No. 21-

In the
Supreme Court of the United States

MARCI WEBBER,

Petitioner,

v.

PEOPLE OF THE STATE OF ILLINOIS,

Respondents.

On Petition for a Writ of Certiorari to the Illinois Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Petitioner has been detained in a state mental health center since her bench trial in June 2012, which adjudicated her Not Guilty by Reason of Insanity (NGRI) for killing her young daughter. The predicate offense was committed while the Petitioner was acutely psychotic. For years, Petitioner has not been psychotic.

In addition, the trial judge who sentenced and later conditionally released her, along with her medical treatment team where she is confined, both state that Petitioner is not mentally ill, not a danger to herself or others, and is not in need of inpatient mental health care. The State's Attorney appealed the trial court's order of conditional release. The Illinois Appellate Court reversed; the Petitioner was returned to confinement after nine days of freedom. The Illinois Supreme Court denied a Petition for Leave to Appeal.

Whether a State's judicially-enforced, indefinite confinement of an NGRI acquittee, who is no longer psychotic, mentally ill, a danger to herself or others, or in need of inpatient mental health care, constitutes punishment and is a significant deprivation of liberty that violates the due process and/or equal protection clauses of the Fourteenth Amendment to the United States Constitution prohibited by *Foucha v. Louisiana,* 504 U.S. 71 (1992).

RELATED CASES STATEMENT

- *People v. Webber*, No. 127430, Illinois Supreme Court. Judgment entered September 29, 2021.

- *People v. Webber*, Case No. 127433, Illinois Supreme Court. Judgment entered August 4, 2021.

- *People v. Webber*, No. 2-19-1090, Illinois Appellate Court for the Second District. Judgment entered June 9, 2021.

- *People v. Webber*, No. 2-19-1090, Illinois Appellate Court for the Second District. Judgment entered December 20, 2019.

- *People v. Webber*, Case No. 10 CF2643, Circuit Court of DuPage County for the Eighteenth Judicial Circuit of Illinois. Judgement entered December 11, 2019.

- *People v. Webber*, No. 10 CF2643, Circuit Court of DuPage County for the Eighteenth Judicial Circuit of Illinois. Judgement entered September 18, 2019.

- *People v. Webber*, No. 2-17-0998, Illinois Appellate Court for the Second District. Judgment entered August 1, 2019.

- *People v. Webber*, No. 10 CF2643, Circuit Court of DuPage County for the Eighteenth Judicial Circuit of Illinois. Judgement entered November 13, 2017.

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PETITION FOR WRIT OF CERTIORARI

Marci Webber petitions for a writ of certiorari to review the decision of the Illinois Supreme Court.

OPINIONS BELOW

This petition seeks the review of the decision of the Illinois Supreme Court in *People v. Webber, 175 N.E. 3d 111 (Ill. 2021),* reprinted at Pet. App. A at 1a, in which the Illinois Supreme Court denied a Petition for Leave to Appeal from the order of the Illinois Appellate Court in *People v. Webber*, 2021 Il. App. (2d) 191090-U, 2021 WL 2375928 (June 9, 2021), reprinted as Pet. App. B at 2a. The Memorandum Opinion of the Trial Court is reprinted at Pet. App. D at 51a, and the Release Order of the Trial Court can be found at (A35).

JURISDICTION

Petitioner's request for relief from the Illinois Supreme Court by way of a Petition for Leave to Appeal from an order of the Illinois Appellate Court was denied on September 29, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourteenth Amendment to the United States Constitution provides, in pertinent part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law."

The pertinent provision of Illinois Statute 730 ILCS 5/5-2-4 (2021) is reprinted in the appendix to this petition as Pet. App. G at 94a.

STATEMENT OF THE CASE

While suffering from acute psychosis, the Petitioner, Marci Webber, killed her young daughter on November 3, 2010. After a bench trial, the Petitioner was adjudicated Not Guilty by Reason of Insanity (NGRI) on June 7, 2012. Petitioner was remanded to the State of Illinois Department of Human Services (IDHS) and found to be in need of mental health treatment on an inpatient basis. At various times she has been detained at the Elgin Mental Health Center (EMHC) or the Chicago-Read Mental Health Center (CRMHC).

The trial court (Judge Bakalis) oversaw Petitioner's case from its inception to the granting of her conditional release on December 11, 2019. (Pet. App. C at 34a). Pursuant to the trial court's order, Petitioner was released from custody. The State's Attorney appealed the trial court's release order, and after nine days of freedom, Petitioner returned to the custody of the State of Illinois mental health system on December 20, 2019, pursuant to an order of the Second District Appellate Court.

Eighteen months later, on June 9, 2021, the Second District reversed the trial court's release order of December 11, 2019. (Pet. App. B at 2a).

In July 2021, Petitioner filed a timely Petition for Leave to Appeal to the Illinois Supreme Court. During the appeal process, Petitioner requested a supervising

order from the Illinois Supreme Court, which was denied on August 4, 2021. *Webber v. Appellate Court Second District*, No. 127433, Illinois Supreme Court, August 4, 2021.

The Illinois Supreme Court denied Petitioner's Petition for Leave to Appeal on September 29, 2021. (Pet. App. A at 1a).

Before, during, and after the conditional release of Petitioner in December 2021, her treatment team at the State of Illinois Department of Human Services issued reports to the trial court that Petitioner was not psychotic, was not mentally ill, was not a danger to herself or others, and was not in need of inpatient mental health care.

Nonetheless, Petitioner's confinement continues because of the orders of the Second District Appellate Court and the denial of review by Illinois Supreme Court.

The First Petition for Conditional Release & First Appellate Court Decision

Petitioner filed her first petition for conditional release or discharge in August 2014. (C. 352-354). A hearing did not take place until three years later. Petitioner presented evidence from a clinical psychologist and three clinical staff from Chicago-Read Mental Health Center, including a doctorate-level social worker, a psychologist, and a psychiatrist, who all opined that Petitioner did not meet the standards for inpatient treatment. (R. 676, 715-716, 797-798, 807, 842, 849, 882, 889-890). The trial court's November 13, 2017, Memorandum Opinion did not grant Petitioner's petition for conditional release, but

nevertheless indicated that it would be reconsidered in six months. (C. 524; *See also* Pet. App. F at 84a). Rather, the court acted cautiously, seeking information about "what resources will be available for [Ms. Webber] when conditional release is granted." (C. 524-525; Pet. App. F at 92a). Petitioner appealed the trial court's decision denying her request for conditional release. (C. 529). On August 1, 2019, the Illinois Appellate Court affirmed the trial court's November 13, 2017 decision. (Pet. App. E at 67a.)

The Second Petition for Conditional Release, Second Appellate Court Decision, & the Denial of Review by Illinois Supreme Court

A second petition for conditional release or discharge was filed with the trial court in 2018. (C.585). Petitioner presented testimony from three expert witnesses, Dr. Watson, Dr. Tasch, and Dr. Paterno. (R. 1754, 1879, 1949). Dr. Watson, a clinical psychologist with thirty-five years of experience as a clinical director of an outpatient mental health clinic, opined that Petitioner was not a danger to herself or others. (R. 676, 1762-1763). Dr. Watson acknowledged that Petitioner's suicide attempt was situational and not evidence of a prolonged mental illness. (R. 1802, 1847). As the trial court noted in its detailed Memorandum Opinion after the hearing on the second petition, Petitioner's suicide attempt was "solely based on the denial of discharge or conditional release at that time." (A. 31; Attached as Pet. App. D). Dr. Tasch, a board-certified psychiatrist with thirty years of experience, testified that Petitioner was not suicidal. (R. 1879-1880, 1931). Dr. Paterno, a psychologist with twenty-five years of experience, testified that Petitioner's 2017 suicide attempt was situational, and that she would have a lower risk of

suicide if she were living outside the state mental health facility. (R. 1949-1950, 2221).

Dr. Kane, the Chief Psychologist for DuPage County, Probation and Court Services, met with Petitioner for five hours. Dr. Kane testified that Petitioner had no "significant symptoms of mental illness" such as psychotic behavior, hearing voices, or seeing things. (R. 2735, 2753). Dr. Kane testified that Ms. Webber was not an imminent risk for self-harm. (R. 2782, 2791, 2861-2862). When the trial court asked if Petitioner had "the skills necessary to seek out the help she would need in an outpatient basis," Dr. Kane stated that, "I think that if [Petitioner] really trusted a therapist, she would probably seek them out." (R. 2870). Dr. Kane testified that Petitioner had a personality disorder.

On September 18, 2019, the trial court issued its second Memorandum Opinion finding that Petitioner would be considered for conditional release if several conditions could be met. (A. 25-34; *see also* Pet. App. D at 51a).

The Petitioner came before the trial court on December 11, 2019, appearing *pro se*. She brought evidence that she had complied with all the court's requirements of conditional release and gave documentary evidence to the court and to the State's Attorney. (See transcript of proceedings, December 11, 2019, R. 2955-2970; Pet. App. C at 34a).

The trial court ordered Petitioner's conditional release on December 11, 2021, after concluding that the conditions of its September 18. 2019, Memorandum Opinion were

met. (Pet. App. C at 34a). The trial court's decision to conditionally release Petitioner confirms that Petitioner had adequate support for a successful transition out of the state's custody. (A. 35; *see also* Pet. App. C at 42-43a).

After the trial court issued the Petitioner's conditional order of release, the State immediately filed an appeal and a motion to stay the release "to preserve the status quo." (R 2965; Pet. App. C at 44a). The trial court denied the oral motion to stay. Soon thereafter, the state filed an emergency motion appealing the denial of the stay order by the trial court, which it won after an *ex parte* hearing before the Second District.

Petitioner lived in the community and followed the terms of her conditional release for about nine days but returned herself to state custody at Chicago-Read Mental Health Center once she received notice of the Second District's order reversing the trial court's order denying the State's motion to stay the release order. (A. 38, 52).

Petitioner has remained at the State's Chicago-Read Mental Health Center, detained against her will, since December 2019 due to the Second District's stay order and decision, reversing the trial court's order granting conditional release.

In her Petition for Leave to Appeal to the Illinois Supreme Court, filed on July 14, 2021, Petitioner attaches a Chicago-Read Mental Health Center report to Judge Guerin, sitting in place of the retired trial judge, Judge Bakalis. This ten-page report, dated February 19, 2021, from a six-person Treatment Team of the Petitioner, recommends the release of the Petitioner. The report

is personally signed by the State's own Chicago-Read Medical Director (Psychiatrist), the Attending Psychiatrist, a Licensed Clinical Psychologist, the Clinical Nurse Manager (RN), the Director of the Department of Social Work (TA), and a Social Worker II (MSW). In that report, the Treatment Team set forth in bold type:

> **At the present time, the Treatment Team of B-South believes that Ms. Webber is no longer in need of inpatient psychiatric treatment, and that her mental health needs could be more adequately addressed in a less restrictive outpatient treatment environment. However, it will be necessary for Ms. Webber to remain in the hospital at this time to work collaboratively with her Treatment Team to create together, a verifiable and validated aftercare plan.** (A. 61). (Emphasis in original).

The Recidivism Rate of Maternal Filicide is Very Low

Another critically important issue, brought out by the Treatment Team in the same report, is the fact that the recidivism rate of maternal filicide is extremely low (contrasted to the recidivism rates, for example, of pedophiles or other sex offenders). The Treatment Team states in their report:

> **Recidivistic studies suggest that the chances of an NGRI acquittee perpetuating another offense of this nature are extremely low. There is nothing from Ms. Webber's current clinical presentation to suggest that she is**

> **at any increased risk for harming herself or others. Her behavior can at times be intensely provocative, however, such behavior is willful and goal-directed and once again, not the current product of an affective or psychotic mental disorder.** (A. 60-61). (Emphasis supplied).

Despite the above conclusions by Petitioner's Treatment Team, petitioner remains in custody at the State's Chicago-Read Mental Health Center.

On July 14, 2021, Petitioner also filed a "Motion for Supervisory Order" with the Illinois Supreme Court requesting supervisory authority to direct the Second District to apply properly the standard of review, to consider properly the constitutionally required elements for inpatient treatment, and requesting an order vacating the appellate court's June 9, 2021, decision to reverse the trial court's order granting the Petitioner's conditional release.

On August 4, 2021, the Illinois Supreme Court denied the Petitioner's Motion for Supervisory Order. *Webber v. Appellate Court Second District*, No. 127433, Illinois Supreme Court, August 4, 2021.

On September 29, 2021, the Illinois Supreme Court denied the Petitioner's Leave to Appeal the merits of the Second District's Order. (Pet. App. A at 1a).

REASONS FOR GRANTING THE PETITION

A. The State illegally denies Petitioner her liberty interest.

It is well-settled that "(t)he committed acquittee is entitled to release when he has recovered his sanity or is no longer dangerous," *Foucha v. Louisiana*, 504 U.S. 71, 77 (1992). Continuing, "the acquittee may be held as long as he is both mentally ill and dangerous, ***but no longer***." Id. (emphasis supplied). In *Foucha*, the Court relied on *O'Connor v. Donaldson,* 422 U.S. 563 (1975), which held as a matter of due process that it was unconstitutional for a State to continue to confine a harmless, mentally ill person. Although the initial commitment was permissible, "it could not constitutionally continue ***after that basis no longer existed***." *Id.* at 77 (emphasis supplied).

"[T]he Constitution permits the Government, on the basis of the insanity judgment to confine him to a mental institution until such time as he has regained his sanity or is no longer a danger to himself or society." *Id.* at 77–78. Thus, as a matter of due process, continued confinement of a harmless, mentally ill person is unconstitutional. *Foucha at* 77.

The plain language of the Illinois statutory scheme requires two elements for a NGRI acquittee's continued inpatient confinement: that the individual is (1) reasonably expected to inflict serious physical harm upon himself or another, and (2) would benefit from inpatient care or is in need of inpatient care. 730 ILCS 5/5-2-4(a-1)(B). (*See* Pet. App. G at 99a-100a).

The State's Treatment Team, including the Medical Director of the mental health facility where Petitioner is detained, unanimously concluded in February 2021 that:

> Ms. Webber is no longer in need of inpatient psychiatric treatment, and that her mental health needs could be more adequately addressed in a less restrictive outpatient treatment environment. ... There is nothing from Ms. Webber's current clinical presentation to suggest that she is at any increased risk for harming herself or others. (A.60-61).

The Illinois trial court that entered Petitioner's NGRI verdict in 2010, and then oversaw her treatment at various State facilities, determined on December 11, 2019, that Petitioner met the requirements for conditional release. Petitioner represented herself at the time of her release and personally appeared *pro se* before the trial judge. (Pet. App. C at 34a). The State violates *Foucha* by incarcerating an NGRI acquittee who the State's Treatment Team has admitted is no longer mentally ill, no longer a danger to herself or others, and no longer in need of inpatient mental health care.

"It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection. ... We have always been careful not to 'minimize the importance and fundamental nature' of the individual's right to liberty." *Foucha* at 80.

Despite such clear direction, the State refuses to release Petitioner. The State's denial of Petitioner's liberty in violation of the Fourteenth Amendment of the United States Constitution is a compelling reason to grant her Petition.

B. The State illegally punishes Petitioner, an NGRI acquittee.

The State's continued incarceration of Petitioner constitutes punishment, not treatment. As a result of the NGRI verdict, the State has no punitive interest. As the Court stated in *Jones v. United States,* 463 U.S. 354, 369 (1982): "As [Petitioner] was not convicted, [s]he may not be punished."

The Court has made clear that "if a restriction or condition is not reasonably related to a legitimate goal — if it is arbitrary or purposeless — a court permissibly may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees *qua* detainees." *Bell v. Wolfish*, 441 U.S. 520, 539 (1979).

Here, the State acts arbitrarily and purposelessly when it continues to incarcerate Petitioner after the Treatment Team has determined she is no longer mentally ill, is not a danger to herself or others, and is not in need of inpatient mental health care in violation of the Illinois statutory scheme. (Pet. App. G at 99a-100a). Indeed, a complete review of the Illinois decision leads to the inescapable conclusion that Petitioner's continued confinement is punitive in nature. An acquittal by reason of insanity is a complete acquittal, extinguishing the State's interest in punishing the individual. *Jones* at 369.

The State's failure to follow the plain language of the Illinois Code, the directives of the Treatment Team, and the holdings of this Court, makes Petitioner's continued confinement punitive in nature. Allowing this violation of

a statutory scheme to stand will encourage Illinois and other States to continue to punish disfavored defendants and cause an over-institutionalization of NGRI acquittees.

A key measure of any society is how it treats its most vulnerable citizens. Since 1977, Illinois has recognized that NGRI acquittees, like Petitioner, are not responsible for their wrongdoing and require treatment, not punishment. Illinois' NGRI statute — based on the Model Penal Code — represents a watershed moment in modern jurisprudence that recognizes the special needs and challenges faced by the mentally ill.

Mental illness is, of course, widespread. Nearly one in five adults live with mental illness and one in twenty adults experience serious mental illness. (National Institute of Mental Health, 2019, Statistics, citing the Center for Behavioral Health Statistics and Quality; *2019 National Survey on Drug Use and Health: Methodological summary and definitions*. Rockville, MD: Substance Abuse and Mental Health Services Administration. Retrieved from https://www.samhsa.gov/data/. Further, NIMH 2019 Statistics can be retrieved online at https://www.nimh.nih.gov/health/statistics/mental-illness.)

Mental illness is not – and must not be – a reason to punish and imprison. Petitioner, who suffered from acute psychosis which has long since disappeared, must not be punished for her former disability. The Fifth Circuit agrees: "Mental institutions exist for the benefit of those who can be helped by care and treatment or who require custodial attention. They are not substitutes for prisons. Nor can they be permitted to become such." *Francois v. Henderson*, 850 F.2d 231, 236 (5th Cir. 1988).

The State's continuing punishment of Petitioner is a compelling reason to grant her Petition.

C. The Illinois Supreme Court improperly affirmed the Second District. Petitioner is not a murderer.

In the opening lines of the Second District's opinion, the court wrote: "On November 3, 2010, defendant murdered her four-year-old daughter, Magdalene." (See Pet. App. B at 3a). This single declaration demonstrates the lower court's error: Petitioner is not a murderer. She was acquitted by reason of insanity.

The Court should grant this Petition because Illinois has failed to follow its own statutory scheme by reversing the trial court's order releasing the Petitioner. (Pet. App. D at 51a). As a matter of substantive due process, the continued confinement of a harmless person, even if mentally ill, is unconstitutional. *Foucha* at 77. The trial court was in the best position to make such a determination. The Second District's decision results in Petitioner's indefinite, unconstitutional confinement.

The record reveals there was ample evidence to support the trial court's determination that Petitioner is not "reasonably expected to inflict serious physical harm upon" herself or others. The Second District's statement that "no clear and convincing evidence was presented to support the notion that she would not reasonably be expected to inflict harm upon herself if granted conditional release" is not only erroneous, but it is a misstatement of the standard of review. (A24 at ¶ 54). The Second District is not supposed to look for clear and convincing evidence as if it were the original fact finder—that is the trial court's job. Instead, the Second District was charged with

determining whether the trial court's finding was against the manifest weight of the evidence.

The Second District's vastly different application of the standard of review after the trial court granted Petitioner's conditional release requires the Court's intervention. The Court should grant this Petition. The rights of NGRI acquittees deserve protection from the Court. Petitioner has been adjudicated not guilty by reason of insanity; she is not a murderer.

CONCLUSION

The Second District Appellate Court order, which the Illinois Supreme Court declined to review, violates Petitioner's constitutional protections and is contrary to the constitutional protections set forth by the Court in *Foucha*. There are compelling reasons of national importance to prevent mental health institutions from becoming prisons. Petitioner respectfully requests that the Court should grant her petition for certiorari and set this case for briefing and argument.

Respectfully submitted,

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APPENDIX

APPENDIX A — DENIAL OF REVIEW OF THE SUPREME COURT OF ILLINOIS, DATED SEPTEMBER 29, 2021

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September 29, 2021

In re: People State of Illinois, respondent, v. Marci M. Webber, petitioner. Leave to appeal, Appellate Court, Second District. 127430

The Supreme Court today DENIED the Petition for Leave to Appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on 11/03/2021.

Very truly yours,
/s/________________________
Clerk of the Supreme Court

APPENDIX B — ORDER OF THE APPELLATE COURT OF ILLINOIS, SECOND DISTRICT, DATED JUNE 9, 2021

IN THE APPELLATE COURT OF ILLINOIS,
SECOND DISTRICT

2021 IL App (2d) 191090-U
No. 2-19-1090

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellant,

v.

MARCI M. WEBBER,

Defendant-Appellee.

June 9, 2021, Order Filed

Notice: This Order was filed under Supreme Court Rule 23(b) and is precedent except in the limited circumstances allowed under Rule 23(e)(1).

JUSTICE HUTCHINSON delivered the judgment of the court. Presiding Justice Bridges and Justice Hudson concurred in the judgment.

ORDER

Held: The trial court's finding that defendant was not a danger to herself was against the

manifest weight of the evidence and therefore its grant of conditional release was error.

The State appeals the trial court's granting of defendant's (Marci M. Webber) petition for discharge or conditional release. The State contends that defendant still suffers from delusions and is a danger to herself and others such that she would benefit from inpatient care. The trial court relied on Dr. Lesley Kane's testimony as support for its findings that defendant should be granted conditional release. Based on our review of that testimony, the trial court's findings are not supported by the manifest weight of the evidence. For the reasons that follow, we reverse.

I. BACKGROUND

On November 3, 2010, defendant murdered her four-year old daughter, Magdalene. She thought that Satan was going to kidnap Magdalene for the purpose of sexual gratification. Defendant cut Magdalene's neck in her mother's bathroom and inscribed words on the walls in blood. On November 10, 2010, defendant was indicted on five counts of first-degree murder.

On June 7, 2012, defendant was found not guilty by reason of insanity (NGRI). She was remanded to the custody of the Illinois Department of Human Services (DHS) pursuant to section 5-2-4 of the Uniform Code of Corrections (730 ILCS 5/5-2-4 (West 2012)) (Code) for an evaluation as to whether she was in need of mental health services. On July 13, 2012, the trial court found defendant

was in need of mental health services pursuant to section 5-2-4(a-1)(B) of the Code. 730 ILCS 5/5-2-4(a-1)(B) (West 2012). Defendant was initially receiving treatment at Elgin Mental Health Center but was moved to Chicago-Read to continue treatment.

On August 22, 2017, after five years of treatment, defendant filed a motion for discharge or conditional release and asked the court to consider her petition under the auspices of section 5-2-4(g) of the Code. 730 ILCS 5/5-2-4(g) (West 2016). After a hearing on November 13, 2017, the trial court denied defendant's petition as it was unconvinced she was ready for discharge. The trial court said that "[w]hat is appropriate is for DHS to do what should have been done some time ago *** establish a plan for [defendant's] eventual transition into society." Two days after the trial court's denial of defendant's petition, she attempted to kill herself by ingesting 30 Fioricet pills. Thereafter, on November 27, 2017, defendant was transferred back to Elgin Mental Health Center. On August 1, 2019, this court affirmed the trial court's denial of defendant's petition. See *People v. Webber*, 2019 IL App (2d) 170998-U.

During the pendency of that appeal, defendant filed another petition for discharge, or in the alternative, conditional release. She subsequently filed two amended petitions for conditional release or discharge in July 2018. Defendant's second amended petition requested the trial court to consider evidence regarding her treatment plan, and whether she met the criteria for inpatient treatment pursuant to section 5-2-4 of the Code. 730 ILCS 5/5-2-4

(West 2018). In response to defendant's amended petition, the trial court ordered Dr. Lesley Kane to conduct an independent evaluation of defendant prior to a hearing on her second amended petition for conditional release.

On May 8, 2019, the trial court began a bench hearing on defendant's second petition for conditional release or discharge. Defendant called three expert witnesses to testify. The first was Dr. Toby Watson, a clinical psychologist and expert in forensic outcome studies as it relates to severe mental illness. Watson was hired to examine defendant on three different occasions; August 17, 2015, July 5, 2017, and March 21, 2018.[1] Watson's testimony was based on reports he created following examination of defendant on those dates.

Watson opined that defendant does not suffer from a mental illness and is not a danger to herself or others. In 2015, he diagnosed defendant with post-traumatic stress disorder and alcohol dependence by history but stated that she was not dependent on alcohol at the time of his testimony due to her having completed the mental illness substance abuse program during inpatient treatment. Watson did not believe defendant would use alcohol again if discharged. Regarding defendant's post-traumatic stress disorder, Watson testified that defendant's trauma stemmed from "verbal and physical abuse from her

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1. Dr. Watson's testimony concerning the August 17, 2015, and July 5, 2017, examinations of defendant was largely duplicative of testimony given at the November 13, 2017, hearing on defendant's August 22, 2017, petition for conditional release or discharge. *People v. Webber*, 2019 IL App (2d) 170998-U, ¶ 7, 8.

parents, *** from being abused from her husbands[,] *** from custody battles[,] *** from the fact that she killed her daughter and doesn't believe that she was mentally ill, that it was actually *** withdrawal from medication ***." Watson further opined that defendant's post-traumatic stress disorder could have been caused from being involuntarily medicated while in inpatient care. Watson reiterated that these traumas did not make defendant mentally ill or a danger to herself or others. He denied the assertion that defendant was under the influence of alcohol when she killed her daughter. He believed that she suffers from underlying depression. Watson acknowledged defendant's November 2017 suicide attempt following the denial of her prior petition for discharge but described it as, while serious, a singular event. He believed that defendant should be transitioned to an outpatient mental health facility and acknowledged that she would need to check in daily due to the stress of finding an apartment and a job.

Defendant next called Dr. Gail Tasch, a board-certified psychiatrist, to testify. Tasch was referred to defendant by Dr. Watson and met with her on one occasion at Elgin Mental Health Center for the purpose of preparing a report and opinion as to whether defendant qualified for release. Tasch testified that she had also spoken to defendant numerous times by phone. Based on her experience and interactions with defendant, Tasch opined that defendant does not suffer from a major mental illness, nor does she have symptoms of a major mental illness. She further opined that defendant "does not have any suicidal thoughts[,] *** no thoughts of wanting to hurt herself or

anybody else, no suicide or homicidal thoughts." Based on her review of defendant's record of inpatient treatment and Dr. Watson's report, she did not believe defendant to be a danger to herself or others.

Tasch testified that she believed defendant's alcohol use to be a side effect of psychotropic medications. In her opinion, if defendant stayed away from those medications, she would not pose a danger. She did not agree with Dr. Watson's diagnosis of defendant's alcohol use disorder. Tasch believed that defendant understands the nature and character of her action but did not believe defendant needed mental health treatment.

Defendant then called psychologist Dr. Dathan Paterno to testify. Paterno conducted an in-person interview and psychological testing with defendant in October 2018. Additionally, Paterno stated that he had "probably 20 phone conversations" with defendant between October 2018 and the time of his testimony. He did not believe that defendant would use alcohol outside of a controlled environment "frequently or to a troublesome degree" as long as "she stayed off psychiatric medications, she would not need [alcohol] to counteract that." Although defendant will need psychotherapy for years, he opined that defendant does not suffer from a mental illness, nor is she a danger to herself or others.

Defendant then testified on her own behalf. She described having been physically attacked by other patients at Elgin Medical Health Center, as well as being called "baby killer" by patients during her time

there. She recalled her suicide attempt on November 15, 2017, at Chicago Read following the denial of her discharge petition. She blamed the suicide attempt on "a lot of circumstances *** including *** a combination of medications, three different medications." Additionally, she "was very vulnerable." She had seen a report of her case on television news the described defendant as "severely mentally ill." She thought it would be better for her to take her own life and "let her [daughter] sue for wrongful death." She admitted that the denial of her discharge petition also played a role in her suicide attempt.

Defendant denied suffering from any mental illness. She described her relationship with her psychiatrist at Elgin Mental Health Center, Dr. Richard Malis, as nonexistent as he refused to accept that defendant does not suffer from a mental illness and sought to administer psychotropic medications to treat defendant. She said that she would not be willing to take any medications prescribed because she knows "that [she is] not insane *** [and she is] not in need of medication." Although she admitted to experiencing paranoid and religious delusions at the time she killed Magdalene, she testified that she had not experienced any since. She further admitted to past alcohol abuse, including at the time of her crime, but did not believe she would abuse alcohol to cope with adversity in the future.

When asked what she would do if released, defendant responded

> "Well, I feel that I know myself very well. What I would like to do, because I understand

> the world is a little bit different now and I've been locked up for some time, I would like to transition by getting counseling.
>
> I need to be in my own home. I need a place of my own, an apartment, where I don't have people telling me what to do that don't know *** what's best for me or don't care. I'm tired of people. I'm exhausted from people. I just want some peace.
>
> I would like to go to a counselor, a one-to-one, to be able to *** grieve the death of my daughter that I've had to stuff all these years, grieve the death of my father that I was antagonized over the phone while he was dying, and to deal with my perception of humanity at this point."

Dr. Richard Malis, defendant's treating psychiatrist at Elgin Mental Health Center, was called to testify by the State. Malis believed that defendant needed mental health services on an inpatient basis. He opined that defendant was expected to inflict serious harm upon herself or others and diagnosed defendant with schizoaffective disorder bipolar type, alcohol use disorder, and borderline personality traits.

As to his diagnosis of schizoaffective disorder bipolar type, Malis explained that defendant met this diagnosis through continued delusional ideas and disorganized thinking. Defendant's symptoms of this diagnosis started before she killed her daughter and continued throughout

her treatment. Malis described defendant's delusional beliefs concerning a conspiracy by the church to harm her daughter. He further described defendant's fixed false beliefs about being mistreated by the legal system during her child custody battles with her ex-husband before she killed Magdalene. Following her crime, defendant continued to demonstrate these delusional beliefs when she believed one of her pyschologists was part of the mafia and Illuminati, conspiring with the courts in her custody battles. Her delusional beliefs continued after being committed by maintaining that she was being tortured deliberately by her treatment providers and hospital staff. Malis opined that defendant's demonstration of "flight of ideas and pressured speech" further evidences this diagnosis.

Malis described the bipolar component of defendant's diagnosis as depressive episodes evidenced by depressed mood, at times with sleep disturbance, changes in weight and appetite, and loss of interest in different activities. Malis recalled defendant had periods of time where she is crying and tearful and describes being sad. She experiences periods of sleep disturbance where she tends to not go to sleep until very late in the evening and not get out of bed until noon the following day, often taking naps the following afternoon. Malis stated that defendant had exhibited chronic increase in appetite and exhibited a lack of interest in most activities.

Malis recommended defendant take psychotropic medications but she has refused. He testified that the goal of the medications was to reduce symptoms of her

delusional beliefs, disorganized thinking, and mood disorder symptoms. He observed that defendant was taking psychotropic medications following the murder of her daughter. She exhibited less of the delusional beliefs and better controlled her mood disorder symptoms when talking these medications. Additionally, defendant seemed less irritable, had more stable moods, engaged in treatment, and her reports exhibited less conflict with hospital staff. Malis opined that psychotropic medication had a positive effect on defendant.

Malis testified that defendant does not have insight into her mental illness. He stated that defendant believes her delusional ideas and is unable to consider the possibility that they are not true. Defendant's refusal to participate in the recommended therapy further exacerbates this problem. She does not attend group therapy regularly. She does not participate in individual therapy at all. She has refused to meet with Malis except once every several weeks as a requirement for the grant of certain hospital privileges. At the time of Malis's testimony, defendant had not met with him in about a year, and she was not currently meeting with her psychologist for any sort of therapy as she was not interested. Malis gave defendant a list of goals each week, including a non-hostile interaction with her social worker. The week prior to his testimony was the first time defendant had met that goal.

Malis testified that defendant has a lack of insight into her alcohol abuse disorder. He recommended treatment to defendant as individuals with this disorder often relapse, as defendant has in the past. Defendant's belief that she

only drank alcohol in the past to cope with side effects from medications would not produce a positive outlook on her chances of maintaining sobriety. Malis stated that alcohol counteracts the beneficial effects of psychotropic medications and can destabilize psychiatric issues. Additionally, there is a higher risk of suicide attempts and violence to others from individuals that abuse alcohol with a history of mental illness.

Malis opined that, if released, defendant is expected to inflict serious harm upon herself or others. He based this opinion on her index offense, history of driving under the influence of alcohol with another individual in her car, physical incidents with other patients, and suicide attempts following the murder of Magdalene and in November 2017 while in DHS custody. Malis stated that defendant's November 2017 suicide attempt consisted of her taking 30 Fioricet pills; a lethal amount of acetaminophen had defendant not thrown up. Malis disagreed with Dr. Watson's assessment that the suicide attempt was not the result of a mental illness.

The State next called Dr. Lesley Kane, Chief Psychologist for Du Page Probation and Court Services, to testify. Kane was appointed by the trial court to conduct an independent evaluation of defendant. Her evaluation was based on meeting with defendant for five hours and reviewing DHS treatment records. She diagnosed defendant with borderline personality disorder, other specified personality disorder with narcissistic traits, rule-out bipolar disorder with psychosis in remission, major depressive disorder with psychosis in remission, and

alcohol use disorder. Regarding the borderline personality disorder diagnosis, Kane testified that someone with such a disorder may overreact to perceived slights or disagreements with another person and believe them bad or evil. She described defendant as having described feelings of being unfairly targeted by others, including DHS staff, that are beyond what would be considered normal. She opined that the severity of defendant's delusions waxed and waned.

Regarding defendant's November 2017 suicide attempt, Kane testified that, at the location of the attempt, defendant had written on the walls about DHS staff targeting, torturing, and treating her unfairly. Additionally, defendant had written a message to her daughter on the wall to sue DHS for wrongful death. Kane stated that suicide attempts are consistent with borderline personality disorder. She expressed concern that "if [defendant] is not in treatment or some form of treatment being monitored, *** there is the potential *** that she could harm herself." Kane believed defendant's potential for self-harm was greater on conditional release because less monitoring would occur.

Kane expressed concern about defendant's alcohol abuse disorder outside of a controlled environment. She testified that there was reason to still be concerned about an alcohol use relapse when defendant was no longer in a secured environment, and that alcohol use could exacerbate symptoms of her mental illness.

Kane testified that her biggest concern for defendant was that she was not recognizing the role mental illness

played in her offending behavior. She opined that psychotropic medications of the kind defendant had refused to take helped her control her mental illness when they were being administered to her. She described defendant as more stable on medication and more insightful as to her mental health condition. Kane worried that, if released, defendant would struggle with the stresses of finding a place to live, supporting herself financially, and maintaining relationships. Additionally, she expressed concern that defendant would be unable to cope with, or even recognize, her symptoms in an outside environment.

It was Kane's recommendation that defendant continue inpatient treatment and opined that her symptoms would not improve without treatment. Kane believed defendant's underlying mental illness was the core issue preventing her from receiving necessary mental health treatment but acknowledged that defendant may not receive that necessary treatment while in DHS. She did not think it was possible that defendant would see Dr. Malis for treatment and stated that defendant has shown more insight into her mental illness when taking medication. Kane testified that defendant's insistence that medication is the cause of all her issues makes her unable to address her problems and recognize the symptoms of her mental illness.

In rebuttal, defendant called Terry Nichols, a former nurse at Elgin Medical Health Center, to testify that he interacted with defendant while employed there and made notes on defendant's chart. He recalled noting a positive interaction with defendant following one of his shifts and

made note of it in the chart. Nichols testified that Dr. Malis believed Nichols must be being manipulated and was not pleased with the positive note. Nichols testified that his supervisor explained to him that Dr. Malis wanted to compel medications for defendant through a court order and the positive notes in her chart would hinder that course of action.

On September 18, 2019, the trial court issued a memorandum opinion that it was considering defendant for conditional release. The trial court's order stated that

> "The court, after reviewing all the testimony and reports regarding [defendant], concludes that it cannot agree with [defendant's] experts that she does not suffer from mental illness, clearly, she does. That fact by itself, however, does not automatically require continued confinement. The court also has difficulty with Dr. Malis's testimony as it is evident he will never acknowledge [defendant] is proper for release until she consents to the taking of psychotropic medications even though her psychosis has been in remission for over eight years without medication.
>
> The court finds that the analysis of Dr. Kane is closest to what currently afflicts [defendant], basically borderline personality disorder. [Defendant] clearly needs to have mental health treatment and therapy. The court, however, for reasons previously discussed, both of the fault

of [defendant] and the fault of [DHS], will never receive that treatment while in the custody of the [DHS].

The court, in determining what would be proper treatment for [defendant], has again considered all evidence presented and the factors set forth in 730 ILCS 5/5-2-4(g). As to the statutory factors, the court finds:

1. [Defendant] does appreciate the harm she caused in the murder of her child and is burdened by her actions.

2. The court continues to have some concerns as to whether [defendant] completely understands that her prior conduct was caused by her developing mental illness and not merely caused by the medications she was taking at the time of the offense.

3. [Defendant's] prior psychotic episodes are now in remission and have been so for some time. Obviously, to date this has only been established in a secured environment. Since her confinement to the Elgin Mental Health Facility, [defendant] has shown an unwillingness to comply with the programs and counseling that DHS requires but, the problem is also, in part, due to the failure of DHS to even attempt to establish a transition program where [defendant's] conduct can be observed outside of

the secured environment. Defendant has been granted no privileges at DHS.

4. [Defendant] refuses to take any medication for her mental illness and believes such medication caused her mental illness to begin with. That said, [defendant's] acute mental illness is in remission and has been for an extended period of time without medication.

5. The adverse effects of medication on the [defendant] are unidentifiable as she has refused any medication.

6. The question of [defendant's] mental health possibly deteriorating without medication cannot be assessed. As indicated, she has refused medication, however, having been off medication for a significant period of time, her psychotic features have remained in remission.

7. [Defendant] has some history of alcohol abuse, but it is also in remission while in a secured setting.

8. [Defendant] has a limited criminal history other than the crime for which she was found insane.

9. There is no evidence regarding any specialized physical or medical needs of [defendant].

10. [Defendant] has a mother and a sister in the area, but their participation or involvement with [defendant] if she were to be released, was not established.

11. Based on the findings of Dr. Kane, the court believes that [defendant] is not a danger to others. There was testimony that she may be a danger to herself based on the suicide episode in November of 2017 after this court's denial of her request for discharge or conditional release. The court believes this was solely based on the denial of discharge or conditional release at that time. As previously indicated, [defendant] continues to show irritability and aggressiveness, but no physically violent behavior has been shown toward staff or other patients. In fact, [defendant] has been the subject of abuse by other patients without retaliating. It is not possible to determine the dangerousness to herself unless a transition program is established to see how [defendant] conducts herself in unsecured environment situations.

It is the court's opinion that the evidence presented does not establish that [defendant] is in need of mental health services on an inpatient basis. At the same time, the evidence does not establish that [defendant] is ready for discharge. The court believes that the proper course of action at this time is to formulate a plan for

> the [defendant's] conditional release from the Illinois Department of Human Services. The court believes that what has been discussed herein is that the Illinois Department of Human Services cannot provide for [defendant's] mental health treatment. [Defendant] needs to be in an environment where she will be able to work in conjunction with treating staff and not in opposition to them. If [defendant] cannot demonstrate an ability to do so, then this court would have to reconsider her placement."

The trial court then provided a list of conditions for defendant to meet before granting her conditional release. DHS was ordered to transfer defendant back to Chicago-Read.

On December 11, 2019, the trial court held a hearing to determine if defendant had met the requirements for conditional release. Defendant filed a memorandum detailing her plans for conditional release, and DHS filed a NGRI Interim Treatment Plan Report prior to the hearing. Defendant was unable to secure housing with outpatient facilities as she would not consent to medication. She was able to secure outpatient mental treatment and housing through legal and mental health advocates. She provided a lease for an apartment in Glen Ellyn and a bank account statement showing an account containing $10,000 deposited by Dr. Tasch. Defendant had secured the services of licensed clinical psychologist Dr. Laura Bauhof to provide further mental health treatment. Dr. Bauhof agreed to submit defendant's treatment progress

reports to the trial court and DHS every 90 days. Dr. Bauhof further agreed to notify DHS of any violations by defendant of her conditional release.

DHS's NGRI Interim Treatment Plan Report stated that defendant's treatment team "remains concerned about her ability to manage stress and cope effectively with day-to-day problems in living in the community." Additionally, the report stated that defendant "continues to be consumed by her antipathy toward DHS and its staff. She struggles to focus on very little else ***."

Following the trial court's review of the evidence presented at the December 11, 2019, hearing, defendant was granted conditional release for a period of five years and required to cooperate with mental health and counseling services, submit to random alcohol testing for at least six months, and have no unsupervised contact with any person under the age of 17. Defendant was released from the custody of DHS.

On December 20, 2019, this court granted the State's emergency motion to stay the trial court's conditional release order. Defendant was returned to DHS custody.

This appeal followed.

II. ANALYSIS

The State contends that the trial court erred in finding that defendant should be released from inpatient treatment. The State argues that defendant failed to show that she is not a danger to herself or others.

Following an acquittal by reason of insanity, a defendant bears the burden of proving by clear and convincing evidence that a petition for conditional release or discharge should be granted. See 730 ILCS 5/5-2-4(g) (West 2018). The defendant's burden is to show by clear and convincing evidence that, due to his or her mental illness (regardless of whether it was enough to require involuntary admission), defendant is not reasonably expected to inflict serious harm upon defendant's self or another and would not benefit from further inpatient care or be in need of such inpatient care. Under a plain reading of the statute, if defendant proves either element, namely defendant is (1) not reasonably expected to inflict serious physical harm upon defendant's self or another or (2) defendant would not benefit from inpatient care or is not in need of inpatient care, by clear and convincing evidence, the judge must grant the petition for conditional release. See 730 ILCS 5/5-2-4(a-1)(B) (West 2018). In determining whether a defendant should be released, the trial court should consider:

> "(1) whether the defendant appreciates the harm caused by the defendant to others and the community by his or her prior conduct that resulted in the finding of not guilty by reason of insanity;
>
> (2) Whether the person appreciates the criminality of conduct similar to the conduct for which he or she was originally charged in this matter;

(3) the current state of the defendant's illness;

(4) what, if any, medications the defendant is taking to control his or her mental illness;

(5) what, if any, adverse physical side effects the medication has on the defendant;

(6) the length of time it would take for the defendant's mental health to deteriorate if the defendant stopped taking prescribed medication;

(7) the defendant's history or potential for alcohol and drug abuse;

(8) the defendant's past criminal history;

(9) any specialized physical or medical needs of the defendant;

(10) any family participation or involvement expected upon release and what is the willingness and ability of the family to participate or be involved;

(11) the defendant's potential to be a danger to himself, herself, or others; and

(12) any other factor or factors the Court deems appropriate." 730 ILCS 5/5-2-4(g) (West 2018).

The trial court's determination as to whether a defendant has carried her burden under section 5-2-4(g) by clear and convincing evidence must be respected unless such determination is against the manifest weight of the evidence. *People v. Wolst*, 347 Ill. App. 3d 782, 790, 808 N.E.2d 534, 283 Ill. Dec. 568 (2004). A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented. *Best v. Best*, 223 Ill. 2d 342, 350, 860 N.E.2d 240, 307 Ill. Dec. 586 (2006).

A State may commit a person found not guilty by reason of insanity when that verdict establishes that (1) the defendant committed an act that constitutes a criminal offense and (2) the defendant committed the act because of mental illness. *Jones v. United States*, 463 U.S. 354, 363, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983). A defendant found not guilty by reason of insanity may be confined to a mental health institution until such time as sanity is regained or defendant is no longer a danger to herself or others. *Jones*, 463 U.S. at 368. As a matter of due process, continued confinement of a harmless, mentally ill person is unconstitutional. *Foucha v. Louisiana*, 504 U.S. 71, 77, 112 S. Ct. 1780, 118 L. Ed. 2d 437 (1992). In Illinois, a defendant found not guilty by reason of insanity in need of mental health services on an inpatient basis due to mental illness is defined as "a defendant who has been found not guilty by reason of insanity but who, due to mental illness, is reasonably expected to inflict serious physical harm upon himself or another and who would benefit from inpatient care or is in need of inpatient care."

730 ILCS 5/5-2-4(a-1)(B) (West 2018). If the court finds that the defendant is no longer in need of mental health services, it shall order defendant's conditional discharge. 730 ILCS 5/5-2-4(h) (West 2018).

Here, the trial court's findings that defendant suffered from mental illness and that she is in need of inpatient care are not at issue. Rather, the issue is the State's argument that defendant did not show by clear and convincing evidence that she was not reasonably expected to inflict serious physical harm upon herself or others.

The trial court heard testimony from five expert witnesses who provided varying opinions as to whether defendant could reasonably be expected to inflict serious physical harm upon herself or others. Ultimately, the trial court found, based on the testimony of Dr. Kane, that [defendant] is not a danger to herself or others. See *supra* ¶ 26. The State argues throughout its brief that the testimony of Dr. Malis supports its proposition that defendant requires continued inpatient mental health treatment as Malis believes defendant to be delusional and a danger to herself and others if granted conditional release.

The trial court is in the best position to resolve the conflicts between the experts' testimony and determine their credibility. *Flynn v. Cohn*, 154 Ill. 2d 160, 169, 607 N.E.2d 1236, 180 Ill. Dec. 723 (1992). When considering an appeal regarding the sufficiency of the evidence, this court will not retry the case. *People v. Collins*, 214 Ill. 2d 206, 217, 824 N.E.2d 262, 291 Ill. Dec. 686 (2005). The

trial judge in a bench hearing like the one at issue in the present case sits as the trier of fact: determining the credibility of witnesses, weighing the evidence, drawing inference from that evidence, and resolving conflicts in the evidence. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228, 920 N.E.2d 233, 336 Ill. Dec. 223 (2009). This court does not substitute its judgment for that of the trial court in making evidentiary determinations. *Best*, 223 Ill. 2d 342, 350-51, 860 N.E.2d 240, 307 Ill. Dec. 586 (2006).

The trial court found Dr. Kane's analysis and diagnosis of defendant's mental health the most credible among the experts presented and based its findings on her testimony. Accordingly, while we will examine the trial court's findings on each statutory factor, we will focus our review of the trial court's findings as to whether defendant remains a danger to herself based on Kane's testimony.

As to the first two statutory factors (730 ILCS 5/5-2-4(g)(1), (2) (West 2018)), the trial court determined that defendant appreciates and is burdened by the harm she caused in murdering Magdalene. The trial court expressed concern that defendant does not completely understand that the murder of her daughter was caused by her mental illness instead of the medications she was taking. We agree with the latter finding.

This court has had the opportunity to review the entire record in this case and noticed that defendant's murdered daughter's name, Magdalene, appears sparsely outside of the indictment where she is mentioned repeatedly. What is clear from our review of this case is that defendant has

actively avoided any discussion of her daughter with her treating staff. Throughout the record, defendant blames—exclusively--withdrawal from psychotropic medications as the scapegoat for what happened to her four-year old girl. It appears that defendant's newly secured legal and mental health advocates share in defendant's approach to the cause of her underlying crime. This court will not speculate on the veracity of these beliefs regarding the discontinuation of psychotropic medications as the cause of what happened to defendant's daughter.

As to the third, fourth, fifth, and sixth statutory factors (730 ILCS 5/5-2-4(g)(3)-(6) (West 2018)), the trial court accepted Dr. Kane's diagnosis of defendant as suffering from borderline personality disorder and recognized that her prior psychotic episodes have been in remission since discontinuing medication. As such, the trial court recognized that any adverse effects of medication on defendant, or whether her mental health would deteriorate without medication could not be identified. The trial court acknowledged that Dr. Malis's belief that medication would be of benefit to defendant before being granted conditional discharge was problematic as "it is evident [Dr. Malis] will never acknowledge [defendant] is proper for release until she consents to the taking of psychotropic medications even though her psychosis has been in remission for over eight years without medication." However, Dr. Kane opined that defendant was more stable and insightful as to her mental condition when on medication.

Regarding the seventh statutory factor (730 ILCS 5/5-2-4(g)(7) (West 2018)), the trial court found defendant

"has some history of alcohol abuse, but it is also in remission while in a secured setting." The trial court was presented with evidence that defendant has not consumed alcohol in over ten years and displayed no symptoms of alcohol addiction while in DHS custody. Defendant did complete treatment for alcohol abuse while in custody and participated in Alcoholics Anonymous meetings.

In making its determination under the eighth statutory factor, the trial court found defendant to have "a limited criminal history other than the crime for which she was found insane." (730 ILCS 5/5-2-4(g)(8) (West 2018)). The record shows defendant having been convicted for driving under the influence in 1998 and 2002. The State argues that this court should take issue with the trial court's finding on this factor and consider a 2007 altercation defendant had with a Walmart employee and a 2010 incident between her and another inmate in the Du Page County jail. Additionally, the State points to incidents noted in reports filed with the trial court by DHS detailing various incidents between defendant and other patients, as well as staff members. However, the State fails to explain to this court how those additional alleged incidents are indicative of "criminal history." We decline to reweigh the evidence on this statutory factor in the manner the State suggests.

The trial court found no evidence was presented regarding any specialized physical or medical needs of defendant. See 730 ILCS 5/5-2-4(g)(9) (West 2018). Our review of the record takes no issue with the trial court's determination on this statutory factor.

Regarding the tenth statutory factor (730 ILCS 5/5-2-4(g)(10) (West 2018)), the trial court found that defendant "has a mother and sister in the area, but their participation or involvement with [defendant] if she were to be released, was not established." The State argues that defendant is alienated from her family but will not talk about it so it is unclear what role, if any, they will play if she is granted conditional discharge. Her father recently passed away. We agree with the State and the trial court that the amount of participation or involvement defendant will receive from her family was not established. Indeed, this court is concerned that this could be a problem for defendant upon conditional discharge. At the hearing on December 11, 2019, defendant presented the trial court with evidence of support from her legal and mental health advocates. They assisted her in securing an apartment and generous funds in her bank account. Additionally, her legal and mental health advocates helped defendant secure outpatient treatment as required by the trial court in its September 18, 2019, order.

The eleventh statutory factor requires the trial court to determine "the defendant's potential to be a danger to *** herself, or others[.]" 730 ILCS 5/5-2-4(g)(11) (West 2018). This factor is of particular import to this case as the determination of whether defendant can be expected to be a danger to herself or others is also a necessary element in the definition of someone who is in need of inpatient services. See 730 ILCS 5/5-2-4(a-1) (West 2018). Here, the trial court found

> "Based on the findings of Dr. Kane, the court believes that [defendant] is not a danger to

> others. There was testimony that she may be a danger to herself based on the suicide episode in November of 2017 after this court's denial of her request for discharge or conditional release. The court believes this was solely based on the denial of discharge or conditional release at that time. As previously indicated, [defendant] continues to show irritability and aggressiveness, but no physically violent behavior has been shown toward staff or other patients. In fact, [defendant] has been the subject of abuse by other patients without retaliating. It is not possible to determine the dangerousness to herself unless a transition program is established to see how [defendant] conducts herself in unsecured environment situations."

This court finds defendant's November 2017 suicide attempt to be particularly concerning. The trial court found Kane's opinion as to this factor to be specifically credible. As such, we cannot agree that the trial court's finding that defendant is not a danger to herself is reasonable and supported by the manifest weight of the evidence. Kane testified as to her concerns about defendant's ability to cope with the stress of transition to the community and whether she would be properly monitored for symptoms of mental illness if granted conditional discharge. The trial court's reliance on Kane's opinion as the basis for its finding on this factor gives pause to this court, as Kane testified that she believed defendant should continue with inpatient treatment. But most importantly, the trial court

agreed that Kane's diagnosis of borderline personality disorder was accurate as to defendant. Kane testified that suicide attempts were consistent with borderline personality disorder and further stated that those who have attempted suicide, like defendant, are more at risk of attempting suicide again and more at risk of succeeding on another attempt.

The trial court further stated in its findings that defendant "may be a danger to herself" based on her November 2017 suicide attempt but dismissed the attempt as "solely based on the denial of discharge or conditional release at the time." This court does not agree with the trial court that the defendant's November 2017 suicide attempt was solely based on the denial of her discharge petition, and we believe that defendant may remain a danger to herself. Kane testified that, in addition to the denial of the petition, defendant said she was worried that she could not provide for her children and believed her death could benefit her children through a wrongful death suit against DHS. Additionally, Kane testified that defendant had written on the walls during her suicide attempt, in a strikingly similar fashion to what she did in the bathroom where she murdered Magdalene. Defendant had been saving up the Fioricet pills she used to attempt suicide for three years. Kane testified that this behavior raised concerns as to whether defendant had been planning to harm herself. The finding that defendant's November 2017 suicide attempt was based solely on the denial of her earlier discharge petition is not supported by the evidence presented. The trial court's reliance on Kane's diagnosis of borderline personality disorder makes

its finding that defendant is no longer a danger to herself unreasonable and seems to selectively ignore Kane's testimony as a whole.

We concur with the trial court's statement that "[i]t is not possible to determine [defendant's] dangerousness to herself unless a transition program is established to see how the petitioner conducts herself in unsecured environment situations." However, we cannot agree that defendant should be granted conditional discharge based on the evidence presented. Again, the trial court parted ways with Dr. Kane's opinion that defendant needs further inpatient treatment after agreeing with her diagnosis of defendant as suffering from borderline personality disorder. In addition to Kane's concerns regarding defendant's November 2017 suicide attempt based on this diagnosis, she believed defendant's potential for self-harm was greater on conditional release because she would be monitored much less. She also expressed concern that defendant's alcohol abuse disorder, while in remission in a controlled environment, could be subject to relapse when no longer in a secure setting. She further testified that alcohol use could exacerbate defendant's mental health symptoms. Defendant herself expressed apprehension in her willingness to attend Alcoholics Anonymous meeting upon discharge because it reminds her of Magdalene as she used to take her to those meetings before she murdered her.

Throughout the proceedings below and evidenced in the many reports submitted by DHS, defendant has consistently exhibited combativeness and irritability when

things do not go the way she would like, including the suicide attempt after the denial of a previous petition for conditional release. The trial court accepted Dr. Kane's diagnosis of borderline personality disorder regarding defendant and this court accepts that diagnosis as well. Undoubtedly, defendant would face the same day-to-day problems and annoyances that every other person in our community faces. However, she and her mental health advocates choose not to address her underlying mental illness and continue to focus solely on her experience with psychotropic medication as the source of all her tribulations. This court fears she will not be able to fulfill the requirements of her conditional release as defendant has not even met DHS's requirements for off-unit privileges during her time as a patient.

To reiterate, defendant must prove by clear and convincing evidence that she is not reasonably expected to inflict serious physical harm upon herself or another or would not benefit from inpatient care or is not in need of inpatient care. See 730 ILCS 5/5-2-4(a-1)(B) (West 2018). This court's review of the record, along with the trial court's articulated findings and expert reliance, illustrates that defendant remains in need of inpatient hospitalization as no clear and convincing evidence was presented to support the notion that she would not reasonably be expected to inflict harm upon herself if granted conditional release. Based on the foregoing, the trial court's finding that defendant is not a danger to herself is not supported by the manifest weight of the evidence. This court agrees with the testimony presented by Dr. Kane that defendant needs further inpatient treatment to address her mental illness before being considered for conditional discharge.

III. CONCLUSION

Accordingly, the judgment of the circuit court of Du Page County is reversed.

Reversed.

APPENDIX C — TRANSCRIPT, OF THE REPORT OF PROCEEDINGS FOR DECEMBER 11, 2019, OF THE CIRCUIT COURT OF DUPAGE COUNTY FOR THE EIGHTEENTH JUDICIAL CIRCUIT OF ILLINOIS, FILED JANUARY 29, 2020

[1]IN THE CIRCUIT COURT OF
DUPAGE COUNTY FOR THE EIGHTEENTH
JUDICIAL CIRCUIT OF ILLINOIS

No. 10 CF 2643

FOR THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff,

-vs-

MARCI M. WEBBER,

Defendant.

MOTION

REPORT OF PROCEEDINGS had of the above-entitled cause, before the Honorable GEORGE J. BAKALIS, Judge of said Court, commencing on Wednesday, the 11th day of December, 2019.

[2]THE CLERK: 10 CF 2643, Marci Webber.

MR. LINDT: People. Good morning, Your Honor, Joe Lindt and Jen Lindt on behalf of the People.

THE COURT: Good morning.

MR. LINDT: Good morning, Your Honor. We're up today on status.

THE COURT: All right. Ms. Webber, I received another update from the department of human services. I've read this report and there's some things that disturb me, some things that are good.

What disturbs me is I understand your dislike for the department of human services and most of the employees that work there, but what they're telling me here is that your conduct toward them in terms of your language, in terms of your yelling at them, and so forth is not acceptable.

You have to keep your emotions under control, whether you like what they're doing, you don't like what they're doing, you just can't get outraged and yell at those people.

THE DEFENDANT: Okay. Your Honor, may I present you with this? I attempted to present that to Joe Lindt and Jennifer Lindt, and Jennifer Lindt put it back at me and said she did not want it, it needed to [3]be on the record.

THE COURT: I'll take a look at that, but let's talk one thing at a time.

THE DEFENDANT: I have met everything you've asked me for. If you would like to address -- there are falsehoods, untruths, in that court report.

THE COURT: Just listen to me. I'm not going to determine whether it's true or false. All I'm telling you is that you have to learn to be more respectful to other people, even if you don't like them, even if you don't like what they say to you.

I've read this report -- I can't find the page that I want here.

This is what they're telling me, that your team remains concerned about your ability to manage stress and cope effectively with day-to-day problems in living in the community.

You're going to face all kinds of problems --

THE DEFENDANT: I understand that.

THE COURT: and you can't just explode and get angry at people. You have to learn to control your emotions.

THE DEFENDANT: I know how to control my anger. They're dishonest, Your Honor.

[4]THE COURT: Well, I don't think that's the case. I think there's some probably truth to it, but you've got to -- what I want to see is that you not -- you're going to have to control yourself so that you don't overreact.

THE DEFENDANT: Your Honor, when I react it's only the same way they're acting to me. They yell at me, they abuse me --

THE COURT: And sometimes what you've got to do is turn the other cheek.

THE DEFENDANT: Most of the time I do, Your Honor, but I am not a saint. They're asking me to be a saint, and they are presenting untruths in that court report.

Do you really think I would say that I can do anything I want because I have a judge in my pocket?

That's so blatantly false.

THE COURT: What I'm telling you is I want to see not these kinds of reports.

Now, the good part it looks like you're going to the counseling, you're doing the things you're supposed to do, that's good. That's important.

Let me take a look at what you've given me here.

MR. LINDT: And, Your Honor, just I understand [5] she's -- I'm not exactly sure what this is, but we wanted to have it as of record just so we do everything at the bench so there's no confusion --

THE DEFENDANT: So can I now hand that to you?

MR. LINDT: if she has a copy, I'll acknowledge receipt of the copy.

THE COURT: Do you have a copy?

THE DEFENDANT: I tried to give it to them earlier.

THE COURT: Do you have a copy now?

THE DEFENDANT: Yes, I just gave them a copy.

MR. LINDT: Right, Your Honor, I just want to have everything --

THE DEFENDANT: I'm totally prepared to be released and have a Merry Christmas like everybody else.

Your Honor, may I step away for a moment?

THE COURT: Sure.

THE DEFENDANT: Thank you.

Your Honor, may I have permission to submit an affidavit to the Court?

THE COURT: I'm sorry?

THE DEFENDANT: May I have permission to submit an affidavit concerning the court report to you?

[6]THE COURT: Do you have an affidavit?

THE DEFENDANT: Yes.

THE COURT: Okay. Go ahead.

THE DEFENDANT: It's just an affidavit with some supporting evidence, and this is my wellness recovery plan that they claim I'm only working on.

It is the fourth one I've done, and I'm sure it's much more detailed than any other patient, most of them.

And I'm very, very serious about my success. I will do what's necessary and what you order me to do.

THE COURT: Is this something you prepared?

THE DEFENDANT: Yes, Your Honor. We prepare that in a group. I prepared it also, the same form, in 2017. It was taken from me in a room search.

Your Honor, did you receive letters from my peers? I sent in the mail --

THE COURT: I've received, I think, two or three, yes.

THE DEFENDANT: Okay. That's evidence that what they're stating in the court reports is false. I'm utterly helpless and vulnerable to be able to prove myself in that environment, and it's a very, very stressful environment. Please do not think that it's [7]some therapeutic vacation.

It's very hostile. The one has contents of a release that was falsified to avoid a HIPAA violation, and the other is documents from the board showing how they had switched

groups without telling me and then tried to cover it up crossing off the groups.

I have dodged obstacle after obstacle to try to comply with your order, Your Honor. They treat me like no other patient; badly. It's the signatures on the release of information that are problematic on what you just opened.

THE COURT: What is this?

THE DEFENDANT: The time -- pardon me?

THE COURT: What is this?

THE DEFENDANT: It's the same thing. I just was going to stick it in the mail to Terry to save it because they take any evidence I garnish, they take them from my room so that I can't prove myself.

THE COURT: Okay. State, have you had a chance to look at these other documents?

MR. LINDT: Yeah, I briefly was able to look at what I believe was the same thing, the memorandum that you were tendered this morning from petitioner. As far as any other correspondence, I really [8]haven't seen or heard or --

THE COURT: I'm really not that concerned about the other correspondence. My concern is whether there's in place the things we asked for.

My reading of their report from DHS would indicate that there are no short-term facilities.

MR. LINDT: I have looked at that, Your Honor. I believe -- I could be mistaken, but I believe maybe the Old Town was still that was pending.

THE DEFENDANT: No, it's listed right there. They won't take me because I don't take medications.

THE COURT: I think that's the case for all these places.

THE DEFENDANT: Right. There isn't any other solution other than an apartment

THE COURT: State, anything else?

THE DEFENDANT: -- and according to --

THE COURT: One second.

Anything else?

MR. LINDT: Not based on that, Your Honor.

THE COURT: All right. I've reviewed the affidavit and so forth that was presented here. My concern is how Ms. Webber would basically exist in this interim period when she's released.

[9]The documentation would indicate that there's been a substantial sum deposited for her benefit with the bank, that there is a lease in place for her to reside, that she has in fact contacted and would begin counseling with a psychologist in the area.

THE DEFENDANT: Your Honor?

THE COURT: Yes.

THE DEFENDANT: I have three appointments arranged with her, tomorrow, Tuesday, and then Monday. I also have an appointment with Health Care Alternative Solutions, which can provide the drug testing, alcohol testing, any of that stuff. That's on Wednesday, the 18th.

I also have NAMI appointments on Wednesday evenings from 7:00 to 8:00. I have set my plan up completely to be successful despite obstacles in my way. They have not provided me any of these resources.

I have gone over and beyond bounds to make sure everything is in place. And in that wellness plan, I have probably more than a dozen phone numbers of people I can reach out to. I wi11 be okay.

THE COURT: We've been through all that.

State, anything else?

MR. LINDT: Based on that? No, Your Honor.

[10]THE COURT: Okay. I'm going to enter an order that she is to be released on conditional release from the department of human services. She will adhere to the counseling as required.

I've also made arrangements, I want you to not only report to the Court, I'm going to have you report, when you come to Court, to report to probation. You've already agreed to do testing for either alcohol and/or drugs.

THE DEFENDANT: Do I do that here or at this place that I'm --

THE COURT: You can do it at both places. You can do it where you are, but I'm also -- when you come to court to give me reports on how you're doing, I'm going to have you then report down to your probation department where they are going to ask you to submit to drug or alcohol testing.

THE DEFENDANT: It's in this building?

THE COURT: It's the building next door.

THE DEFENDANT: Okay. How soon do I have to report there so I can figure out my way and get transportation?

THE COURT: Well, soon. They're going to enter an order giving you conditional release today.

[11] When do you intend to be in this apartment?

THE DEFENDANT: Right away. As soon as possible.

THE COURT: I'm going set your case --

THE DEFENDANT: Immediately.

THE COURT: I'm going to set your case over to January 29th, 9:00 a.m. for status.

MR. LINDT: Your Honor, if I might, since you are officially entering the order for conditional release today, the People are going to file their notice of appeal.

They're going to file that with the Court, here is a copy for Your Honor. I'll give a copy to Petitioner Webber.

Additionally, Your Honor, we're asking for an oral motion for the stay of the Court's order releasing the petitioner.

It is the People's position that they presented a substantial case on the merits on appeal, and the stay is essential to preserve the status quo, and therefore, the Court should grant our motion for a stay of this Court's order entered today.

THE COURT: That's denied.

MR. LINDT: Okay. Thank you, Your Honor.

THE COURT: Now, Ms. Webber, you have to [12] understand, the State is filing a notice of appeal.

They want the appellate court to review my rulings granting you conditional release.

Are you in a position or do you have an attorney who could represent you on appeal?

THE DEFENDANT: I currently don't because I didn't expect this.

THE COURT: Why don't you on the next court date let me know --

THE DEFENDANT: Sure.

THE COURT: -- whether or not you have representation.

THE DEFENDANT: I will. Can I make sure -- because I don't want I mean, I think you saw in one of my drafts that I had stated that Dr. Malik said to me, if you do anything to violate your conditional release -- I don't want to ever go back to Elgin.

So can I clarify this probation thing; like how soon do I have to go there, what do I say to them.

THE COURT: No, all I want you to do, the only thing probation is going to monitor, I've asked them just to whether they would conduct alcohol and drug testing. That's all they have to do.

THE DEFENDANT: So when do I go?

[13]THE COURT: The next time you come to court, on the 29th, after you're here, I'm going to ask you to go to probation on that date.

THE DEFENDANT: Okay.

THE COURT: Okay?

THE DEFENDANT: So I don't need to do anything other than register?

THE COURT: You don't need to do anything.

MR. LINDT: Your Honor, if I might, she said not register. She would be subject to --

THE DEFENDANT: No, I said I do have to register within five days.

THE COURT: Yes, we're talking about probation.

MR. LINDT: And if you could admonish her as to that, that --

THE COURT: Where does she do that?

MR. LINDT: She would -- it would have to be registered, Your Honor, I don't know necessarily where she would be living, if that's--

THE DEFENDANT: Glen Ellyn.

MR. LINDT: Well, I don't know if it's incorporated or unincorporated Glen Ellyn, but it would -- if it's unincorporated Glen Ellyn, it would be the DuPage County Sheriff's Office; if it was [14]incorporated Glen Ellyn, it would be Glen Ellyn --

THE COURT: You have to register.

THE DEFENDANT: I have five days to do that. I'm planning on doing that today or tomorrow.

THE COURT: And bring -- the next time you're here bring proof that you've done that.

THE DEFENDANT: Okay. Sure. Thank you very much.

THE COURT: Anything else, State?

MR. LINDT: I don't believe so, Your Honor.

THE COURT: Okay. Thank you.

THE DEFENDANT: Thank you. Have a good Christmas.

(The above-entitled cause was passed and later recalled.)

THE CLERK: Recalling 10 CF 2643, Marci Webber.

MR. LINDT: People. Your Honor, I apologize, there was just something I had to clarify in terms of the order before on Ms. Webber.

THE COURT: Okay.

THE DEFENDANT: Pardon me?

MR. LINDT: Joe Lindt, L-i-n-d-t, on behalf of the People.

Your Honor, as terms and conditions of the conditional release that this Court has just issued, is it consistent with your previously written opinion?

[15]THE COURT: Right.

MR. LINDT: So that also includes no unsupervised contact with minors under --

THE COURT: Correct. Yes.

MR. LINDT: So we're just going to reference the Court's --

THE COURT: Yes.

MR. LINDT: -- in today's order as to the written order back in September?

THE COURT: You understand those are the conditions?

THE DEFENDANT: Yes, currently, correct, as presently?

THE COURT: Yes.

THE DEFENDANT: Your Honor, may I ask for a copy of the handwritten affidavit, not the wellness plan, I have a copy of that. I don't have a copy of the affidavit and the supporting evidence.

THE COURT: Hold on one second.

THE DEFENDANT: But I do want these to be maintained on the record.

MR. LINDT: Obviously, Your Honor, the People would request any copies be provided also to the People.

[16]THE COURT: You've given me a lot of documents. Which one --

THE DEFENDANT: Pardon me?

THE COURT: Which document is it?

THE DEFENDANT: This one I have a copy of already, Your Honor, but Mr. Lindt needs it. These I do not have copies of, and what was in the envelope, the two envelopes, I gave you I do not have copies of. I really appreciate you doing that.

THE COURT: All right. It will be a few minutes, but we'll make copies for you.

MR. LINDT: Your Honor, and are these also being filed with the Court, because --

THE COURT: I'll file them, sure, and then we'll make copies for you as well.

MR. LINDT: Thank you, Your Honor.

THE DEFENDANT: Thank you, Your Honor.

THE COURT: It will be awhile.

(WHICH WERE ALL THE PROCEEDINGS HAD IN THE ABOVE-ENTITLED CAUSE ON THIS DATE.)

APPENDIX D — MEMORANDUM OPINION OF THE CIRCUIT OF THE EIGHTEEN JUDICIAL CIRCUIT, DUPAGE COUNTY, ILLINOIS, DATED SEPTEMBER 18, 2019

IN THE CIRCUIT OF THE EIGHTEEN
JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

No. 10CF2643

PEOPLE OF THE STATE OF ILLINOIS

Plaintiff,

v.

MARCI WEBBER

Defendant.

MEMORANDUM OPINION

This matter comes on for decision following a hearing on the petition of Marci Webber to be discharged from further confinement in the Illinois Department of Human Services (IDHS). Ms. Webber, in June of 2012, was found not guilty by reason of insanity in the killing of her young daughter. She has been in the custody of IDHS since that time.

Ms. Webber had previously petitioned for discharge in 2014 which, after numerous delays, went to hearing which resulted in the court denying her request in November

2017. That ruling was appealed in December of 2017 and the trial court's denial was affirmed on appeal.

In approximately June of 2018, a new petition for discharge was filed and commenced hearing in May of 2019. The law applicable to hearings for discharge or conditional release is outlined in the Code of Corrections at 730 ILCS 5/5-2-4.

At the discharge hearing, the petitioner had the burden of proving by clear and convincing evidence that she is entitled to discharge or conditional release. In *People v. Bryson*, 2018 IL App (4th) 170771, the court discussed at length the criteria the lower court must examine in deciding a discharge or conditional release petition. That court noted, a person not guilty by reason of insanity may be detained only as long as she continues to be subject to involuntary admission or in need of mental health services. Petitioner has the burden to show that she is not expected to inflict serious harm upon herself or another person and would not benefit from further inpatient care. If either of these propositions are proved by the petitioner, the court must grant discharge or conditional release. To continue confinement, a person can be held only so long as she is both mentally ill and a danger to herself or others. (*People v. Hager* 253 Ill. App. 3d 37) It is unconstitutional to continue to confine a harmless, mentally ill person. (*Foucha v. Louisiana* 504 U.S. 71, 1992).

With these factors as guidance, the court will review the evidence presented by petitioner in favor of discharge and the state's evidence in opposition.

Petitioner presented testimony of three professionals: Dr Dathan Paterno, a psychologist; Dr. Toby Watson, a clinical psychologist; Dr. Gail Tasch, a psychiatrist.

Dr. Paterno administered several tests to the petitioner, including, the Beck Depression Inventory 2nd Edition and the Beck Anxiety Inventory, as well as a personality assessment inventory. Dr. Paterno concluded that petitioner clearly is not insane and has no mental illness. He further opined that she is not a danger to herself or others and exhibits no sign of psychosis.

Dr. Watson has examined petitioner several times, last being March of 2018. He concluded petitioner is not now insane and does not suffer from severe mental illness. He was of the opinion that she is not a danger to herself or to others. He acknowledged that petitioner has had a history of depression and post-traumatic stress disorder. He testified that she has not exhibited these traits since her incarceration. Dr. Watson administered numerous tests on petitioner and, based on that testing, he concluded that petitioner did not meet any criteria for any mental disorder and did not suffer from any mental illness at present.

Dr. Gail Tasch has met with petitioner on one occasion and has had numerous phone contacts with her. She has reviewed the reports by Dr. Malis of IDHS, the report of Dr. Kane, the court appointed psychologist, and all of the reports generated by IDHS regarding the petitioner.

Dr. Tasch concluded that petitioner presently suffers from no major mental illness, is not insane or psychotic and presents no ideation of being a danger to herself or to others. She was of the opinion that any anxiety or depression petitioner may suffer from on occasion is due to her environment and treatment in IDHS. She attributed petitioner's November 2017 suicide attempt to feelings of helplessness after this court denied her initial petition for release. She testified to having observed no suicidal indication at the present time. Dr. Tasch was of the opinion that petitioner may have symptoms of post-traumatic stress disorder but that is primarily due to her incarceration and treatment while in the custody of IDHS.

The state presented the opinions of psychologist Dr. Lesley Kane, who the court had appointed to interview the petitioner, and Dr. Richard Malis, a psychiatrist at IDHS.

Dr. Kane concluded that petitioner was diagnosed with:

1. Major depressive disorder, with psychosis, in remission

2. Alcohol use disorder, sustained remission, in a controlled environment

3. Borderline personality disorder

4. Other specified personality disorder, narcissistic traits

5. Rule out bipolar disorder, with psychosis in remission

Dr. Kane concluded that although there are some overlap between these diagnoses, that as of late, the petitioner had exhibited traits largely consistent with borderline personality disorder. She stated that persons with borderline personality disorder often display marked mood swings, are typically emotionally intense, frequently agitated, and are prone to feelings of depression and anxiety. Dr. Kane was of the opinion that such persons can be short tempered and have difficulty controlling their emotions and behavior. She felt that these individuals may display extreme sarcasm, enduring bitterness, and are prone to verbal outbursts.

In her opinion, Dr. Kane concluded that, while Ms. Webber has not demonstrated any psychotic symptoms for an extended period of time, she does have difficulty regulating her emotions and has displayed intermittent depressive symptoms, suspiciousness, and anxiety. She concluded, however, that even though the petitioner has demonstrated these symptoms for a number of years, it has been without the reemergence of a psychotic episode. Dr. Kane believed that because of the presence of these symptoms, she could be at risk for developing more symptomology in a community setting and concluded that Miss Webber is not ready for conditional release; however, Dr. Kane did acknowledge that although petitioner has demonstrated many of these symptoms for a number of years, it has been without the emergence of a psychotic episode. This has been true even though petitioner has refused medications to prevent psychotic relapses.

It is the court's opinion that Dr. Kane's findings basically conclude that petitioner has mental health issues but that the major disorders are now, and have been for some time, in remission. Other characteristics attributed to petitioner, although making her a somewhat disagreeable and difficult person to deal with, do not, in the court's opinion, require inpatient attention. Many persons with the same attributes are found throughout society. Being a difficult, disagreeable and narcissistic person may make a person unlikeable but does not establish a person to be a danger to herself or others. When specifically asked by the court whether petitioner poses a threat to others, Dr. Kane indicated that she did not. As to a threat to herself, Dr. Kane was concerned with the defendant's suicide attempt in 2017 that occurred immediately after learning of this court's denial of her original petition, as well a purported suicide attempt when she killed her daughter, which occurred when she was insane. In the almost two years since her 2017 suicide attempt, there have been no indications of any further suicidal ideation. Dr. Kane's conclusion was that the petitioner is not delusional but basically suffers from borderline personality disorder. Dr. Kane was further of the opinion that inpatient care in a facility other than IDHS would be adequate for the petitioner.

Dr. Richard Malis is the psychiatrist assigned to the petitioner at Elgin Mental Health Center. He has been responsible for overseeing her treatments since 2018. He testified that petitioner has refused to meet with him over the last six months. He believed petitioner suffers from major mental illness and continues to need inpatient

care. He believes petitioner suffers from hallucinations and delusions and schizoaffective bipolar disorder. He acknowledges that even though petitioner has not taken medication in many years, she exhibits no evidence of psychosis. He believes petition continues to be a threat to herself or others.

The court specifically asked Dr. Malis if rapport was necessary between a psychiatrist and a patient in order for treatment to be effective; Dr. Malis acknowledged this was necessary. He further acknowledged that no such rapport exists between himself and the petitioner because of petitioner's distrust of him and his position that she cannot improve without psychiatric medications. When asked by the court whether a different psychiatrist could be assigned to petitioner in light of this lack of rapport, Dr. Malis stated this was not possible.

The court has concerns about the treatment relationship between petitioner and Dr. Malis. Clearly, petitioner is uncooperative with Dr. Malis and Dr. Malis sees no hope for petitioner improving without her taking medications even though petitioner has been in remission of psychosis for a number of years without medication.

The court would also note that most of petitioner's refusals to participate in treatment have occurred at Elgin Mental Health Center. She was transferred from Chicago-Read Mental Health Center after her suicide attempt.

While at Chicago-Read, she did not exhibit as much reluctance to participate in treatment as she has at Elgin.

Petitioner, without question, is a difficult person to work with; her narcissistic personality and belief that she is being targeted for mistreatment can be a block to effective treatment. At Chicago-Read, however, petitioner did not, to the present extent, display the type of noncooperation she now does at Elgin.

This court is also concerned regarding the testimony offered by Terry Nicholas. Mr. Nicholas was employed at Elgin Mental Health Center as the head night-shift nurse. He had direct contact with petitioner from November 2017 until June 2018 by working with her on a daily basis and maintaining a progress chart regarding the petitioner.

Mr. Nicholas testified as to an occasion when he indicated in his charting regarding his contact with petitioner, that she was pleasant and cooperative. Upon review by his superiors, Mr. Nicholas was informed that Dr. Malis was not pleased with this charting and did not want pleasant things regarding petitioner reported as it would harm his intent to petition the court to obtain an order for forced medication on the petitioner. Nicholas testified that Dr. Malis himself expressed his displeasure directly to him stating that he could not obtain the court order with those types of comments in the petitioner's chart. This testimony was unrebutted by the state.

Testimony that took place at petitioner's first discharge hearing now tied into Mr. Nicholas' testimony also causes the court concern. At the first hearing for discharge, Lucy Menezer, a social worker at Chicago-Read, testified that she did not feel petitioner suffered from mental illness.

She was unable, however, to explain why, if this was her belief, she had continually signed treatment plan letters that indicated petitioner's continued to need confinement in a secured environment.

Similar testimony was elicited from Dr. Craig Jock, a clinical psychologist at Chicago-Read. Dr. Jock was treating petitioner as a patient since October 2016. At the first hearing he testified that petitioner does not meet criteria for mental illness and no longer needed to be confined. He also could not explain why, if these were his beliefs, he continued to sign treatment plan letters to the court stating petitioner continued to need treatment in a secured environment. This prior testimony and the present testimony of Mr. Nicholas seems to indicate to the court that employees of the Illinois Department of Human Services are directed by their superiors to endorse their superiors' diagnoses even if they disagree with it. Although the testimony at the prior hearing was not while petitioner was under the care of Dr. Malis, it calls into question the manner of which IDHS makes reports and what pressure is placed on employees to conform to what supervising doctors feel should be done even if they disagree. This causes the court pause to consider whether or not the ninety-day reports which have been submitted to the court, are completely accurate regarding the petitioner.

The court, after reviewing all the testimony and reports regarding the petitioner, concludes that it cannot agree with petitioner's experts that she does not suffer from mental illness, clearly, she does. That fact by itself,

however, does not automatically require continued confinement. The court also has difficulty with Dr. Malis' testimony as it is evident, he will never acknowledge petitioner is proper for release until she consents to the taking of psychotropic medications even though her psychosis has been in remission for over eight years without medication.

The court finds that the analysis of Dr. Kane is closest to what currently afflicts the petitioner, basically borderline personality disorder. The petitioner clearly needs to have good mental health treatment and therapy. The court, however, for reasons previously discussed, both of the fault of petitioner and the fault of IDHS, will never receive that treatment while in the custody of the IDHS.

The court, in determining what would be proper treatment for petitioner, has again considered all evidence presented and the factors set forth in 730 ILCS 5/5-2-4 (g). As to the statutory factors, the court finds:

1. Petitioner does appreciate the harm she caused in the murder of her child and is burdened by her actions.

2. The court continues to have some concerns as to whether petitioner completely understands that her prior conduct was caused by her developing mental illness and not merely caused by the medications she was taking at the time of the offense.

3. Petitioner's prior psychotic episodes are now in remission and have been so for some time. Obviously, to date this has only been established in a secured environment. Since her confinement to the Elgin Mental Health Facility, petitioner has shown an unwillingness to comply with the programs and counseling that DHS requires but, the problem is also, in part, due to the failure of DHS to even attempt to establish a transition program where petitioner's conduct can be observed outside of the secured environment. Defendant has been granted no privileges at DHS.

4. Petitioner refuses to take any medication for her mental illness and believes such medication caused her mental illness to begin with. That said, petitioner's acute mental illness is in remission and has been for an extended period of time without medication.

5. The adverse effects of medication on the petitioner are unidentifiable as she has refused any medications.

6. The question of petitioner's mental health possibly deteriorating without medication cannot be assessed. As indicated, she has refused medication, however, having been off medication for a significant period of time, her psychotic features have remained in remission.

7. Petitioner has some history of alcohol abuse, but it is also in remission while in a secured setting.

8. Petitioner has a limited criminal history other than the crime for which she was found insane.

9. There is no evidence regarding any specialized physical or medical needs of the petitioner.

10. Petitioner has a mother and a sister in the area, but their participation or involvement with petitioner if she were to be released, was not established.

11. Based on the findings of Dr. Kane, the court believes that the petitioner is not a danger to others. There was testimony that she may be a danger to herself based on the suicide episode in November of 2017 after this court's denial of her request for discharge or conditional release. The court believes this was solely based on the denial of discharge or conditional release at that time. As previously indicated, petitioner continues to show irritability and aggressiveness, but no physically violent behavior has been shown toward staff or other patients. In fact, the petitioner has been the subject of abuse by other patients without retaliating. It is not possible to determine the dangerousness to herself unless a transition program is established to see how the petitioner conducts herself in unsecured environment situations.

It is the court's opinion that the evidence presented does not establish that petitioner is in need of mental health services on an inpatient basis. At the same time, the evidence does not establish that petitioner is ready for discharge. The court believes that the proper course of action at this time is to formulate a plan for the petitioner's conditional release from the Illinois Department of Human Services. The court believes that what has been discussed herein is that the Illinois Department of Human Services cannot provide for petitioner's mental health treatment. Petitioner needs to be in an environment where she will be able to work in conjunction with treating staff and not in opposition to them. If petitioner cannot demonstrate an ability to do so, then this court would have to reconsider her placement.

The court will therefore consider the petitioner for conditional release if the following conditions can be put into place:

1. The Illinois Department of Human Services is ordered to provide care to the petitioner while on conditional release pursuant to 735/5-2-4(D). IDHS shall contract with any public or private agency to provide services to include outpatient mental health counseling and therapy, alcohol counseling and community adjustment programs.

2. IDHS will attempt to place petitioner in a short-term residential facility for the care outlined above. If IDHS is unable to place the petitioner in such a facility and, as a result, petitioner is to

engage in outpatient treatment, petitioner will have to provide the court evidence of housing and the means of paying for such housing. Any such housing obtained by the petitioner must be in DuPage County or the immediate surrounding area.

3. If for any reason IDHS is unable to place the petitioner in a residential or outpatient facility, then petitioner is to engage in treatment and therapy with a private psychiatrist or psychologist. That person must be other than any such person who appeared on behalf of petitioner at the discharge hearing. The court wants her treatment to be by a professional without any personal interest in the petitioner's case.

4. If the petitioner is unable to be provided services by IDHS, then in addition to the housing requirement outlined herein, petitioner must provide evidence either that the petitioner has employment to support herself or that there are persons who will commit to providing financial support to her until she finds employment and is self-supporting.

5. Given the nature of the crime committed by the petitioner, the court finds it advisable that, at present, petitioner have no unsupervised contact with any person under the age of seventeen.

6. During the period of conditional release, petitioner will not use any non-prescribed drugs, cannabis or alcohol. Petitioner will submit to random testing by the DuPage County Probation Department to monitor non-use. This testing requirement will be reviewed in six months after conditional release.

7. The court shall be provided evidence of any outside support systems, such as family or friends, who are willing to assist the petitioner in this transition.

8. The court will continue this matter for a period of sixty days to see what progress has been made on the above conditions.

9. During this interim period, IDHS is ordered to transfer petitioner from the Elgin Mental Health Center to the Chicago-Read Mental Health Center. In order to meet the conditions for her conditional release, petitioner, while at Chicago-Read Mental Health Center, must actively participate in mental health counseling. In addition, petitioner must show by her conduct that he is able to cooperate with staff at Chicago-Read and able to conduct herself by keeping with the regulations of that institution.

Pursuant to statute, the conditional release period is for five years. During that period, either petitioner or the state may petition the court for modifications

of the conditions set forth herein or seek revocation of conditional release if the petitioner fails to comply with required counseling. If petitioner can successfully adhere to these conditions, at the end of the period, she will be fully discharged. If, however, petitioner fails to adhere to these conditions or in uncooperative with mental health counseling, she runs the risk of conditional release being revoked and her being returned to an IDHS facility.

For the information of all the parties, the court has had contact with IDHS regarding services they may be able to provide to petitioner. The court will provide the names and phone numbers for individuals who might be of assistance in establishing a program for the petitioner:

Debbie Dyle *DMH Forensic Community Administrator* (618) 474-3811

Dr. Colman *Deputy Director IDHS* (312) 814-4909

George J. Bakalis
Circuit Judge
September 18, 2019

APPENDIX E — ORDER OF THE APPELLATE COURT OF ILLINOIS, SECOND DISTRICT, FILED AUGUST 1, 2019

IN THE APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

August 1, 2019,
Order Filed

No. 2-17-0998

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

MARCI WEBBER,

Defendant-Appellant.

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1)

JUSTICE HUTCHINSON delivered the judgment of the court. Justices Zenoff and Hudson concurred in the judgment.

ORDER

Held: The trial court's finding that defendant failed to prove by clear and convincing evidence that her

> petition for conditional release or discharge should have been granted was not against the manifest weight of the evidence.

Defendant, Marci Webber, appeals the trial court's denial of her petition for discharge or conditional release. Defendant argues that the trial court's denial of her petition was against the manifest weight of the evidence as her treatment team's testimony suggested that she does not suffer from a recognized mental illness and she no longer poses a danger to herself or others. For the reasons that follow, we affirm the trial court's findings.

I. BACKGROUND

On November 3, 2010, defendant murdered her four-year old daughter, Magdalene. She thought that Satan was going to kidnap Magdalene for the purpose of sexual gratification. Defendant cut Magdalene's neck in her mother's bathroom and inscribed words on the walls in blood. On November 10, 2010, defendant was indicted on five counts of first degree murder.

On June 7, 2012, defendant was found not guilty by reason of insanity (NGRI). She was remanded to the custody of the Illinois Department of Human Services (DHS) pursuant to 730 ILCS 5/5-2-4 for an evaluation as to whether she was in need of mental health services. On July 13, 2012, the trial court found defendant was in need of mental health services pursuant to 730 ILCS 5/5-2-4(a-1)(B). Defendant was initially receiving treatment at Elgin Mental Health Center but was moved to Chicago-Read to continue treatment.

On August 22, 2017, defendant filed a motion for discharge or conditional release and asked the court to consider her petition under the auspices of 730 ILCS 5/5-2-4(g). The matter proceeded to hearing on September 26, 2017.

Defendant first called Dr. Toby Watson. Watson testified that he evaluated defendant for eight hours in 2015 and one hour in 2017. He had also spoken to defendant on the phone approximately two dozen times but was not her treating psychiatrist. It was Dr. Watson's opinion that defendant does not need inpatient care because he believes that she is not suffering from a mental disorder. Defendant indicated to Dr. Watson that the medication she was taking at the time of the murder played a part in her becoming aggressive, violent, and murderous. Dr. Watson testified that defendant was being kept in an acute treatment unit as opposed to a chronic treatment unit at Chicago-Read. He said that she may be kept in the acute unit so as not to advise other patients not to take psychotropic medications or cause other disruptions. He believed that defendant's treatment plan should include increasing her freedoms and transitioning her to release followed by six to eight months of monitoring to see how she is able to function.

Dr. Watson spoke with Dr. Radomska, a previous treating psychiatrist of defendant. Dr. Radomska felt that defendant did not meet any criteria for a specific mental illness and should be transitioned into the community. Dr. Radomska was not prescribing any medications to defendant, nor was she recommending any. Dr. Watson acknowledged that Dr. Radomska had since been suspended from practicing psychiatry.

Defendant's social worker at Chicago-Read, Dr. Lucy Menezes, next testified. Dr. Menezes testified that defendant had only earned the privilege of an escort pass within the facility. An escort pass allows defendant to be escorted within the facility. She acknowledged that defendant's treatment team has not made any recommendations that supervised or unsupervised off-site privileges be granted. She stated that defendant sometimes is verbally aggressive and expresses frustration and anger with her hospitalization.

Dr. Craig Jock, defendant's treating psychologist, was then called to testify. Dr. Jock stated that defendant is diagnosed with depressive disorder, severe with psychotic features in remission, although he had not observed defendant exhibiting any symptoms of that affliction. Dr. Jock testified that having a discharge plan in place would allow for defendant's safe discharge from Chicago-Read. However, he has never recommended any privileges or discharge plans for defendant.

Defendant next called Dr. Mir Obaid, a psychiatrist at Chicago-Read. Dr. Obaid saw defendant in one group that meets twice per week. He is not defendant's treating psychiatrist. He believes that if defendant were to be released, she would need a social support network and things to keep her occupied. He stated that defendant had told him that she does not suffer from a mental illness and the murder of her daughter was caused by medications she was taking at the time. Dr. Obaid acknowledged that he was unfamiliar with defendant's history and could not agree or disagree with defendant's statements.

The trial was continued to October 11, 2017, whereupon defendant testified. She stated that she does appreciate the criminality of her conduct and that she misses her deceased daughter everyday. She quit taking psychotropic medications in September 2013, and feels much better since their discontinuation. She denied having a mental illness but testified that she did suffer from mental illness in the past due to medications. She testified that, if released, she would not take psychotropic medications as they would present a risk to both her and the public. She is hopeful to move to Arizona upon her release to be with her ailing father, cousin, and sister. Although, she stated she would remain in Illinois if the court ordered her to do so.

Following defendant's testimony, the State called Dr. Patrick Corcoran, a member of defendant's treating team and the medical director at Chicago Read. Dr. Corcoran also had contact with defendant during her incarceration in the DuPage County jail before trial on the murder of her daughter. He testified that defendant exhibited symptoms of psychosis following the murder. She had cut her own neck in an attempt to commit suicide. He successfully treated defendant before her trial with Seroquel and Zoloft. In the DuPage County jail, defendant had difficulty dealing with other inmates and guards.

Dr. Corcoran testified further that defendant took medication regularly throughout 2013. In 2014, defendant exhibited aggressive and threatening behavior resulting in a restriction of rights medications. He stated that defendant currently exhibits irritability, argumentativeness, and

resistance to working collaboratively with the treatment staff. He believes that defendant would be helped by mood stabilizing medication. He acknowledged that defendant continues to claim that she suffers from no mental illness and that the episode of psychosis leading to her daughter's murder was brought on by psychotropic medications. However, Dr. Corcoran testified that defendant still suffers from mood instability, a mental illness. He stated that while mood instability is not in the DSM-V, it is a symptom complex, an unspecified personality disorder.

Dr. Corcoran explained that defendant is resistant to collaboration with her treatment team, resistant to treatment planning, and difficult to treat as a patient. He and his team believe that defendant needs to acknowledge her mental illness and work to explore treatment options. He testified that defendant had a history of alcohol abuse, consuming six to eight beers per night. She had two DUI convictions including one with a child in the car. Dr. Corcoran stated that she is currently in institutional remission for her alcohol abuse but has not attended AA meeting in the hospital on a regular basis.

Dr. Corcoran testified that defendant currently continues to have mood instability and that her conduct reflects irritability, and an argumentative nature. She has temper tantrums and reclusiveness. Although acknowledging that her mental illness is now in remission, Dr. Corcoran expressed concern that defendant's behaviors are similar in nature to those exhibited prior to her daughter's murder. He would like to see defendant show that she is able to follow the rules and regulations

at Chicago-Read and go through the regular steps before a recommendation for discharge. This includes unsupervised, on-grounds passes followed by supervised off-grounds passes. Defendant could then be prepared for conditional discharge but as of the time of his testimony, Dr. Corcoran stated that defendant only complies with some of her treatment plan.

On October 13, 2017, a 60-day NGRI treatment plan report was filed with the trial court. The report found that defendant was in need of further inpatient mental health services. The report listed major mental illness with violence, alcohol dependence, aftercare planning, and resistance and/or refusal of treatment as the risk factors leading to the finding.

On November 13, 2017, the trial court issued its memorandum opinion denying defendant's petition. In reaching its decision, the trial court reviewed 1) DHS treatment plan reports from July 2012 through October 2017; 2) the initial findings of Dr. Orest Wasyliw, clinical psychologist, concluding petitioner was insane at the time of the offense; 3) the report of Dr. Roni L. Seltzberg, a board certified psychiatrist appointed by the trial court to evaluate defendant after filing her petition for discharge; 4) the report of Dr. Watson; 5) the testimony elicited at the hearing in connection with defendant's petition; and 6) the statutory factors set forth in 730 ILCS 5/5-2-4(g).

As to the statutory factors set forth in 730 ILCS 5/5-2-4(g), the trial found:

"1. Petitioner does appreciate the harm she caused in the murder of her child and is burdened by her actions.

2. The court has some concerns as to whether petitioner truly appreciates the criminality of her conduct in the sense that her criminal actions were in fact caused by her developing mental illness and not merely caused by medication she was taking at the time.

3. Petitioner's mental illness although now in remission has only been shown in a secured environment. This is partially the result of petitioner's unwillingness to comply with the programs and counseling DHS is requiring, but also due, in this court's opinion, to the failure of DHS to even attempt to establish a transition program where petitioner's conduct can be observed outside of the secured environment. As indicated, defendant has been granted no privileges at DHS.

4. Petitioner refuses to take any medication for her mental illness believing such medication caused her mental illness to begin with. That said, petitioner's mental illness is in remission and has been without medication.

5. The adverse effects of medication on the petitioner are unidentifiable as she has refused medications.

6. The question of petitioner's mental health possibly deteriorating without medication cannot be assessed as she refuses medication. Again, however, having been off medication for a significant period of time, her mental illness remains in remission.

7. Petitioner has had a history of alcohol abuse, but it is also in remission while in a secured setting.

8. Petitioner has had a limited criminal history other than the crime for which she was found insane.

9. There is no evidence regarding any specialized physical or medical needs of the petitioner.

10. Petitioner has a mother and sister in the area, but their participation or involvement with petitioner if she was released was not established. Petitioner seeks leave, if discharged, to reside in [Arizona] to be near her father who resides in a nursing home. Evidence was presented that a friend in [Arizona] is willing to employ petitioner as a caregiver in a group home. Given the evidence of petitioner's current mood disorders, the court believes this would not be an appropriate setting. In addition, if the petitioner was to be granted any form of conditional release, the court would require that she remain in Illinois under the jurisdiction of the court.

> 11. If the petitioner is a potential danger to herself or others is somewhat unclear. Although DHS personnel found such dangers were inactive and in remission with treatment, the team of DHS staff all signed off on her need for treatment in a secured environment. As indicated, petitioner continues to show irritability and aggressiveness, but no physical violent behavior has been shown towards staff or other patients. It is not possible to determine the dangerousness to herself or others unless a transition program is established to see how the petitioner conducts herself in unsecured environment situations."

Following its finding that defendant had not met her burden of clear and convincing evidence that she is ready for discharge, the trial court went on to say that "[w]hat is appropriate is for DHS to do what should have been done some time ago — establish a plan for [defendant's] eventual transition into society. [Defendant] and DHS are to be faulted for not working in tandem to achieve this goal." The trial court then ordered Chicago-Read's director to establish a plan towards defendant's eventual conditional release and would reconsider that potential conditional release in six months.

This appeal followed.

II. ANALYSIS

Defendant contends that the trial court erred in denying her petition for conditional release or discharge

as its findings where against the manifest weight of the evidence. Defendant argues that she proved by clear and convincing evidence that she does not suffer from a mental illness and is not a threat to herself or others.

Following an acquittal by reason of insanity, a defendant bears the burden of proving by clear and convincing evidence that a petition for conditional release or discharge should be granted. See 730 ILCS 5/5-2-4(a)(g) (West 2016). The defendant's burden is to show by clear and convincing evidence that, due to his or her mental illness (regardless of whether it was enough to require involuntary admission), defendant is not reasonably expected to inflict serious harm upon defendant's self or another and would not benefit from further inpatient care or be in need of such inpatient care. Under a plain reading of the statute, if defendant proves either element, namely defendant is (1) not reasonably expected to inflict serious physical harm upon defendant's self or another or (2) defendant would not benefit from inpatient care or is not in need of inpatient care, by clear and convincing evidence, the judge must grant the petition for conditional release. See 730 ILCS 5/5-2-4(a-1)(B) (West 2016). In determining whether a defendant should be released, the trial court should consider:

> "(1) whether the defendant appreciates the harm caused by the defendant to others and the community by his or her prior conduct that resulted in the finding of not guilty by reason of insanity;

(2) Whether the person appreciates the criminality of conduct similar to the conduct for which he or she was originally charged in this matter;

(3) the current state of the defendant's illness;

(4) what, if any, medications the defendant is taking to control his or her mental illness;

(5) what, if any, adverse physical side effects the medication has on the defendant;

(6) the length of time it would take for the defendant's mental health to deteriorate if the defendant stopped taking prescribed medication;

(7) the defendant's history or potential for alcohol and drug abuse;

(8) the defendant's past criminal history;

(9) any specialized physical or medical needs of the defendant;

(10) any family participation or involvement expected upon release and what is the willingness and ability of the family to participate or be involved;

(11) the defendant's potential to be a danger to himself, herself, or others; and

> (12) any other factor or factors the Court deems appropriate." 730 ILCS 5/5-2-4(g) (West 2016).

The trial court's determination as to whether a defendant has carried her burden under section 5-2-4(g) by clear and convincing evidence must be respected unless such determination is against the manifest weight of the evidence. *People v. Wolst*, 347 Ill. App. 3d 782, 790, 808 N.E.2d 534, 283 Ill. Dec. 568 (2004). A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented. *Best v. Best*, 223 Ill. 2d 342, 350, 860 N.E.2d 240, 307 Ill. Dec. 586 (2006).

Defendant points this court to two cases that wholly support the trial courts in fmdings in the present case: *People v. Wolst*, 347 Ill. App. 3d 782, 808 N.E.2d 534, 283 Ill. Dec. 568 (2004), and *People v. Bryson*, 2018 IL App (4th) 170771, 425 Ill. Dec. 807, 115 N.E.3d 362.

In *Wolst*, the defendant shot and killed a stranger in a health club while under the delusion the victim was a federal agent. *Wolst*, 347 Ill. App. 3d at 784. As the defendant was suffering from paranoid schizophrenia, he was initially found unfit to stand trial. *Id.* After being returned to fitness, he was found NGRI and committed to the Elgin Mental Health Center. *Id.* Later, the facility director recommended transfer to a nonsecure setting, as well as the granting of supervised off-grounds and unsupervised on-grounds passes, which defendant then petitioned the trial court to obtain. *Id.* at 784-85. The

trial court denied the transfer and request for supervised off-ground passes but granted the unsupervised on-grounds pass privileges, and defendant appealed. *Id.* at 785. The appellate court was asked to determine whether the court's ruling was against the manifest weight of the evidence since each of defendant's four witnesses recommended all three privileges. *Id.* A social worker, two staff psychiatrists with the Cook County court's forensic medical services, and one staff psychiatrist for Elgin Mental Health Center testified the defendant was not a threat to himself or anyone else; was no longer suffering delusions; and, due to his medication, his paranoid schizophrenia was in remission and was considered one of the most "stable" and "appropriate" patients on the unit. *Id.* at 785-89. They did not believe the transfer or passes posed a risk or danger to the defendant or others and that they would be beneficial to the defendant's treatment. *Id.* All of the doctors indicated their opinions were contingent on defendant's continued compliance with medication. *Id.*

The court in *Wolst* found the record provided ample support for the court's decision in that "[t]he record makes clear that the trial court's primary concern was that [the] defendant, when placed in a less secure environment and charged with taking his own medication, might fail to do so and relapse." *Id* at 791. The record indicated that the defendant's clinical team felt the need to observe how he did with unsupervised on-grounds passes before advancing to offgrounds and a transfer. *Id.* at 790. The court noted that, although all the witnesses supported defendant's requests, they also acknowledged the possibility of relapse with the concomitant potential for

dangerous behavior if the defendant stopped taking his medication. The appellate court also found section 5-2-4(g) gave the trial court broad discretion in determining whether a defendant remains mentally ill and dangerous. Responsibility for considering and weighing the evidence lies with the fact finder and not the defendant's treating physicians. *Id.* at 790.

In *Bryson*, the defendant was found NGRI of attempted kidnapping following a stipulated bench trial and remanded to custody of DHS. *Bryson*, ¶ 1. She had entered a residence and attempted to leave with a two-year-old child, claiming the child was hers. *Id.* Defendant was diagnosed with bipolar I disorder, current or most recent episode manic with psychotic features, and had a history of engaging in behavior which threatened harm to herself and others when not stabilized with prescribed medication. *Id.* At the hearing on defendant's petition for conditional release, defendant's treatment team expressed encouragement at defendant's progress within the hospital setting but did not support her conditional release as they believed she needed more time with inpatient treatment. *Id.* ¶ 67. Her treatment team believed this was so even though she presented as stable, not dangerous, and likely to continue treatment in the community. *Id.*

The court in *Bryson* found that the denial of the petition for conditional release was proper because the trial court had given proper consideration to the factors listed in 730 ILCS 5/5-2-4(g), weighed the testimony of defendant's treatment team, and properly considered the reports and recommendations of the treatment team. *Id.* ¶ 76.

Defendant in the present appeal believes *Wolst* and *Bryson* to be distinguishable from the case-at-bar because those courts were concerned with the respective defendants' abilities to continue with prescribed medications upon release. Although it is true that medications were at issue in those cases, the courts' holdings were not limited to that issue only. Those cases support the notion that the trial courts gave proper consideration to the statutory factors, weighed the testimony of experts, and considered the reports and recommendations of the treatment teams before the appellate court ruled that their findings were proper and not against the manifest weight of the evidence. As the trial court in the present case gave the proper considerations, our holding here will be no different.

In its November 13, 2017 (See *supra* ¶ 18-19), the trial court meticulously recited every source of evidence used to come to its thoughtful conclusion. The court went through all the requisite statutory factors in great detail and outlined its concerns for both defendant and DHS going forward. The trial court specifically set forth the standard under which it was to decide the case, and it stated on the record its finding was by "clear and convincing evidence." Our supreme court has said a reviewing court "presume[s] that the trial judge knows and follows the law unless the record indicates otherwise." *People v. Gaultney*, 174 Ill. 2d 410, 420, 675 N.E.2d 102, 221 Ill. Dec. 195 (1996). We presume the same, and nothing in the record affirmatively rebuts that presumption.

III. CONCLUSION

Accordingly, the judgment of the circuit court of DuPage County is affirmed.

Affirmed.

APPENDIX F — MEMORANDUM OPINION OF THE CIRCUIT OF THE EIGHTEEN JUDICIAL CIRCUIT, DUPAGE COUNTY, ILLINOIS, DATED NOVEMBER 13, 2017

STATE OF ILLINOIS, COUNTY OF DUPAGE
IN THE CIRCUIT OF THE EIGHTEEN JUDICIAL CIRCUIT DUPAGE COUNTY ILLINOIS

No. 10 CF 2643

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff,

v,

MARCI M. WEBBER,

Defendant.

MEMORANDUM OPINION

This matter comes on for decision following a hearing pursuant to the motion of petitioner, Marci Webber, for discharge or condition release from the Department of Human Services where she has been inpatient since being found not guilty by reason of insanity for the murder of her young daughter. In July 2012 she was transferred to the Elgin State Mental hospital for treatment. At present she is inpatient at Chicago-Read Mental Health Center. At Read as she had been in Elgin she is housed in the acute mental health unit.

In reaching a decision in the case the court has reviewed the following:

1. Treatment plan reports from the department of human services (DHS), from July 2012 through October 2017.

2. The initial finding for Dr. Orest Wasyliw, Clinical Psychologist, in his report concluding petition was insane at the time of the offense. The report dated November 16, 2011 and his finding contain therein.

3. The report of Dr. Roni L. Seltzberg, M.D. a board certified psychiatrist. Dr. Seltzberg was appointed by this court to evaluate the petitioner when the petition was first filed in this matter. The report is dated January 20, 2015.

4. The report of Toby T. Watson a clinical psychologist retained by petitioner to do an evaluation of her.

5. The testimony elicited at the hearing held in connection with the petition.

6. Statutory factors as set forth in 730 ILCS 5/5-2-4(g)

The treatment plan reports for petitioner from DHS span a period of approximately five years. The reports fluctuate between periods when petitioner is cooperative with treatment to periods when she becomes frustrated by her continued inpatient status and refuses to cooperate. There are periods when she appears to be actually

engaged in group sessions and then periods when she decides she will not attend. As the years have progressed she exhibited displeasure with much of the treating staff at DHS. She has often had loud verbal disputes with the staff and other patients, sometimes acting very aggressively in manner but never physically violent.

Petitioner on her own has refused to take any psychotropic medications. She believes that her prior use of said medication caused her prior suicidal and homicidal behavior. She believes that her crime was the result of delusion resulting from taking such medication which she refers to as iatrogenic symptoms. That being said, it is acknowledged that since being off medications she has not relapsed into any psychotic state.

In her January 29, 2015 report, Dr. Seltzberg concluded that petitioner fulfills most of the diagnostic criteria for schizophrenia, and alcohol use disorder in remission. Dr. Seltzberg concluded that although there may have been validity to some of petitioner's claims of improper treatment at DHS, there existed documentation of paranoid interpretation of the intention of others. The court has reviewed the reports from DHS since that evaluation which indicated many of the same problems continue to exist. The report of August 2017 related distrust of DHS staff, petitioner expressing various complaints, frequent loud confrontations with staff trying to elicit her cooperation with unit routines and expectations. In treatment sessions she seems to concentrate on her frustrations rather than discussions about developing helpful coping strategies or discussion of treatment plan recommendations.

That being said, however, the report indicates that a danger to herself or other is inactive with treatment, as is her alcoholic dependence. The problem apparently is her unwillingness to comply with recommended treatments to ensure that these areas will not reactivate in the future.

The evidence at hearing was somewhat contradictory. Lucy Menezer, a social worker at Read, testified she did not feel petitioner suffers from mental illness. She acknowledged that no privileges have been granted to petitioner. She was unable to explain why if this was her belief she has continually signed treatment plan letters indicating that petitioner continues to need confinement in a secured environment.

Similar testimony was elicited from Dr. Craig Jock a clinical psychologist. Dr. Jock was treating petitioner as a patient since October of 2016. He testified that petitioner does not meet criteria for mental illness and no longer needed to be confined. He is part of the treatment team for the petitioner. He also could not explain if these were his believes why he continued to sign treatment plan letters to the court for June and August 2017 stating petition continued to need treatment in a secured setting. Even after this hearing concluded, this October 2017 report from DHS signed by both of these team members concluded that petitioner continued to need treatment in a secured environment.

Dr. Mir Obaid, a psychiatrist, although not petitioner's doctor has had frequent contact with her at Read. He stated he observed no active systems of mental illness and

opined that is not a danger to herself or others. Dr. Obaid however is not member of her treating team.

Toby Watson is a psychologist retained by the petitioner in this matter. In his opinion petitioner's risk for violence has significantly been reduced with the structure, placement and treatment provided, and characterized as low risk any possibility of future violence. It was his opinion based on petitioner's history and interview, that she categorized as posing a low risk of committing an act of violence toward another person in the next several month. He concluded that she does not meet criteria for mental health disorder, does not have mental illness and does not need hospitalization. He recommended that she begin the discharge process by having DHS staff continue to support, educate and provider information to petitioner about life transition skills and linkage to care and suitable living arrangements. The problem in the court's opinion is that petition has shown an unwillingness to cooperate with DHS staff in achieving these life transitions skills.

Dr. Corcoran, first has contact with petitioner when she was incarcerated at the DuPage County jail awaiting trial. He is also at present the medical director at Reed. He has consulted with her treating team and has now assumed a role as part of petitioner's treating team. He testified that petition continues to have mood disability and that her conduct reflects irritability, and an argumentative nature, temper tantrums and reclusiveness. Although acknowledging the petitioner's mental illness is now in remission, he expressed concern that these types of attributes are similar in nature to those shown by

petitioner prior to her descent into the insane state which resulted in the murder of her daughter.

The court has considered all of the above evidence and the factors as set forth in 730 ILCS 5/5-2-4(g). As to these statutory factors the court finds:

1. Petitioner does appreciate the harm she caused in the murder of her child and is burden by her actions.

2. The court has some concerns as to whether petitioner truly appreciated the criminality of her conduct in the sense that her criminal actions were in fact caused by her developing mental illness and not merely caused by medication she was taking at the time.

3. Petitioner's mental illness although not in remission has only been shown in a secured environment. This is practically the result of petitioner's unwillingness to comply with the programs and counseling DHS is requiring, but also due, in the court's opinion, to the failure of DHS in even attempt to establish a transition program where petitioner's conduct can be observed outside of the secured environment. As indicated defendant has been granted no privileges at DHS.

4. Petitioner refuses to take any medication for her mental illness believing such medication caused

her mental illness to begin with. That said, petitioner's mental illness is in remission and has been without medication.

5. The adverse effects of medication on the petitioner are unidentifiable as she refused any medications.

6. The question of petitioner's mental health possibly deteriorating without medication cannot be assessed as she refused medication. Again however having been off medication for a significant period of time her mental illness remains in remission.

7. Petitioner has had a history of alcohol abuse, but it also in remission while in a secured setting.

8. Petitioner has had a limited criminal history other than the crime for which she was found insane.

9. There is no evidence regarding any specialized physical or medical needs of the petitioner.

10. Petitioner has a mother and sister in the area, but their participation or involvement with petitioner if she was released was not established. Petitioner seeks leave, if discharged, to reside in Texas to be near her father who resides in a nursing home. Evidence was presented that a friend in Texas is willing to employ petitioner as a caregiver in a group home. Given the evidence of petitioner's

currents moods disorders the court believes this would not be an appropriate setting. In addition if the petitioner was to be granted any form of conditional release the court would require that she remain in Illinois under the jurisdiction of the court.

11. If the petitioner is a potential danger to herself or others is somewhat unclear. Although DHS personnel found such dangers were inactive and in remission with treatment, the team of DHS staff all signed off on her need for treatment in a secure environment. As indicated petitioner continues to show irritability and aggressiveness, but no physical violent behavior has been shown towards staff or other patients. It is not possible to determine the dangerousness to herself or others unless a transition program is established to see how the petitioner conducts herself in unsecured environment situations.

Proof in this case is upon the petition, the court has not been convicted by clear convincing evidence that petitioner is ready for discharge. What is appropriate is for DHS to do what should have been done some time ago – establish a plan for petitioner's eventual transition into society. Petitioner and DHS are to be faulted for not working in tandem to achieve is goal.

It is hereby ordered that the director that the director of Chicago-Read establish a plan for petitioner's eventual condition release. This should included the following:

1. Transfer of the petitioner from the acute care unit to the chronic care unit.

2. The petitioner is to have unsupervised ground privileges for a period of two months.

3. If there are no incidents regarding the above privileged, then she is to be granted supervised off ground privileges for a period of three months.

4. Petitioner will participate in a program with counseling involving psychiatric and substance abuse issues. In addition the court orders petitioner to participate in all counseling established by DHS whether she believes it necessary or not. This should included meetings with her social worker, psychologist and psychiatrist to discuss coping strategies, mood disorder and irritability, deal with anger and frustration and discussions of leading a productive life when released. DHS should begin to explore what resources will be made available for petitioner when conditional release is granted both as to continued outpatient treatment, housing, employment and family support. Substance abuse counseling should be resumed once a substances abuse counselor is again available at Reed.

The court will not order petitioner to take medication as her symptoms are in remission without such. The court might suggest that petitioner consider medications that might

> alleviate her irritability and aggressive nature toward others, and the possible paranoia described by Dr. Seltzberg regarding the action of DHS stuff. If petitioner is unwilling to take any such medication she should at least received counseling regarding these issues.

Petitioner's conditional release will be reconsidered in approximately six months. The court must however be convinced at the time that both parties have in good faith worked toward petitioner's ultimate release. The court must be shown a the time that petitioner's mental illness remains in remission during the transition stage. The court must be shown that defendant's mental illness and alcohol abuse remain in inactive status when she has been in situations outside of the secured environment of Read.

/s/

George J. Bakalis
Circuit Judge

November 13, 2017

APPENDIX G — RELEVANT STATUTORY PROVISIONS

730 ILCS 5/5-2-4
Formerly cited as IL ST CH 38 ¶ 1005-2-4

5/5-2-4. Proceedings after acquittal by reason of insanity

Effective: August 20, 2021

<Pursuant to Executive Order 2020-24 (2019 IL EO 20-24), issued April 10, 2020, during the duration of and for no more than thirty days following the termination of the Gubernatorial Disaster Proclamations related to COVID-19, subsec. (a) is suspended. Executive Order 2020-33 (2019 IL EO 20-33), issued April 30, 2020, re-issues and extends Executive Order 2020-24 through May 29, 2020. Executive Order 2020-39 (2019 IL EO 20-39), issued May 29, 2020, re-issues and extends Executive Order 2020-24 through June 27, 2020. Executive Order 2020-44 (2019 IL EO 20-44), issued June 26, 2020, re-issues and extends Executive Order 2020-24 through July 26, 2020. Executive Order 2020-48 (2019 IL EO 20-48), issued July 24, 2020, re-issued and extended Executive Order 2020-24 in its entirety through August 22, 2020. Executive Order 2020-52 (2019 IL EO 20-52), issued August 21, 2020, re-issued and extended Executive Order 2020-24 in its entirety through September 19, 2020. Executive Order 2020-55 (2019 IL EO 20-55), issued September 18, 2020, re-issued and extended Executive Order 2020-24 through October 17, 2020. Executive Order 2020-59 (2019 IL EO 20-59),

issued October 16, 2020, re-issued and extended Executive Order 2020-24 through November 14, 2020. Executive Order 2020-71 (2019 IL EO 20-71), issued November 13, 2020, re-issued and extended Executive Order 2020-24 through December 12, 2020. Executive Order 2020-74 (2019 IL EO 20-74), issued December 11, 2020, re-issued and extended Executive Order 2020-24 through January 9, 2021. Executive Order 2021-01 (2021 IL EO 21-01), issued January 8, 2021, re-issued and extended Executive Order 2020-24 through February 6, 2021. Executive Order 2021-04 (2021 IL EO 21-04), issued February 5, 2021, re-issued and extended Executive Order 2020-24 through March 6, 2021. Executive Order 2021-05 (2021 IL EO 21-05), issued March 5, 2021, re-issued and extended Executive Order 2020-24 through April 3, 2021. Executive Order 2021-06 (2021 IL EO 21-06), issued April 2, 2021, re-issued and extended Executive Order 2020-24 through May 1, 2021. Executive Order 2021-09 (2021 IL EO 21-09), issued April 30, 2021, re-issued and extended Executive Order 2020-24 through May 29, 2021. Executive Order 2021-11 (2021 IL EO 21-11), issued May 28, 2021, re-issued and extended Executive Order 2020-24 through June 26, 2021. Executive Order 2021-14 (2021 IL EO 21-14), issued June 25, 2021, re-issued and extended Executive Order 2020-24 through July 24, 2021. Executive Order 2021-15 (2021 IL EO 21-15), issued July 23, 2021, re-issued and extended Executive Order 2020-24 through August 21, 2021.>

§ 5-2-4. Proceedings after acquittal by reason of insanity.

(a) After a finding or verdict of not guilty by reason of insanity under Sections 104-25, 115-3, or 115-4 of the

Code of Criminal Procedure of 1963,[1] the defendant shall be ordered to the Department of Human Services for an evaluation as to whether he is in need of mental health services. The order shall specify whether the evaluation shall be conducted on an inpatient or outpatient basis. If the evaluation is to be conducted on an inpatient basis, the defendant shall be placed in a secure setting. With the court order for evaluation shall be sent a copy of the arrest report, criminal charges, arrest record, jail record, any report prepared under Section 115-6 of the Code of Criminal Procedure of 1963, and any statement prepared under Section 6 of the Rights of Crime Victims and Witnesses Act. The clerk of the circuit court shall transmit this information to the Department within 5 days. If the court orders that the evaluation be done on an inpatient basis, the Department shall evaluate the defendant to determine to which secure facility the defendant shall be transported and, within 20 days of the transmittal by the clerk of the circuit court of the placement court order, notify the sheriff of the designated facility. Upon receipt of that notice, the sheriff shall promptly transport the defendant to the designated facility. During the period of time required to determine the appropriate placement, the defendant shall remain in jail. If, within 20 days of the transmittal by the clerk of the circuit court of the placement court order, the Department fails to notify the sheriff of the identity of the facility to which the defendant shall be transported, the sheriff shall contact a designated person within the Department to inquire about when a placement will become available at the designated facility

1. 725 ILCS 5/104-25, 5/115-3 or 5/115-4.

and bed availability at other facilities. If, within 20 days of the transmittal by the clerk of the circuit court of the placement court order, the Department fails to notify the sheriff of the identity of the facility to which the defendant shall be transported, the sheriff shall notify the Department of its intent to transfer the defendant to the nearest secure mental health facility operated by the Department and inquire as to the status of the placement evaluation and availability for admission to the facility operated by the Department by contacting a designated person within the Department. The Department shall respond to the sheriff within 2 business days of the notice and inquiry by the sheriff seeking the transfer and the Department shall provide the sheriff with the status of the placement evaluation, information on bed and placement availability, and an estimated date of admission for the defendant and any changes to that estimated date of admission. If the Department notifies the sheriff during the 2 business day period of a facility operated by the Department with placement availability, the sheriff shall promptly transport the defendant to that facility. Individualized placement evaluations by the Department of Human Services determine the most appropriate setting for forensic treatment based upon a number of factors including mental health diagnosis, proximity to surviving victims, security need, age, gender, and proximity to family.

The Department shall provide the Court with a report of its evaluation within 30 days of the date of this order. The Court shall hold a hearing as provided under the

Mental Health and Developmental Disabilities Code[2] to determine if the individual is: (a) in need of mental health services on an inpatient basis; (b) in need of mental health services on an outpatient basis; (c) a person not in need of mental health services. The court shall afford the victim the opportunity to make a written or oral statement as guaranteed by Article I, Section 8.1 of the Illinois Constitution and Section 6 of the Rights of Crime Victims and Witnesses Act.[3] The court shall allow a victim to make an oral statement if the victim is present in the courtroom and requests to make an oral statement. An oral statement includes the victim or a representative of the victim reading the written statement. The court may allow persons impacted by the crime who are not victims under subsection (a) of Section 3 of the Rights of Crime Victims and Witnesses Act to present an oral or written statement. A victim and any person making an oral statement shall not be put under oath or subject to cross-examination. The court shall consider any statement presented along with all other appropriate factors in determining the sentence of the defendant or disposition of the juvenile. All statements shall become part of the record of the court.

If the defendant is found to be in need of mental health services on an inpatient care basis, the Court shall order the defendant to the Department of Human Services. The defendant shall be placed in a secure setting. Such defendants placed in a secure setting shall not

2. 405 ILCS 5/1-100 et seq.

3. 725 ILCS 120/6.

be permitted outside the facility's housing unit unless escorted or accompanied by personnel of the Department of Human Services or with the prior approval of the Court for unsupervised on-grounds privileges as provided herein. Any defendant placed in a secure setting pursuant to this Section, transported to court hearings or other necessary appointments off facility grounds by personnel of the Department of Human Services, shall be placed in security devices or otherwise secured during the period of transportation to assure secure transport of the defendant and the safety of Department of Human Services personnel and others. These security measures shall not constitute restraint as defined in the Mental Health and Developmental Disabilities Code. If the defendant is found to be in need of mental health services, but not on an inpatient care basis, the Court shall conditionally release the defendant, under such conditions as set forth in this Section as will reasonably assure the defendant's satisfactory progress and participation in treatment or rehabilitation and the safety of the defendant, the victim, the victim's family members, and others. If the Court finds the person not in need of mental health services, then the Court shall order the defendant discharged from custody.

(a-1) Definitions. For the purposes of this Section:

(A) (Blank).

(B) "In need of mental health services on an inpatient basis" means: a defendant who has been found not guilty by reason of insanity but who, due to mental illness, is reasonably

expected to inflict serious physical harm upon himself or another and who would benefit from inpatient care or is in need of inpatient care.

(C) "In need of mental health services on an outpatient basis" means: a defendant who has been found not guilty by reason of insanity who is not in need of mental health services on an inpatient basis, but is in need of outpatient care, drug and/or alcohol rehabilitation programs, community adjustment programs, individual, group, or family therapy, or chemotherapy.

(D) "Conditional Release" means: the release from either the custody of the Department of Human Services or the custody of the Court of a person who has been found not guilty by reason of insanity under such conditions as the Court may impose which reasonably assure the defendant's satisfactory progress in treatment or habilitation and the safety of the defendant, the victim, the victim's family, and others. The Court shall consider such terms and conditions which may include, but need not be limited to, outpatient care, alcoholic and drug rehabilitation programs, community adjustment programs, individual, group, family, and chemotherapy, random testing to ensure the defendant's timely and continuous taking of any medicines prescribed to control or manage his or her conduct or mental state, and periodic checks with the legal authorities and/or the

Department of Human Services. The Court may order as a condition of conditional release that the defendant not contact the victim of the offense that resulted in the finding or verdict of not guilty by reason of insanity or any other person. The Court may order the Department of Human Services to provide care to any person conditionally released under this Section. The Department may contract with any public or private agency in order to discharge any responsibilities imposed under this Section. The Department shall monitor the provision of services to persons conditionally released under this Section and provide periodic reports to the Court concerning the services and the condition of the defendant. Whenever a person is conditionally released pursuant to this Section, the State's Attorney for the county in which the hearing is held shall designate in writing the name, telephone number, and address of a person employed by him or her who shall be notified in the event that either the reporting agency or the Department decides that the conditional release of the defendant should be revoked or modified pursuant to subsection (i) of this Section. Such conditional release shall be for a period of five years. However, the defendant, the person or facility rendering the treatment, therapy, program or outpatient care, the Department, or the State's Attorney may petition the Court for an extension of the conditional release period

for an additional 5 years. Upon receipt of such a petition, the Court shall hold a hearing consistent with the provisions of paragraph (a), this paragraph (a-1), and paragraph (f) of this Section, shall determine whether the defendant should continue to be subject to the terms of conditional release, and shall enter an order either extending the defendant's period of conditional release for an additional 5-year period or discharging the defendant. Additional 5-year periods of conditional release may be ordered following a hearing as provided in this Section. However, in no event shall the defendant's period of conditional release continue beyond the maximum period of commitment ordered by the Court pursuant to paragraph (b) of this Section. These provisions for extension of conditional release shall only apply to defendants conditionally released on or after August 8, 2003. However, the extension provisions of Public Act 83-1449 apply only to defendants charged with a forcible felony.

(E) "Facility director" means the chief officer of a mental health or developmental disabilities facility or his or her designee or the supervisor of a program of treatment or habilitation or his or her designee. "Designee" may include a physician, clinical psychologist, social worker, nurse, or clinical professional counselor.

(b) If the Court finds the defendant in need of mental health services on an inpatient basis, the admission, detention, care, treatment or habilitation, treatment plans, review proceedings, including review of treatment and treatment plans, and discharge of the defendant after such order shall be under the Mental Health and Developmental Disabilities Code, except that the initial order for admission of a defendant acquitted of a felony by reason of insanity shall be for an indefinite period of time. Such period of commitment shall not exceed the maximum length of time that the defendant would have been required to serve, less credit for good behavior as provided in Section 5-4-1 of the Unified Code of Corrections, before becoming eligible for release had he been convicted of and received the maximum sentence for the most serious crime for which he has been acquitted by reason of insanity. The Court shall determine the maximum period of commitment by an appropriate order. During this period of time, the defendant shall not be permitted to be in the community in any manner, including, but not limited to, off-grounds privileges, with or without escort by personnel of the Department of Human Services, unsupervised on-grounds privileges, discharge or conditional or temporary release, except by a plan as provided in this Section. In no event shall a defendant's continued unauthorized absence be a basis for discharge. Not more than 30 days after admission and every 90 days thereafter so long as the initial order remains in effect, the facility director shall file a treatment plan report in writing with the court and forward a copy of the treatment plan report to the clerk of the court, the State's Attorney, and the defendant's attorney, if the defendant is represented by counsel, or to a person

authorized by the defendant under the Mental Health and Developmental Disabilities Confidentiality Act to be sent a copy of the report. The report shall include an opinion as to whether the defendant is currently in need of mental health services on an inpatient basis or in need of mental health services on an outpatient basis. The report shall also summarize the basis for those findings and provide a current summary of the following items from the treatment plan: (1) an assessment of the defendant's treatment needs, (2) a description of the services recommended for treatment, (3) the goals of each type of element of service, (4) an anticipated timetable for the accomplishment of the goals, and (5) a designation of the qualified professional responsible for the implementation of the plan. The report may also include unsupervised on-grounds privileges, off-grounds privileges (with or without escort by personnel of the Department of Human Services), home visits and participation in work programs, but only where such privileges have been approved by specific court order, which order may include such conditions on the defendant as the Court may deem appropriate and necessary to reasonably assure the defendant's satisfactory progress in treatment and the safety of the defendant and others.

(c) Every defendant acquitted of a felony by reason of insanity and subsequently found to be in need of mental health services shall be represented by counsel in all proceedings under this Section and under the Mental Health and Developmental Disabilities Code.

> (1) The Court shall appoint as counsel the public defender or an attorney licensed by this State.

(2) Upon filing with the Court of a verified statement of legal services rendered by the private attorney appointed pursuant to paragraph (1) of this subsection, the Court shall determine a reasonable fee for such services. If the defendant is unable to pay the fee, the Court shall enter an order upon the State to pay the entire fee or such amount as the defendant is unable to pay from funds appropriated by the General Assembly for that purpose.

(d) When the facility director determines that:

(1) the defendant is no longer in need of mental health services on an inpatient basis; and

(2) the defendant may be conditionally released because he or she is still in need of mental health services or that the defendant may be discharged as not in need of any mental health services;

the facility director shall give written notice to the Court, State's Attorney and defense attorney. Such notice shall set forth in detail the basis for the recommendation of the facility director, and specify clearly the recommendations, if any, of the facility director, concerning conditional release. Any recommendation for conditional release shall include an evaluation of the defendant's need for psychotropic medication, what provisions should be made, if any, to ensure that the defendant will continue to receive psychotropic medication following discharge,

and what provisions should be made to assure the safety of the defendant and others in the event the defendant is no longer receiving psychotropic medication. Within 30 days of the notification by the facility director, the Court shall set a hearing and make a finding as to whether the defendant is:

> (i) (blank); or
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> (ii) in need of mental health services in the form of inpatient care; or
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> (iii) in need of mental health services but not subject to inpatient care; or
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> (iv) no longer in need of mental health services; or
>
> (v) (blank).

A crime victim shall be allowed to present an oral and written statement. The court shall allow a victim to make an oral statement if the victim is present in the courtroom and requests to make an oral statement. An oral statement includes the victim or a representative of the victim reading the written statement. A victim and any person making an oral statement shall not be put under oath or subject to cross-examination. All statements shall become part of the record of the court.

Upon finding by the Court, the Court shall enter its findings and such appropriate order as provided in subsections (a) and (a-1) of this Section.

(e) A defendant admitted pursuant to this Section, or any person on his behalf, may file a petition for treatment plan review or discharge or conditional release under the standards of this Section in the Court which rendered the verdict. Upon receipt of a petition for treatment plan review or discharge or conditional release, the Court shall set a hearing to be held within 120 days. Thereafter, no new petition may be filed for 180 days without leave of the Court.

(f) The Court shall direct that notice of the time and place of the hearing be served upon the defendant, the facility director, the State's Attorney, and the defendant's attorney. If requested by either the State or the defense or if the Court feels it is appropriate, an impartial examination of the defendant by a psychiatrist or clinical psychologist as defined in Section 1-103 of the Mental Health and Developmental Disabilities Code[4] who is not in the employ of the Department of Human Services shall be ordered, and the report considered at the time of the hearing.

(g) The findings of the Court shall be established by clear and convincing evidence. The burden of proof and the burden of going forth with the evidence rest with the defendant or any person on the defendant's behalf when a hearing is held to review a petition filed by or on behalf of the defendant. The evidence shall be presented in open Court with the right of confrontation and cross-examination. Such evidence may include, but is not limited to:

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4. 405 ILCS 5/1-103.

(1) whether the defendant appreciates the harm caused by the defendant to others and the community by his or her prior conduct that resulted in the finding of not guilty by reason of insanity;

(2) Whether the person appreciates the criminality of conduct similar to the conduct for which he or she was originally charged in this matter;

(3) the current state of the defendant's illness;

(4) what, if any, medications the defendant is taking to control his or her mental illness;

(5) what, if any, adverse physical side effects the medication has on the defendant;

(6) the length of time it would take for the defendant's mental health to deteriorate if the defendant stopped taking prescribed medication;

(7) the defendant's history or potential for alcohol and drug abuse;

(8) the defendant's past criminal history;

(9) any specialized physical or medical needs of the defendant;

(10) any family participation or involvement expected upon release and what is the willingness and ability of the family to participate or be involved;

(11) the defendant's potential to be a danger to himself, herself, or others; (11.5) a written or oral statement made by the victim; and

(12) any other factor or factors the Court deems appropriate.

(h) Before the court orders that the defendant be discharged or conditionally released, it shall order the facility director to establish a discharge plan that includes a plan for the defendant's shelter, support, and medication. If appropriate, the court shall order that the facility director establish a program to train the defendant in self-medication under standards established by the Department of Human Services. If the Court finds, consistent with the provisions of this Section, that the defendant is no longer in need of mental health services it shall order the facility director to discharge the defendant. If the Court finds, consistent with the provisions of this Section, that the defendant is in need of mental health services, and no longer in need of inpatient care, it shall order the facility director to release the defendant under such conditions as the Court deems appropriate and as provided by this Section. Such conditional release shall be imposed for a period of 5 years as provided in paragraph (D) of subsection (a-1) and shall be subject to later modification by the Court as provided by this

Section. If the Court finds consistent with the provisions in this Section that the defendant is in need of mental health services on an inpatient basis, it shall order the facility director not to discharge or release the defendant in accordance with paragraph (b) of this Section.

(i) If within the period of the defendant's conditional release the State's Attorney determines that the defendant has not fulfilled the conditions of his or her release, the State's Attorney may petition the Court to revoke or modify the conditional release of the defendant. Upon the filing of such petition the defendant may be remanded to the custody of the Department, or to any other mental health facility designated by the Department, pending the resolution of the petition. Nothing in this Section shall prevent the emergency admission of a defendant pursuant to Article VI of Chapter III of the Mental Health and Developmental Disabilities Code or the voluntary admission of the defendant pursuant to Article IV of Chapter III of the Mental Health and Developmental Disabilities Code. If the Court determines, after hearing evidence, that the defendant has not fulfilled the conditions of release, the Court shall order a hearing to be held consistent with the provisions of paragraph (f) and (g) of this Section. At such hearing, if the Court finds that the defendant is in need of mental health services on an inpatient basis, it shall enter an order remanding him or her to the Department of Human Services or other facility. If the defendant is remanded to the Department of Human Services, he or she shall be placed in a secure setting unless the Court determines that there are compelling reasons that such placement is not necessary. If the Court finds that the

defendant continues to be in need of mental health services but not on an inpatient basis, it may modify the conditions of the original release in order to reasonably assure the defendant's satisfactory progress in treatment and his or her safety and the safety of others in accordance with the standards established in paragraph (D) of subsection (a-1). Nothing in this Section shall limit a Court's contempt powers or any other powers of a Court.

(j) An order of admission under this Section does not affect the remedy of habeas corpus.

(k) In the event of a conflict between this Section and the Mental Health and Developmental Disabilities Code or the Mental Health and Developmental Disabilities Confidentiality Act, the provisions of this Section shall govern.

(*l*) Public Act 90-593 shall apply to all persons who have been found not guilty by reason of insanity and who are presently committed to the Department of Mental Health and Developmental Disabilities (now the Department of Human Services).

(m) The Clerk of the Court shall transmit a certified copy of the order of discharge or conditional release to the Department of Human Services, to the sheriff of the county from which the defendant was admitted, to the Illinois State Police, to the proper law enforcement agency for the municipality where the offense took place, and to the sheriff of the county into which the defendant is conditionally discharged. The Illinois State Police

shall maintain a centralized record of discharged or conditionally released defendants while they are under court supervision for access and use of appropriate law enforcement agencies.

(n) The provisions in this Section which allow a crime victim to make a written and oral statement do not apply if the defendant was under 18 years of age at the time the offense was committed.

(*o*) If any provision of this Section or its application to any person or circumstance is held invalid, the invalidity of that provision does not affect any other provision or application of this Section that can be given effect without the invalid provision or application.