

Cite as 2018 Ark. App. 598
ARKANSAS COURT OF APPEALS

DIVISION II
No. CV-18-94

IN THE MATTER OF ANTHONY BEARE

ANTHONY BEARE

APPELLANT

V.

ARKANSAS DEPARTMENT OF HUMAN
SERVICES

APPELLEE

Opinion Delivered: December 5, 2018

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
THIRTEENTH DIVISION
[NO. 60PR-17-2433]

HONORABLE RANDALL WELCH
MORLEY, JUDGE

AFFIRMED

MIKE MURPHY, Judge

Appellant Anthony Beare appeals from the December 1, 2017 Pulaski County Circuit Court’s order committing him to the custody of the director of the Arkansas Department of Human Services (DHS) for continued treatment of his schizophrenia. On appeal, Beare argues that the circuit court erred in finding that he failed to demonstrate by clear and convincing evidence that his release would not create a substantial risk of bodily injury to others. We affirm.

This case began when Beare, forty-six years old, was charged with aggravated assault and robbery.¹ On October 27, 2017, the Mississippi County Circuit Court entered a judgment acquitting Beare of the aggravated-assault charge on the basis of mental disease

¹The circuit court directed a verdict as to the robbery charge.

or defect. The judgment specifically found that the offense involved bodily injury to another person or serious damage to property or a substantial risk of such injury or damage and that Beare remained affected by mental disease or defect. In accordance with Arkansas Code Annotated section 5-2-314 (Supp. 2017), the judgment committed Beare to the custody of the director of DHS for an examination by a psychiatrist or a licensed psychologist. Pursuant to the statute, the judgment also ordered the director to file within thirty days a report of the examination with a circuit court of jurisdiction, with a hearing to be held within ten days of the filing of the report.

On November 29, 2017, DHS filed its report in the Pulaski County Circuit Court concerning Beare's mental health. The report was prepared by Dr. John Casey at the Arkansas State Hospital in Little Rock. Based on his evaluation, Dr. Casey diagnosed Beare with schizophrenia, moderate cocaine use disorder, and antisocial personality disorder. Dr. Casey reported that Beare continues to be affected by mental disease but not mental defect and that Beare remains a substantial risk to persons and property if not confined to a structured therapeutic environment. In the patient-history section of the report, Dr. Casey noted that Beare reported that he has spent fifteen of the last twenty-six years "locked up" in hospitals, residential-care facilities, and jails. He has a ten-to-fifteen-year history of cocaine use. Beare also reported to Dr. Casey a history of two past suicide attempts (one in his early twenties and the other four or five years ago). Beare has been convicted of forgery and public intoxication and has been arrested for aggravated assault, aggravated robbery, terroristic threatening, and battery.

Dr. Casey concluded the report with the following opinions:

Mr. Beare remains affected by the mental disease Schizophrenia, as evidenced by paranoid and persecutory delusions and evidence of hallucinations. He was acquitted of Aggravated Assault and Robbery based on this diagnosis. Although he participates in group therapy and the therapeutic milieu, he does not currently take medications, which are necessary in order to stabilize his psychosis. He constitutes a risk of dangerousness if not maintained in treatment. This conclusion is based on the following risk factors:

1. Mr. Beare has a history of dangerousness to others or property as evidenced by the acquittal on the above charge and past convictions for Battery.

2. Mr. Beare remains affected by the mental disease Schizophrenia, which the court determined was a causative factor for the crime for which he is acquitted.

3. Mr. Beare has a history of using illicit substances, which increases his risk of dangerous behaviors if he relapses to substance use in the community.

4. Mr. Beare's score on the Hare PCL: SV was highly indicative of psychopathy and he requires further treatment to maintain a low risk of future violence as indicated by the HCR-20.

5. Mr. Beare requires continued hospitalization and court-ordered medications to stabilize his psychosis, as he has refused medications for psychosis.

On December 1, 2017, a hearing was held in the Pulaski County Circuit Court in connection with Dr. Casey's report. Both Dr. Casey and Beare testified at the hearing. Dr. Casey testified first, and his testimony was consistent with the opinions he had expressed in the psychiatric report. Dr. Casey reported that the hospital is still the least restrictive, appropriate setting for Beare at this time. Consistent with the report, Dr. Casey explained that while Beare was not physically aggressive, he repeatedly had been verbally aggressive.

Beare testified next. He explained that he had been treated for mental-health issues in the past and that, although he has been prescribed medication in the past, he took it

only on an as-needed basis because of its side effects. He added that he would be willing to take the medication if he had to.

At the conclusion of the hearing, the circuit court stated from the bench that he agreed with Dr. Casey's recommendation that Beare be committed to the state hospital for further psychiatric treatment because he still posed a substantial risk of bodily injury to another person or serious damage to the property of another due to a present mental disease or defect. An order committing Beare to the state hospital was entered on December 1, 2017, and this timely appeal follows.

We review circuit court proceedings de novo, and the decision of the court will not be disturbed unless it is clearly erroneous. *George v. State*, 80 Ark. App. 185, 186, 92 S.W.3d 692, 693-94 (2002). A finding is clearly erroneous when, although there is evidence to support it, the appellate court after reviewing the entire evidence is left with the definite and firm conviction that a mistake has been committed. *Id.* In making our review, we give due regard to the superior position and opportunity of the circuit court, sitting in probate, to determine the credibility of the witness. *Id.*

Arkansas Code Annotated section 5-2-314(e)(1) provides,

A person found not guilty of an offense involving bodily injury to another person or serious damage to the property of another person or involving a substantial risk of bodily injury to another person or serious damage to the property of another person due to the person's lack of criminal responsibility has the burden of proving by clear and convincing evidence that his or her release would not create a substantial risk of bodily injury to another person or serious damage to property of another person due to a present mental disease or defect.

Given the circuit court's acquittal order from October 27, 2017, Beare had the burden to prove by clear and convincing evidence that his unconditional release would not create a substantial risk of bodily injury to another person or serious damage to the property of another person. On appeal, Beare argues he met this burden because Dr. Casey testified that during Beare's time as a patient in the state hospital, he had not exhibited any physical aggression. We do not agree.

Although Dr. Casey did testify that Beare had not been physically aggressive while at the state hospital, he also testified that Beare had verbally threatened other patients and staff members. Dr. Casey opined that Beare continued to be a high risk of danger to himself and others. He believed that the hospital is the least restrictive, appropriate setting for Beare at this time. Giving due regard to the superior position of the circuit court to determine the credibility of the witnesses, we hold the circuit court did not clearly err by refusing to release Beare from the custody of DHS.

Affirmed.

WHITEAKER and VAUGHT, JJ., agree.

William R. Simpson, Jr., Public Defender, by: *Clint Miller*, Deputy Public Defender, for appellant.

Leslie Rutledge, Att'y Gen., by: *Vada Berger*, Ass't Att'y Gen., for appellee.