

DISTRICT COURT OF APPEAL OF FLORIDA  
SECOND DISTRICT

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In re Commitment of Larry Gordon.

LARRY GORDON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D20-997

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November 17, 2021

Appeal from the Circuit Court for Pinellas County; Paul A. Levine,  
Acting Circuit Judge.

Howard L. Dimmig, II, Public Defender, and Carol J.Y. Wilson,  
Assistant Public Defender, Bartow, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and, Cerese Crawford  
Taylor, Assistant Attorney General, Tampa, for Appellee.

LaROSE, Judge.

Larry Gordon is a sexually violent predator (SVP) receiving  
treatment at the Florida Civil Commitment Center. He appeals the

trial court's order finding no probable cause to conduct a nonjury trial to decide if Mr. Gordon may be released. See § 394.918(3), (4) Fla. Stat. (2019).<sup>1</sup> We reverse.

The trial court shall hold a nonjury trial for a person committed as an SVP if the committed person shows at a limited hearing that "there is probable cause to believe that [his] condition has so changed that it is safe for [him] to be at large and that [he] will not engage in acts of sexual violence if discharged."

§ 394.918(3); see also *Higdon v. Dep't of Child. & Fams.*, 310 So. 3d 1026, 1028 (Fla. 2d DCA 2020). "Probable cause is established when sufficient evidence is presented to cause a person of ordinary prudence and action to conscientiously entertain a reasonable belief that the committed person's condition has changed." *Drake v. State*, 295 So. 3d 1269, 1272 (Fla. 2d DCA 2020).

At the limited hearing, Mr. Gordon only had to show that there was probable cause to believe that his condition had changed so that it was safe to discharge him and that he will not engage in sexual violence if discharged. He was not required to prove that his

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<sup>1</sup> We have jurisdiction. See Fla. R. App. P. 9.030(b)(1)(A).

physical condition had so deteriorated that he was incapable of committing violent sexual offenses. *See* § 394.918(3); *compare Higdon*, 310 So. 3d at 1029 (concluding Higdon showed probable cause where two doctors testified that "Higdon no longer met the criteria for civil commitment" and he was a willing participant in treatment, even though he had engaged in consensual sexual activity contrary to the commitment center's rules), *with Abaunza v. State*, 278 So. 3d 207, 211 (Fla. 1st DCA 2019) (holding Abaunza did not establish probable cause, finding particularly troubling his refusal and failure to participate in treatment). Nor did the law require Mr. Gordon to present conclusive evidence to meet his burden. *See Drake*, 295 So. 3d at 1272.

The trial court found, on two prior occasions, no probable cause existed after Mr. Gordon's limited hearings under section 394.918(3) that were conducted as part of Mr. Gordon's 2019 and 2020 annual reviews. *See* § 394.918(1). At the 2019 limited hearing, Mr. Gordon presented two progress reports and two expert witnesses, Dr. Dean Cauley and Dr. Chris Robinson. They opined that his mental condition had changed based on his progress with treatment and improved behavior. Dr. Cauley also noted that Mr.

Gordon's advancing age diminished his antisocial personality disorder. He also discussed Mr. Gordon's physical limitations resulting from two recent strokes. The State relied on the written report of its expert, Dr. Michael Gamache. He opined that Mr. Gordon's mental condition had not changed based on various incidents, including an alleged inappropriate relationship with a fellow resident.

Mr. Gordon appealed the 2019 order. *Gordon v. State*, 313 So. 3d 940, 941 (Fla. 2d DCA 2021). As here, Mr. Gordon argued at his 2019 limited hearing "that his mental condition had changed such that his status as [an SVP] should be rescinded, causing him to be eligible for release from involuntary civil commitment." *Id.* at 940 (emphasis added). In a per curiam opinion, we concluded that the record supported probable cause, reversed the trial court's 2019 order, and remanded for a nonjury trial. *Id.* at 940-41.

The order in this appeal is from the 2020 limited hearing. The record of that proceeding reflects that Dr. Cauley and Dr. Robinson echoed their 2019 opinions. The State relied on Dr. Amy Swan's written report. Dr. Swan interviewed Mr. Gordon once and opined that his condition had not changed because he had "not yet

completed sufficient treatment to deal with his long history of deviant sex and sexual preoccupation," his deviant arousal, and his dynamic risk factors. Dr. Swan emphasized group treatment notes and two nonsexual confrontations<sup>2</sup> that occurred after Mr. Gordon's 2019 review. Dr. Swan opined that Mr. Gordon had other specified paraphilic disorder—not antisocial personality disorder—based on a statement attributed to Mr. Gordon at a September group meeting. Mr. Gordon's experts considered these same facts, provided more context during their testimony at the limited hearing, and still concluded that Mr. Gordon's condition had changed. Clearly, this was a battle of the experts.

The experts differed as to whether Mr. Gordon's condition has in fact changed or whether his mental condition remains such that it is not safe for him to be at large and that he is likely to engage in sexual violence if discharged. But this question is "the ultimate question to be resolved at a [nonjury] trial under section

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<sup>2</sup> Dr. Swan mentioned that Mr. Gordon engaged in a fight about another resident, with whom Mr. Gordon "has been accused of having a [sexual] relationship." Mr. Gordon denied having such a relationship. Nothing showed that the accusations were more than rumors and speculation.

394.918(4)." *See Higdon*, 310 So. 3d at 1030; *see also* § 394.918(4) (providing that the State must prove at the nonjury trial "that the 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"). Mr. Gordon faced a less daunting burden at the 2020 limited hearing.

At the limited hearing, Mr. Gordon, as in 2019, established probable cause to believe that his mental condition has changed. *See Drake*, 295 So. 3d at 1272 ("Probable cause is established when sufficient evidence is presented to cause a person of ordinary prudence and action to conscientiously entertain a reasonable belief that the committed person's condition has changed."). Thus, we reverse the trial court's 2020 order and remand for a nonjury trial under section 394.918(4). *See Higdon*, 310 So. 3d at 1029-30 (reversing and remanding for a nonjury trial where the State's evidence "established only that experts differ as to whether Higdon's condition has *in fact* changed"); *Drake*, 295 So. 3d at 1272 (holding that Drake satisfied his probable cause burden where "[t]he State's expert acknowledged Drake's ill health and age but opined that he could still 'commit acts of sexual impropriety' " because any conflict

with the experts was a conflict "on the ultimate issue of whether, notwithstanding any changes, Drake '*remains*' likely to engage of acts of sexual violence, a matter which section 394.918(4) reserves for trial"); *see also Gordon*, 313 So. 3d 940.<sup>3</sup>

Reversed and remanded for further proceedings.

MORRIS, C.J., and SILBERMAN, J., Concur.

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Opinion subject to revision prior to official publication.

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<sup>3</sup> Because Mr. Gordon met his burden, we decline to comment on the remaining issue he raises. *See Gordon*, 313 So. 3d 940.