

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1768

September Term, 2016

NEAL MANNING

v.

STATE OF MARYLAND

Leahy,
Reed,
Rodowsky, Lawrence F.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: July 13, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant, Neal Manning, applied for conditional release from the Department of Health and Mental Hygiene under Section 114(c) of the Criminal Procedure Article of the Maryland Code. *See* Md. Code Ann., Crim. Proc. §§ 3-114 et. seq. Following an administrative hearing, an administrative law judge (“ALJ”) recommended Mr. Manning’s release subject to numerous conditions, and the Office of the State’s Attorney for Anne Arundel County (the “State’s Attorney”) filed exceptions. The Circuit Court for Anne Arundel County, after conducting a hearing on those exceptions, denied Mr. Manning’s request for conditional release. Mr. Manning applied for leave to appeal, which the State asked this Court to grant in its response. We granted the application for leave to appeal, but ordered briefing on the following questions, rephrased as follows:

1. Where the State declined to participate in the hearing before the ALJ on Mr. Manning’s petition for conditional release, did the State lack standing to file exceptions to the ALJ’s report recommending the granting of that petition?
2. Did the circuit court err when the court concluded that the findings and the recommendation of the ALJ to grant a conditional release were not supported by substantial evidence?

FACTUAL AND PROCEDURAL BACKGROUND

A. Background Information

On April 27, 2011, the Circuit Court for Anne Arundel County committed Mr. Neal Manning to the Department of Health and Mental Hygiene (the “Department”) after finding him not criminally responsible for the first degree murder of his landlord. Mr. Manning, who claimed that the voices of a demon instructed him to shoot his victim, was committed to Clifton T. Perkins Hospital Center (“Perkins”), an inpatient facility maintained by the

Department. Mr. Manning was subsequently diagnosed with major depression with psychosis and narcissistic personality traits. After approximately four years of treatment, Mr. Manning, with the support of the Department, applied for conditional release pursuant to Section 3-119(b) of the Criminal Procedure (“CP”) Article of the Maryland Code. On July 28, 2015, Perkins’ Clinical Forensic Review Board recommended Mr. Manning’s release upon certain conditions.¹

B. ALJ Hearing

A hearing was convened before an administrative law judge with the Maryland Office of Administrative Hearings on August 20, 2015. The State’s Attorney did not participate in the hearing, despite receiving notice.² Witnesses included Dr. Faranarz Mokhtari, Mr. Manning’s treating psychiatrist who testified as an expert in medicine and psychiatry, and Rachelle Mechaly, Mr. Manning’s social worker.

Dr. Mokhtari told the ALJ that he had no reservations about conditional release because Mr. Manning posed no danger to himself or others, and further testified that Mr. Manning fell into the “lowest of the low” risk category for violence. Dr. Mokhtari testified that during Mr. Manning’s time at Perkins, he had never expressed any violent or aggressive physical behavior.³ At the time of the hearing before the ALJ, Dr. Mokhtari

¹ Any formal report produced by the Clinical Forensic Review Board was not included in the record.

² A letter to the State’s Attorney for Anne Arundel County dated August 4, 2015, informing the State’s Attorney of the hearing was presented to the ALJ.

³ Dr. Mokhtari testified that on one occasion approximately one year before the hearing, Mr. Manning had a “heated argument” with an alcohol counselor which resulted

further testified that Mr. Manning had attained the “highest level of privilege for any patient in the hospital.” Mr. Manning lived on a minimum security ward and had been permitted to take more than twenty staff-supervised and family-accompanied visits into the community, during which his behavior was “very appropriate.” Mr. Manning worked in the horticulture, dietary, and maintenance departments while at Perkins, and never used any tools as a weapon.

With antipsychotic medication, Mr. Manning had not experienced any hallucinations or signs of paranoia in the last three years.⁴ Dr. Mokhtari testified that Mr. Manning self-administered his medications without any problems and never cheated on his doses. The drugs had no side effects that made it likely that Mr. Manning would want to stop taking them, and Mr. Manning testified to the effectiveness of the medications in leveling his mood. Social worker Rachelle Mechaly offered similar testimony, stating that Mr. Manning had always been very compliant with his medication regimen, and that he understood the importance of taking his medication.

in the temporary suspension of his “level 3” privileges for a few months. He also testified that “both parties talked about it,” Dr. Mokhtari addressed the issue with Mr. Manning, and Mr. Manning earned back the privileges he had lost as a result of the incident.

⁴ Dr. Mokhtari testified that before he began treating Mr. Manning, another psychiatrist had once tried to decrease the medication, which resulted in beginning symptoms of paranoia. After the medication was increased to the original dose, Mr. Manning had no further symptoms of paranoia.

Mr. Manning regularly participated in therapy and had developed a “Wellness Recovery Action Plan” to prevent any future mental state decompensation.⁵ Mr. Manning testified that he had identified his triggers and early warning signs for decompensation and said that, if he noticed any of these triggers or warning signs, he would immediately contact his therapist or psychiatrist. Ms. Mechaly testified that Mr. Manning had already been accepted into an intensive residential rehabilitation program which would entail, at a minimum, 40 hours a week of direct contact with his provider, and potentially “24/7” supervision. In the event that Mr. Manning were not to have overnight supervision, Ms. Mechaly testified that there would be other residents in the house and a staff person on call. Once a month, Mr. Manning would see his doctor and review his medication, and a staff person would ensure that Mr. Manning took his medication daily. He would also meet weekly with a therapist, attend a daily rehabilitation program, and have opportunities to work on his own.

Mr. Manning testified that he struggled daily with the fact that he took his friend’s life. He further testified that he had not heard voices since coming to Perkins, and that in the future he would “definitely” utilize the services of his therapist and “the whole team [of] somatic and therapeutic doctors so that [his crime] [would] never happen again.” Mr. Manning testified that he had no desire to hurt himself or others.

⁵ Merriam-Webster’s Dictionary defines “decompensation” as the loss of physiological compensation or psychological balance.

C. ALJ’s Recommendations and the State’s Exceptions

On August 27, 2015, the ALJ found, by a preponderance of the evidence, that Mr. Manning would not be a danger to himself or others if conditionally released, thus making him eligible for release under CP §3-114(c)⁶ and (d).⁷ The ALJ recommended Mr. Manning’s release subject to sixteen conditions, including his admission to a residential rehabilitation program approved by the Department, monthly visits with a psychiatrist, weekly visits with a mental health therapist, adherence to his prescribed medications, and submission to periodic tests to ensure his compliance with medication and his abstention from alcohol and drugs.

Although the State’s Attorney was not present at the hearing, the office filed exceptions to the ALJ’s findings. The State’s Attorney agreed with most of the findings of fact in the ALJ’s report, but expressed concern that Mr. Manning’s negative reaction when his medication was decreased in his first year at Perkins suggests that, if he were to stop taking his medication, “it is likely he could become actively psychotic again.” The State also argued that Dr. Mokhtari and the ALJ had underestimated the potential risk of release, particularly given that, “in today’s society, it is possible to obtain a firearm illegally,” and “the Defendant ha[d] only been committed a few years.”

⁶ “A committed person is eligible for conditional release from commitment only if that person would not be a danger, as a result of mental disorder or mental retardation, to self or to the person or property of others if released from confinement with conditions imposed by the court.”

⁷ “To be released, a committed person has the burden to establish by a preponderance of the evidence eligibility for . . . conditional release.”

D. Circuit Court Ruling

A hearing on the State's Attorney's exceptions was held on February 2, 2016, in the Circuit Court for Anne Arundel County, with Judge Laura S. Keissling presiding. The court granted the State's exceptions and ruled that Mr. Manning was not eligible for release based on its conclusion that the findings and recommendations of the ALJ to grant a conditional release were not supported by substantial evidence. After citing relevant statutory sections and the applicable legal standards, the court stated:

Of note to the Court is that I do not find that there is substantial evidence that he would – that there would be no risk of danger with the conditions articulated. Of particular concern to the Court is the proposed residential rehabilitation which I find does not sufficiently mitigate danger. . . .

Of equal concern . . . I find that the evidence was that there would . . . not be sufficient individual therapy. . . .

The Administrative Law Judge found . . . that Ms. [Mechaly's] testimony establishes that [a residential rehabilitation program] is available for the patient and that the program would include intensive supervision and all aspects of the patient's activities and treatment.

However, I find that the evidence is not consistent with that based on the lack of overnight supervision and the limited amount of individual treatment. So I find that the record does not support the Administrative Law Judge's finding in that regard.

* * *

I would note that the records indicated several times that [Mr. Manning] was on Level 3 supervision for an entire year, and then at other places noted that his Level 3 supervision had been taken away for several months as a result of [his argument with an alcohol counselor] which was within the past year. . . .

Again, I find . . . there is not substantial evidence to support the Administrative Law Judge's recommend[ation]

I find the Administrative Law Judge . . . specifically found that it is more likely than not that the patient would not be a danger to himself, or others, or to the property of others and that this is not the correct standard to be applied in this case.

On March 1, 2016, Mr. Manning filed an Application for Leave to Appeal. On June 15, 2016, in light of the decision of *Merchant & Stoddard v. State*, 488 Md. 75 (2016), the State conceded in its answer to the Application for Leave to Appeal that the circuit court committed reversible error because substantial evidence supported the administrative law judge’s recommendation for conditional release.

DISCUSSION

I. THE STATE’S STANDING TO FILE EXCEPTIONS TO THE ALJ’S REPORT

A. The Parties’ Contentions

The appellant argues that the State’s Attorney waived its right to file exceptions to the ALJ’s report recommending Mr. Manning’s conditional release when the State declined to participate in the administrative hearing before the ALJ. The appellant asserts that, while the law “generally recognizes the right of the State’s Attorney to object to the findings or recommendations of the ALJ[,] . . . [this] right is not absolute” when examined in the context of “the complete statutory scheme” of Title 3 of the Criminal Procedure Article.

The appellant contends that a party’s right to file exceptions depends on that party’s participation in the administrative hearing of the ALJ, during which the ALJ “consider[s] any relevant information that will enable [the ALJ] to make recommendations to the [circuit] court as to whether the committed person is eligible for release.” CP §3-115(a). The appellant notes that, in this scheme, the ALJ “effectively acts as a trial court” because it is assigned the responsibility for taking evidence, while the circuit court’s role is limited to judicial review of the ALJ’s report and recommendation. According to the appellant, “it follows . . . that any challenge the State’s Attorney may have to an individual’s release

must be raised in the administrative hearing.” The State did not respond to this issue raised by the appellant.

B. Analysis

As indicated *supra*, the appellant argues that the State’s Attorney lacked standing to file exceptions to the ALJ’s report due to its failure to participate in Mr. Manning’s administrative hearing. We disagree. Section 3-115(e)(6) of the Criminal Procedure Article provides that the State’s Attorney is “*entitled* to be present, to offer evidence, and to cross examine witnesses” at the release hearing. (Emphasis added). In addition, CP § 3-116(d) stipulates that “[t]he committed person, the State’s Attorney, or the Health Department may file exceptions to the report of the Office within 10 days after receiving the report.” Although provided with the opportunity to do so, the State’s Attorney was not required to be present at Mr. Manning’s hearing, as evidenced by the text of CP § 3-115(e)(6). Therefore, we conclude that the State’s Attorney had standing to file exceptions to the ALJ’s findings under Maryland Code of Criminal Procedure §3-116(d), despite the fact that the State’s Attorney did not participate in Mr. Manning’s release eligibility hearing.

II. WHETHER THE ALJ’S RECOMMENDATION FOR CONDITIONAL RELEASE IS SUPPORTED BY SUBSTANTIAL EVIDENCE

A. The Parties’ Contentions

Both the appellant argues and the State concedes that the Circuit Court for Anne Arundel County committed reversible error by concluding that the administrative law judge’s findings and recommendations to grant a conditional release were not supported by substantial evidence.

The appellant contends that the circuit court erred in stating that the ALJ applied the wrong standard of review. He asserts that the language in the ALJ’s report upon which the circuit court relied to reach this conclusion “was simply [the ALJ] restating the applicable burden of proof (preponderance of the evidence)” that the ALJ found Mr. Manning had met. The appellant argues that he satisfied this burden with substantial evidence, namely through Dr. Mokhtari’s uncontroverted expert testimony that Mr. Manning posed no danger to himself or others if he were to be conditionally released.

Next, the appellant asserts that each of the concerns raised by the State’s Attorney, and echoed by the court, regarding the ALJ’s findings were speculative and not supported by any facts in Mr. Manning’s case. As an example, the appellant points to the prosecutor’s suggestion that Mr. Manning, if released, would stop taking his medication and become psychotic again. The appellant emphasizes that there is nothing in the record to support that this would be likely, and that the evidence actually establishes the opposite. The appellant also notes that the prosecutor alluded to the possibility that Mr. Manning could access firearms, but did not offer record evidence that indicated that Mr. Manning would attempt to obtain a gun.

The appellant argues that the circuit court also raised only speculative concerns, none of which demonstrated that the ALJ’s decision to grant conditional release lacked the support of substantial evidence. The appellant provides several examples. First, the circuit court implied that four years was too short of a time for treatment, but referred to no facts that showed Mr. Manning personally needed more treatment in an in-patient facility. Next, the appellant notes that the circuit court did not adequately explain why a residential

rehabilitation program without overnight supervision was insufficient, nor why weekly therapy sessions and monthly meetings with a psychiatrist were inadequate. Lastly, the appellant maintains that, contrary to the circuit court’s conclusion, Mr. Manning’s temporary loss of level three privileges did not defeat the reasonableness of the ALJ’s recommendation for conditional release because “[t]he court failed to explain how having the privileges for 10 months, as opposed to 12 months, indicated that Mr. Manning was a danger to himself or others.”

As we noted *supra*, the State concedes that there was substantial evidence to support the ALJ’s recommendation of conditional release.

B. Standard of Review

A decision for conditional release involves an executive/judicial “hybrid” of action by the ALJ and the circuit court. *Byers v. State*, 184 Md. App. 499, 511 (2009). An ALJ must “hold a hearing to consider any relevant information that will enable [the ALJ] to make recommendations to the court as to whether the committed person is eligible for release,” after which the circuit court must rule on the ALJ’s recommendation. CP § 3-115(a). If the circuit court requires more information to make its determination, or if “timely exceptions are filed” to the ALJ’s report (CP § 3-117(a)(2)), the circuit court must conduct a hearing “on the record that was made before [the ALJ]” before issuing a decision. CP § 3-117(b)(1). Within 15 days after the judicial hearing, the court “shall determine whether the evidence indicates whether the committed person proved by a preponderance of the evidence eligibility for release.” CP § 3-118(a).

A reviewing court is required to apply the substantial evidence standard to the decisions of an administrative agency. As the Court of Appeals recently noted in *Merchant & Stoddard v. State*, 448 Md. 76, 100 (2016),

[a] court’s role in reviewing an administrative agency adjudicatory decision is narrow[.] [I]t is limited to determining if there is substantial evidence in the record as a whole to support the agency’s findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law. *Cosby v. Dep’t of Human Res.*, 425 Md. 629, 638 (2012) (citing *Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59, 67-68 (1999)).

Also in *Merchant*, the Court of Appeals explained that the substantial evidence standard applies to a circuit court’s review of an ALJ’s recommendation to conditionally release individuals that are held not criminally responsible for their actions. *Id.*

Substantial evidence is such relevant evidence that “[a] reasoning mind reasonably could have reached the factual conclusions reached by the [ALJ].” *Banks*, 354 Md. at 68. In light of the *Merchant* decision, a circuit court’s role is confined to determining whether the evidence before the ALJ was substantial enough to support the conclusion that an individual would not be a danger to himself or others if released with conditions. 488 Md. 76. In reviewing the decision of an ALJ, “the appellate court looks not so much at the trial judge as it looks through the trial judge to the antecedent administrative decision [of the ALJ].” *Byers*, 184 Md. App. at 532 (citing *Emp.’s Ret. Sys. of Baltimore Cty. v. Bradford*, 227 Md. App. 75, 86 (2016)).

C. Analysis

The question before this court is whether there was substantial evidence in the record to support the ALJ's recommendation that Mr. Manning be released subject to sixteen conditions. We answer in the affirmative and reverse the judgment of the Circuit Court for Anne Arundel County.

The evidence before the ALJ was replete with indications that Mr. Manning was no longer a threat to himself or to the community. First, the uncontroverted expert testimony of Mr. Manning's treating psychiatrist, Dr. Mokhtari, was that Mr. Manning posed no danger to himself or others if he were to be conditionally released. With respect to an individual's dangerousness to himself or others, the testimony of one psychiatrist can be sufficient to support an ALJ's conclusion. *See Dep't of Health & Mental Hygiene v. Bean*, 178 Md. App. 418, 423 (2008), *reversed on other grounds, Bean v. Dep't of Health & Mental Hygiene*, 406 Md. 419 (2008). In great detail, Dr. Mokhtari chronicled Mr. Manning's successes during his stay at Perkins, including Mr. Manning's lack of violent behavior or signs of psychosis in three years, his attainment of the highest level of privileges that patients can reach, and his full compliance with taking his psychiatric medications. Further, Dr. Mokhtari's extensive testimony regarding Mr. Manning's improved behavioral state and mental health was corroborated by the testimony of Ms. Mechaly, a social worker with whom Mr. Manning regularly meets at Perkins, and the Perkins Clinical and Forensic Review Board's recommendation for conditional release.

Based on the aforementioned evidence, the ALJ concluded that “it [was] more likely than not that [Mr. Manning] would not be a danger to himself, others, or the property of others.”⁸ Upon review, we disagree with the circuit court’s ruling that this conclusion is not supported by substantial evidence. Because the circuit court was constrained in its review of the ALJ’s decision, as we are, we must conclude that “[a] reasoning mind reasonably could have reached the factual conclusions reached by the [ALJ].” *Banks*, 354 Md. at 68. We do not suggest that the circuit court’s concerns regarding Mr. Manning’s conditional release were unreasonable. However, that the court had concerns does not indicate that the ALJ’s recommendation was not supported by substantial evidence. As noted by the State, the standard for the circuit court “is not whether there exists a substantial basis for denying Manning’s release; the standard is whether there was substantial evidence to support the ALJ’s recommendation.”

The circuit court based its decision on its own interpretation of the evidence, which was improper given that “[i]t is not the trial judge’s responsibility to be persuaded on the ultimate merits.” *Byers*, 184 Md. App. at 531.

The circuit court contended that the ALJ’s recommendations were not supported by substantial evidence “that there would be no risk of danger” to the community upon Mr.

⁸ Contrary to the circuit court’s contention otherwise, the ALJ did not apply the wrong standard of review in her report. The excerpt provided from the ALJ’s report simply states that Mr. Manning satisfied his burden of proof (preponderance of the evidence). As to be sure, the Maryland Pattern Jury Instructions provide, “to prove by a preponderance of the evidence means to prove that something is more likely so than not so.” MPJI 1:7 (3d ed. 2000).

Manning’s release. However, the court did not take into account the specific conditions articulated by the ALJ that were designed to mitigate any risk Mr. Manning might pose. Importantly, “the elimination of all risk is not a precondition” for release. *Hawkes v. State*, 433 Md. 105, 133-34 (2013). “[I]n a conditional release setting under Section 3-114(c), the determination of whether a patient poses a danger to himself or others must take into account proposed conditions of release.” *Id.* at 108-09.

For instance, the circuit court found it deficient that Mr. Manning’s proposed residential rehabilitation program (“RRP”) did not guarantee overnight supervision. However, the condition in the ALJ’s report that Mr. Manning participate in a RRP specified that the program would be of the Department’s choosing, and the circuit court was notified by the Department’s counsel that it could order the Department to select a program with overnight supervision. Moreover, Ms. Mechaly testified that a staff person would always be on call and that Mr. Manning would be living with other residents. The court did not discuss these facts in concluding that the ALJ’s decision lacked substantial evidence. Similarly, the circuit court concluded that Mr. Manning’s required attendance of weekly therapy sessions and monthly meetings with a psychiatrist under the ALJ’s conditions were insufficient. Yet, the record shows that Dr. Mokhtari’s uncontroverted expert testimony was that the conditions imposed in the release plan were adequate to ensure Mr. Manning would not be a danger to himself or others. Additionally, the court failed to note that Mr. Manning’s release plan also required him to attend a day program, to work, and to take his medication daily under the supervision of a trained mental health professional. Based on our review, we find that the record, taking into account the conditions of release

enumerated in the ALJ’s report, contains substantial evidence to support the ALJ’s conclusion that Mr. Manning would not pose a danger to himself or others.

As further support for its ruling, the circuit court asserted that four years was too short of a time for treatment at Perkins. We are not convinced by this argument, as the court did not refer to any evidence in the record that showed Mr. Manning personally needed more treatment in an in-patient facility. Regardless, because “the deprivation of liberty involved in . . . hospitalization . . . clearly is not imposed as a punishment,” the length of treatment is immaterial to the decision to grant conditional release. *Bergstein v. State*, 322 Md. 506, 516 (1991) (footnote omitted). Therefore, we are also unpersuaded that Mr. Manning’s temporary loss of the highest level of privileges at Perkins ten months prior to his hearing, as opposed to twelve months, was particularly relevant to the court’s assessment of the reasonableness of the ALJ’s recommendation for conditional release.

The presence of evidence that could be interpreted as undermining the ALJ’s recommendation does not signify that the record lacked substantial evidence in support of that recommendation. Under the governing standard, the ALJ was not required to find proof, beyond a reasonable doubt, that Manning had met the requisite standard of eligibility

for conditional release. For the aforementioned reasons, we hold that the circuit court erred in finding that the record did not contain substantial evidence to support the ALJ's recommendation.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY REVERSED. CASE REMANDED TO THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY WITH INSTRUCTIONS TO GRANT APPELLANT'S CONDITIONAL RELEASE IN ACCORDANCE WITH THE RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGE AND UPON THE CONDITIONS ENUMERATED BY THE ADMINISTRATIVE LAW JUDGE. COSTS TO BE PAID BY ANNE ARUNDEL COUNTY.