IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE

IN THE MATTER OF THE CARE AND TREATMENT OF WADE TURPIN,

Appellant,

v.

STATE OF MISSOURI,

Respondent.

DOCKET NUMBER WD83707

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: April 27, 2021

APPEAL FROM

The Circuit Court of Cass County, Missouri
The Honorable J. Michael Rumley, Judge

JUDGES

Division Two: Pfeiffer, P.J., and Ahuja and Mitchell, JJ. CONCURRING.

ATTORNEYS

Amy E. Lowe, Assistant Public Defender, St. Louis, MO, Attorney for Appellant.

Eric S. Schmitt, Attorney General, and Kristen S. Johnson, Assistant Attorney General, Jefferson City, MO, Attorneys for Respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

IN THE MATTER OF THE CARE AND TREATMENT OF WADE TURPIN, APPELLANT,
v.
STATE OF MISSOURI, RESPONDENT.

WD83707 Cass County

Before Division Two Judges: Mark D. Pfeiffer, Presiding Judge, and Alok Ahuja and Karen King Mitchell, Judges

Wade Turpin was involuntarily committed to the custody of the Missouri Department of Mental Health (DMH) as a sexually violent predator in 2004. In 2016, he petitioned for conditional release. Following an evidentiary hearing, the trial court denied Turpin's petition because he failed to prove by a preponderance of the evidence that he no longer suffered from a mental abnormality that makes him likely to engage in acts of sexual violence if released. In his sole point on appeal, Turpin argues that the trial court erred in denying his petition because the court did not consider the conditions of release set out in § 632.505. Finding no error, we affirm.

AFFIRMED.

Division Two holds:

1. To preserve allegations of error relating to the form or language of the judgment, including the failure to make statutorily-required findings, Rule 78.07(c) requires that such allegations first be raised in a motion to amend the judgment. Thus, to the extent Turpin argues that the trial court was required to make findings and it failed to do so, he waived that argument by failing to file a timely post-judgment motion.

2. In the appeal of a bench-tried case, we view the facts in the light most favorable to the trial court's judgment. And, when the evidence poses two reasonable but different conclusions, appellate courts must defer to the trial court's assessment of that evidence.

3. We will reverse the denial of a petition for conditional release from DMH's custody only if there is no substantial evidence to support the denial, it erroneously declares or applies the law, or it is against the weight of evidence.

4. Missouri's sexually violent predator (SVP) laws authorize the State to indefinitely and involuntarily commit a person convicted of a sexually violent offense if the State proves

that the person suffers from a mental abnormality which makes him more likely than not to engage in predatory acts of sexual violence if released.

5. To satisfy due process concerns, a person must be both mentally ill and dangerous in order to be civilly committed; the absence of either characteristic renders involuntary civil confinement unconstitutional.

6. The duration of civil commitment under the SVP laws must be linked to the stated purposes of the commitment, namely, to hold the person until his mental abnormality no longer causes him to be a threat to others.

7. DMH must annually examine the mental health of every sexually violent predator who remains involuntarily committed. And each such offender may petition the court for conditional release with or without DMH's authorization.

8. The proceedings on a petition for conditional release involve a two-step process. The first step is a hearing before the court, during which the petitioner must prove by a preponderance of the evidence that he no longer suffers from a mental abnormality that makes him likely to engage in acts of sexual violence if released under the conditions specified in § 632.505. Section 632.505.3 lists twenty-one conditions designed to monitor and control a conditionally-released offender's whereabouts, conduct, medication compliance, and treatment compliance.

9. The second step is a merits trial, during which the State must prove by clear and convincing evidence that the petitioner's mental abnormality remains such that he is not safe to be at large and if released is likely to reoffend.

10. To the extent Turpin argues that the trial court failed to consider the conditional release factors in § 632.505.3 in rendering judgment, his argument fails because the record contained ample evidence that the court considered the conditions in determining whether Turpin met his burden at the evidentiary hearing. Both expert witnesses testified that they considered the conditions of release in formulating their opinions, the court asked the parties to submit proposed judgments that considered the conditions, and the court's judgment referenced the expert testimony that none of the conditions would lower Turpin's risk of reoffending.

Opinion by: Karen King Mitchell, Judge April 27, 2021

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THIS SUMMARY IS **UNOFFICIAL** AND SHOULD NOT BE QUOTED OR CITED.