

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

MENTAL HEALTH DIVISION 02
CASE NO: 2012-MH-001435

In Re: Civil Commitment of:

TOMMIE LEE ANDREWS,
Respondent.

FINAL JUDGMENT GRANTING RELEASE

THIS CAUSE came before the Court for trial on July 9 and 10, 2021 pursuant to s. 394.918, Fla. Stat., Rule 4.470, Fla. R. Civ. P.—S.V.P., and following the Court's Order Granting Probable Cause for Bench Trial After Petition for Release Hearing. The Court heard the testimony of the expert witnesses presented by the State and the Respondent. The Court had the opportunity to observe the witnesses testify and considered all of the factors bearing on the believability of each witness and the weight to be given to the testimony of each witness, and has considered the knowledge, skill, experience, training, and education of the expert witnesses, the reasons given by the expert witnesses for their opinions expressed, and all of the other evidence in the case. The Court has also heard the argument of counsel. Based on the pleadings and filings herein, the evidence presented and the argument of counsel, the Court finds as follows:

1. On October 24, 2012, Respondent was committed to the Florida Civil Commitment Center after a jury determined he met the criteria as a sexually violent predator pursuant to Chapter 394, Fla. Statutes.
2. In this most recent set of civil commitment proceedings, the Respondent filed a Petition for Release on April 29, 2020. At a limited hearing on February 3, 2020, the Court reviewed the reports of Dr. Deborah Leporowski and Dr. Karen Parker. On the basis of those reports, the Court entered an order on February 4, 2020 finding

probable cause to believe that the Respondent's condition has so changed that it is safe for the Respondent to be at large and that the Respondent will not engage in acts of sexual violence if discharged. Based on the interim finding, the Court set the matter for a non-jury trial before the Court pursuant to s. 394.918 (3), Fla. Stat.

3. After numerous delays due mainly to issues from the COVID pandemic, trial was held before the Court on July 9 and 10, 2021.
4. The Court heard first from the State's expert witnesses, Amanda Graham, Ph.D. and Peter Bursten, Ph.D., both of whom are well qualified clinical psychologists by education, training and experience. After the close of the State's evidence, and denial of the Respondent's *ore tenus* motion for involuntary dismissal, the Court received the testimony of the Respondent's expert witnesses Gregory Declue, Ph.D., Chris Carr, Ph.D., Dean Cauley, Ph.D. (not a licensed psychologist), Karen Parker, Ph.D. and Gregory Prichard, Ph.D. who were also well qualified by their education, training and experience.
5. The Court is called upon to determine whether the State of Florida has met its burden to prove, by clear and convincing evidence, that the Respondent's mental condition remains such that it is not safe for the Respondent to be at large and that, if released, the Respondent is likely to engage in acts of sexual violence.
6. The Court finds the testimony of the Respondent's experts to be more credible than that of the State's experts; specifically, the Respondent's experts' opinions are predicated upon a more complete, thorough and accurate factual basis, and reflect the history of the more than 30 years the

Respondent has spent either in the Department of Corrections or in civil commitment without a single incident of violence or sexually deviant behavior. The Court accepts the testimony of the Respondent's experts that the Respondent's record of non-violence and lack of sexually deviant behavior or sexual pre-occupation indicate that the Respondent has a very low risk of re-offending. Even the State's experts put the Respondent's risk of re-offending at no greater than 7.9%. The criteria for continued commitment is "likely to engage in acts of sexual violence", however, the Court finds no clear and convincing evidence that a 7.9% risk, coupled with 34 years of behavior with no incidents of a sexually inappropriate nature (especially in an environment that is ripe for engaging in such) demonstrates that the Respondent is "likely to engage in acts of sexual violence".

The Court carefully considered the Respondent's refusal to participate in most of the treatment offered at the commitment center. The stated reason is that he refused to admit guilt, which is a prerequisite to participation. The purpose of this treatment is to learn the skills and coping mechanisms to avoid a repeat of the behaviors that resulted in the horrific crimes committed by the Respondent. The evidence of the past 34 years of behavior by the Respondent demonstrates that he has assisted various fellow inmates and formed some social relationships, there is no evidence of hostility to women and no impulsivity or violence. In other words, the record demonstrates the Respondent has exhibited the skills and coping mechanisms that counseling and therapy are meant to develop.

7. The Court is not permitted to speculate, it is bound by evidence. The State's evidence consisted of two experts who testified that despite the results of the testing and the Respondent's lack of violent or sexually inappropriate behavior they believed he was still a deviant. However, those opinions with nothing more, do not amount to clear and convincing evidence. Clear and convincing evidence is defined as an intermediate burden of proof that:

requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

South Florida Water Management Dist. v. RLI Live Oak, LLC, 139 So. 3rd 869 (Fla. 2014) (Citing *Inquiry Concerning a Judge*, 645 So. 2d 398, 404 (Fla. 1994), quoting *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

The State's responsibility is to prove, by clear and convincing evidence that the Respondent is currently likely to commit an act of sexual violence if released. The State has not met its burden of proof.

IT IS, THEREFORE, ORDERED AND ADJUDGED that:

- A. The Respondent's Petition for Release is hereby GRANTED.
- B. Respondent is hereby released from the custody of the Department of Children and Families.

DONE AND ORDERED IN Orlando, Orange County, Florida, on this 27th day of August, 2021.


eSigned by Leticia Marques 08/27/2021 09:22:22 Q-MZEcWh
LETICIA MARQUES, Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was filed with the Clerk of Court by using the Florida Courts E-filing Portal System. Accordingly, a copy of the foregoing is being serviced on this day to all attorneys/interested parties identified on the ePortal Electronic Service List, via transmission of Notices of Electronic Filing generated by the ePortal System.

Judicial Assistant