IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

WALTER GOLDEN,

Appellant,

v. Case No. 5D17-330

STATE OF FLORIDA,

Appellee.

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Opinion filed December 15, 2017

Appeal from the Circuit Court
for Volusia County,
Randell H. Rowe, III, Judge.

James S. Purdy, Public Defender, and Sean K. Gravel, Assistant Public Defender, Daytona Beach, for Appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Douglas T. Squire, Assistant Attorney General, Daytona Beach, for Appellee.

HARRIS, J., Associate Judge.

Walter Golden appeals the denial of his petition for discharge from involuntary civil commitment under the Civil Commitment of Sexually Violent Predators Act (commonly known as the "Jimmy Ryce Act"), sections 394.910-.932, Florida Statutes (2016) (hereinafter "the Act"). Golden argues that the trial court applied an incorrect standard of

proof at trial and, in so doing, improperly shifted the burden of proof from the State to Golden. We agree and reverse.

In 1990, Golden was convicted of six counts of Sexual Battery On a Child by a Person in Familial or Custodial Authority and eight counts of Lewd/Lascivious Assault Upon a Child, and he was sentenced to prison. Upon his release from prison in 2001, Golden consented to sex offender treatment and was transferred to the Florida Civil Commitment Center ("FCCC"). He subsequently withdrew his consent, and in 2004, a jury determined that Golden was a sexually violent predator. He was then involuntarily committed to the FCCC for long-term control, care, and treatment.

Following an annual review hearing in 2014, the trial court, pursuant to section 394.918(3), Florida Statutes, found probable cause to believe that it was safe for Golden to be at large and that, if discharged, Golden would not engage in acts of sexual violence. Following that probable cause determination, the trial court properly set the matter for trial.

A non-jury trial took place on December 19, 2016. In such trials, "the [S]tate bears the burden of proving, by clear and convincing evidence, that the [committed] person's mental condition remains such that it is not safe for the person to be at large and that, if released, the person is likely to engage in acts of sexual violence." § 394.918(4), Fla. Stat. (2016). In the instant case, the State submitted three expert reports, each concluding that Golden no longer met the criteria for involuntary civil commitment and recommending his release. At no point did any witness testify, nor did the State ever argue, that if released, Golden would be likely to engage in acts of sexual violence.

Following the trial, the court found that the reports and evaluations submitted by the State were stale as a matter of law and, thus, not competent substantial evidence. The court then "rejected the conclusions in the reports of the three experts that it is now safe for [Golden] to be at large" and entered its final order denying Golden's motion for release from involuntary civil commitment.

In reaching this conclusion, the trial court found that there was no competent substantial evidence to support a finding that Golden's condition had so changed that it would be safe for him to be at large. This not only improperly shifted the burden to Golden, it reconfigured the finding that the court must make in order to deny release from involuntary civil commitment.

We reverse the final judgment in this case and remand for a new trial.

REVERSED AND REMANDED.

SAWAYA and BERGER, JJ., concur.