ill and dangerous by, at a minimum, clear and convincing evidence. *Foucha v. Louisiana*, 504 U.S. 71, 80, 112 S.Ct. 1780, 118 L.Ed.2d 437 (1992); *Addington v. Texas*, 441 U.S. 418, 433, 99 S.Ct. 1804, 60 L.Ed.2d 323 (1979); *In re Turay*, 139 Wn.2d 379,

423, 986 P.2d 790 (1999). This standard reflects "the value society places on individual liberty." *Addington*, 441 U.S. at 425. The Washington Legislature has gone even further and requires the trier of fact to find beyond a reasonable doubt that a respondent meets the definition of a sexually violent predator. RCW 71.09.060. Being a sexually violent predator, in turn, encompasses both mental illness and dangerousness. RCW 71.09.020(16) (sexually violent predator is a person who has been convicted or charged with a crime of sexual violence and has a "mental abnormality or personality disorder" which makes the person "likely to engage in predatory acts of sexual violence if not confined in a secure facility"). Thus, in Washington, the fact finder must be convinced beyond a reasonable doubt that a respondent is both mentally ill and dangerous. RCW 71.09.060; RCW 71.09.020(16).

To involuntarily and indefinitely commit a person pursuant to the SVPA, the State must prove beyond a reasonable doubt the person is a sexually violent predator. RCW 71.09.060(1). A "sexually violent predator" is defined as: any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual

violence if not confined in a secure facility. RCW 71.09.020(16).

Due process concerns are "... satisfied because the sexually violent predator statute requires dangerousness as a condition for civil commitment. ...[M]ental illness is insufficient, standing alone, to justify confinement. Instead, there must be a showing that the person is dangerous to the community. ... [T]his Court has often said that "the only basis for involuntary commitment is dangerousness." *In re Detention of Young*, 122 Wn.2d 1, 31-32, 857 P.2d 989 (1993) (citations omitted).

To establish present dangerousness of a person who is incarcerated at the time the petition is filed, the State must prove either the person was in custody for a sexually violent offense as defined in RCW 71.09.020(15), or the person was in custody for an offense that was comparable to a "recent overt act" as defined in RCW 71.09.020(10). *Henrickson*, 140 Wn.2d at 693, 695. "Recent overt act" is defined as "any act or threat that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm in the mind of an objective person who knows of the history and mental condition of the person engaging in the act." RCW 71.09.020(10).

In the case at bar, Mr. Anderson argues is that the record does not contain substantial evidence that proved beyond a reasonable doubt that he was "likely to engage in predatory acts of sexual violence if not confined in a secure facility" as that phrase is used in the definition of an SVP. The State's evidence on this issue was presented through Dr. North's testimony concerning the three actuarial assessment tools he employed to evaluate Mr. Anderson's propensity to commit further crimes of sexual violence. According to Dr. North, Mr. Anderson's scores on the first of these three tests, the Static-99, indicated a "high risk of reoffense," meaning that there was a 38% risk for re-offense at 5 years, and a 49% risk for re-offense within 10 years. 3RP at 412. On the Static-2002R actuarial assessment tool, Dr. North scored Mr. Anderson with a 35% risk of re-offense after 5 years and a 46% risk of re-offense after 10 years. 3RP at 418. Finally, on the MnSOST-R actuarial assessment, Dr. North's scoring predicted a 30% risk of re-offense after six years of release. 3RP at 420.

The problem with this evidence is the actuarial tests that Dr. North employed did not constitute evidence of what current risk Mr. Anderson was for re-offense. Rather, they only provided an assignment of risk many years into the future.

Moreover, Dr. North, without citation to actuarial instruments, bolstered these percentages by stating that Mr. Anderson's risk of reoffending was probably higher than indicated by the actuarial results due to what he perceived as a high sex drive. 4RP at 527, 536. Dr. North's testimony, however, contained no citation to the definition of a "high sex drive," and he provided no basis to support his opinion that Mr. Anderson's sex drive was higher than other segments of the population or whether Mr. Anderson's rate of offending prior to 2006 was a result of his alleged high sex drive. In short, Dr. North's opinion that the actual risk of reoffending was higher than indicated by the actuarial instruments appears to be purely anecdotal or speculative and not tied to any specific scientific study or database.

In addition, even had the assessment tools assigned current levels of risks, those levels ran from a low of 38% to a high of 49%. This did not constitute evidence that proved "beyond a reasonable doubt" that Mr. Anderson was "likely to engage in predatory acts of sexual violence if not confined in a secure facility." This is in contrast to "proof beyond a reasonable doubt" in criminal cases; if a jury heard a case involving a criminal charge of a sex offense in which the only evidence of who committed the offense comes from

a DNA sample obtained from the body of the victim of the crime, and if the record reveals that the only evidence identifying the defendant as the perpetrator of the offenses is the testimony of the State's expert that there is a 38% to 49% statistical probability that the DNA belonged to the defendant, a reviewing court would almost certainly reverse the conviction based upon this evidence because a 38% to 49% statistical probability does not constitute proof beyond a reasonable doubt. Yet in the case at bar, this is precisely what occurred. The jury evidently found that a 38% to 49% statistical probability of re-offense, and that sometime years into the future, constituted proof beyond a reasonable doubt that Mr. Anderson was "likely to engage in predatory acts of sexual violence if not confined in a secure facility."

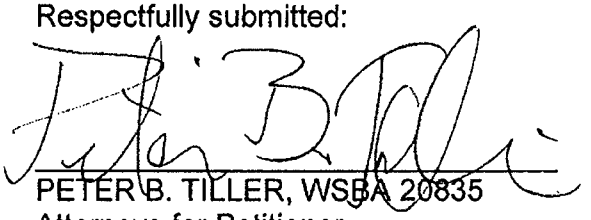
In light of the foregoing, the Court of Appeals has committed probable or obvious error and "has so far departed from the accepted and usual course of judicial proceedings" that review of Spicer's case is appropriate under RAP 13.5(b)(1)-(3).

F. CONCLUSION

For the foregoing reasons, Mr. Anderson respectfully requests this petition for review be granted.

DATED this 14th day of February, 2014.

Respectfully submitted:



PETER B. TILLER, WSBA 20835
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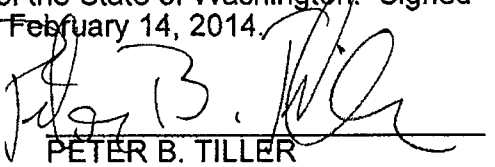
CERTIFICATE OF SERVICE

The undersigned certifies that on February 14, 2014, that this Petition for Review was e-filed to (1) the Clerk of the Court, Court of Appeals, Division III, 500 N. Cedar St., Spokane, WA 99210, and true and correct copies of this petition were mailed by U.S. mail, postage prepaid, to the appellant Mr. Stanford Anderson, S.C.C., PO Box 88600, Steilacoom, WA 98388-0647, **LEGAL MAIL/SPECIAL MAIL.** ,and Mr. Malcolm Ross, Assistant Attorney General, 800 5th Ave., Ste. 2000, Seattle, Washington 98104-3188.

This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Centralia, Washington on February 14, 2014.



PETER B. TILLER

FILED
JAN. 16, 2014
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

In re the Detention of:	)	No. 30639-9-III
	)	
	)	UNPUBLISHED OPINION
	)	
STANFORD ANDERSON.	)	

KULIK, J. — Stanford Anderson appeals the trial court's order civilly committing him as a sexually violent predator (SVP) under chapter 71.09 RCW. He contends the State did not prove beyond a reasonable doubt that he would likely engage in predatory acts of sexual violence unless confined to a secure facility. We conclude that the State presented sufficient evidence for the jury to decide beyond a reasonable doubt that Mr. Anderson is an SVP. Accordingly, we affirm.

FACTS

Stanford Anderson, born October 27, 1953, has a long history of sexually assaulting minor males. In the mid-1980s, he sexually assaulted his 10- or 11-year-old nephew, but was not prosecuted for the offense. In 1984, he pleaded guilty to indecent liberties involving his girl friend's 9-year-old son. While he was on parole for that offense, he had four violations of his community supervision conditions for unsupervised

contact with males under the age of 16 and for sexually touching two males under the age of 16.

In 1986, Mr. Anderson assaulted the 13-year-old son of a woman he was dating. Mr. Anderson gave the boy marijuana and had him perform oral sex on Mr. Anderson. Mr. Anderson later entered a guilty plea to communicating with a minor for immoral purposes. In 1991, he was convicted for the crime of third degree child molestation of a 14 year old. After release from custody on that offense, he was convicted in 1997 of a sexually motivated fourth degree assault against a 23-year-old male.

In 2003, Mr. Anderson made sexual remarks to a 14-year-old male while they were working together and touched the boy's genitals. Mr. Anderson was not charged with a criminal offense because the victim did not tell anyone about the incident at the time. One year later, Mr. Anderson was convicted of third degree rape of a 16 year old. Mr. Anderson admitted to having sexual intercourse with the minor, but believed the relationship was consensual. Mr. Anderson was convicted of 5 sex offenses over a 20-year period.

Mr. Anderson participated in a sex offender treatment program (SOTP) in prison between August 2006 and August 2007. His therapist reported that Mr. Anderson made "minimal progress," noting that, "[h]e struggles with sexual preoccupation. He is

sexually aroused to male minors to include young looking offenders. . . . He sexually acted out his thoughts resulting in his termination for the second time from SOTP." Ex. 22 at 789. At trial, his therapist testified that Mr. Anderson received multiple infractions for sexually inappropriate behavior and "invasiveness" with other inmates, and that he has "difficulty differentiating between friendship and sexual advances." Ex. 22 at 802; Report of Proceedings (RP) at 332. Ultimately, he was terminated from treatment for failure to progress and "abide by the rules." RP at 333.

Shortly before Mr. Anderson was due to be released from custody in 2009, the State petitioned to have Mr. Anderson committed as an SVP under chapter 71.09 RCW. The court remanded Mr. Anderson to the custody of the Special Commitment Center (SCC) at McNeil Island during pendency of the case and ordered him to submit to interviews and testing.

At trial, the State's expert, Dr. Christopher North, a psychologist who specializes in assessing sexually violent predators, testified that he interviewed Mr. Anderson in 2007 and 2011. He diagnosed Mr. Anderson with pedophilia and paraphilia, not otherwise specified, explaining that Mr. Anderson's primary sexual attraction was to boys between the ages of 9 and 14.

In assessing Mr. Anderson, Dr. North used three actuarial tests: the Static-99R; the Static-2002R; and the Minnesota Sex Offender Screening Tool-Revised (MnSOST-R). Mr. Anderson had a score of 7 on the Static-99R, which correlated with a recidivism rate of 38 to 49 percent within 10 years of release. On the Static-2002R test, Mr. Anderson obtained a score of 8, which correlated with a 46 percent chance of recidivism within 10 years. Finally, Mr. Anderson's score of 8 on the MnSOST-R was correlated with a recidivism rate of 30 percent within 6 years. Dr. North explained that these scores represent a high risk to reoffend relative to other offenders.

In addition to the test scores, Dr. North discussed Mr. Anderson's long history of sexual offenses against both prepubescent and pubescent boys. He also pointed out that while incarcerated, Mr. Anderson had been "infracted [for targeting] younger looking and vulnerable and weaker inmates, again, I think, because they are the closest thing available to his preferred age, which is right around the age of puberty." RP at 383.

When asked whether Mr. Anderson currently suffers from paraphilia, Dr. North answered, "we know that these fantasies, urges and behaviors began around the time that he was a teenager, and they continued up through we know at least through 2007 when he was in sex offender treatment and was admitting to them." RP at 388. He testified, "the evidence from the sex offender treatment program is that he is still actively attracted to

prepubescent and to pubescent boys" and that he continued to seek out more vulnerable and young-looking individuals in prison. RP at 443.

Dr. North concluded that Mr. Anderson was likely to commit a predatory sexual offense if released from confinement. At the close of his testimony, he explained:

> [D]ue to [Mr. Anderson's] ongoing sexual attraction to prepubescent and pubescent children, his very high sex drive, his tendency to try to meet his sexual and emotional needs through sexual activity, his loneliness, all of those, I think, combine to create a portrait of a very unhappy, unfortunate individual who is sexually deviant and who is, I think, at high risk for re offense [sic].

RP at 448.

The jury found that Mr. Anderson is an SVP. The trial court entered an order of civil commitment. Mr. Anderson appeals.

ANALYSIS

Although SVP commitment proceedings are civil in nature, the criminal standard of review applies to sufficiency of the evidence challenges to the SVP statute. *In re Det. of Thorell*, 149 Wn.2d 724, 744, 72 P.3d 708 (2003). The evidence is sufficient if, when viewed in the light most favorable to the State, a rational trier of fact could find each essential element beyond a reasonable doubt. *Id.* As in criminal cases, we defer "to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence." *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970

(2004).

A court may civilly commit a person to a secure facility if it determines beyond a reasonable doubt that he is an SVP. RCW 71.09.060(1). To commit a person as an SVP, the State must prove that the individual (1) has been convicted of or charged with a crime of sexual violence; (2) suffers from a mental abnormality or personality disorder; and (3) is more likely than not, because of the disorder, to engage in predatory acts of sexual violence if not committed to a secure treatment facility. RCW 71.09.020(18). Civil commitment only satisfies due process if the State proves an individual is "mentally ill and currently dangerous." *In re Det. of Moore*, 167 Wn.2d 113, 124, 216 P.3d 1015 (2009).

Mr. Anderson argues that the State presented insufficient evidence to prove that he is likely to commit predatory acts of sexual violence if released. Specifically, he challenges the State's reliance on actuarial tests, contending they "did not constitute evidence of what current risk Mr. Anderson was for re-offense. Rather, they only provided an assignment of risk many years into the future." Appellant's Br. at 15. He also argues that because his scores on the actuarial tests did not exceed 50 percent, they did not indicate a sufficient likelihood that he would reoffend. He argues, "a 38% to 49% statistical probability does not constitute proof beyond a reasonable doubt." Appellant's

Br. at 17.

Mr. Anderson's argument is unpersuasive. The actuarial data was merely one component relied on by the State's expert. Dr. North explained that actuarial data is only a "beginning point to assess an offender's risk," and that Mr. Anderson's scores represented a "conservative estimate." RP at 400, 413. He testified that actuarial estimates are considered significant underestimates of risk because their data does not include undetected or unreported offenses. For example, Dr. North explained that the Static-99R includes data about charges or convictions, but does not take into account crimes where the perpetrator was never found.

Dr. North explained that because of the limited predictive value of actuarial instruments, he evaluated other information to determine Mr. Anderson's risk of recidivism. Thus, he also interviewed Mr. Anderson and reviewed his criminal history, prison records, and records from treatment providers. Dr. North found it significant that while in sexual offender treatment, Mr. Anderson revealed ongoing sexual fantasies about prepubescent and pubescent males, had attempted to molest young men while incarcerated, and admitted in an interview with Dr. North, "'I'm sick. I need help. I'm tired of doing this, and I don't want to create further victims.'" RP at 384.

Additionally, Dr. North explained that he also looked at other research-based descriptors related to a sex offender's risk of recidivism. He stated that to get a comprehensive picture of Mr. Anderson's risk of reoffending, he looked to "dynamic risk factors" that are correlated to recidivism. RP at 425. Dr. North stated these factors included Mr. Anderson's "sexual preoccupation" and ongoing harassment of inmates in prison, and his inability to experience emotionally intimate relationships with adults. RP at 426. He also noted the lack of "protective" factors, which would have lowered Mr. Anderson's risk to reoffend. RP at 433. These included the lack of physical or medical problems that would limit Mr. Anderson's ability to commit future offenses, and Mr. Anderson's inability to be in the community for at least five years without reoffending.

Finally, Dr. North also testified that Mr. Anderson's release plans increased his risk to reoffend:

> He doesn't really have anybody that can help him out. He's going out into a community where he will know no one. We know that he struggles often with feeling lonely and depressed, and when he gets lonely and depressed he's even more likely to seek out a victim or someone he can have sex with to try to help him feel better.

RP at 446.

Dr. North based his opinion on numerous factors and variables. Because Dr. North's expert opinion was not exclusively based on the results of the actuarial

assessments, Mr. Anderson's argument—that the actuarial tests did not constitute evidence of his current risk of reoffending and that the results of the tests demonstrated a percentage risk that did not amount to beyond a reasonable doubt—is unpersuasive.

Viewing all of the evidence in a light most favorable to the State, including Mr. Anderson's long history of sexually assaulting minor males, the jury could have found, beyond a reasonable doubt, that Mr. Anderson was likely to commit sexually violent crimes if not confined.

The State presented sufficient evidence for the finder of fact to determine beyond a reasonable doubt that Mr. Anderson met the definition of an SVP.

We affirm the trial court's order of commitment.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Kulik, J.

WE CONCUR:

Korsmo, C.J.

Fearing, J.

TILLER LAW OFFICE

February 14, 2014 - 4:20 PM

Transmittal Letter

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Court of Appeals Case Number: 30639-9

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