

SUPREME COURT OF VIRGINIA

Smith v. Commonwealth

694 S.E.2d 578 (Va. 2010) · No. Record No. 091535 · Decided June 10, 2010

SUMMARY

The Supreme Court of Virginia affirmed the continued civil commitment of Dwight Keith Smith as a sexually violent predator following his fifth annual review hearing. The court held that treatment records were admissible under the modern Shopbook Rule and concluded that clear and convincing evidence supported the finding that Smith remained a sexually violent predator in need of secure inpatient treatment.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Senior Justice Harry L. Carrico; Chief Justice Hassell; Justice Koontz; Justice Kinser; Justice Goodwyn; Justice Millette; Senior Justice Carrico; Senior Justice Lacy
JURISDICTION	Virginia
DECIDED	June 10, 2010
DOCKET	Record No. 091535
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a circuit court order entered after Smith's fifth annual review hearing under Virginia's civil commitment statute for sexually violent predators. The Supreme Court of Virginia granted an appeal on evidentiary and sufficiency-of-the-evidence assignments of error.
STANDARD OF REVIEW	The facts are viewed in the light most favorable to the Commonwealth, the prevailing party below. The Commonwealth's burden at the annual review hearing is to prove by clear and convincing evidence that the respondent remains a sexually violent predator.
PRECEDENTIAL VALUE	Published opinion; binding Virginia Supreme Court precedent.
PARTIES	Dwight Keith Smith v. Commonwealth of Virginia

TOPICS

nursing home liability

hearsay

evidence

standard of review

appellate procedure

PRACTICE AREAS

civil commitment

mental health law

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court erred by admitting Smith's treatment records despite his objection that they contained inadmissible hearsay and impermissible opinions.
2. Whether the evidence was sufficient to establish by clear and convincing evidence that Smith remained a sexually violent predator and continued to require civil commitment.

HOLDINGS

1. The circuit court did not err in admitting Smith's treatment records as regularly prepared and maintained business records under Virginia's modern Shopbook Rule.
2. The evidence was sufficient to prove by clear and convincing evidence that Smith remained a sexually violent predator and required continued secure inpatient treatment and confinement.

KEY QUOTATIONS

"That the General Assembly chose to afford the procedural protections provided in the SVPA does not transform a civil commitment proceeding into a criminal prosecution." (694 S.E.2d at 580)

"A record is made "of progress that the individual has made since the last master treatment plan and the objective for the treatment plan in that area."" (694 S.E.2d at 581)

"Accordingly, this Court affirms the judgment of the circuit court committing Smith to the custody of the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services for appropriate treatment and confinement in a secure facility." (694 S.E.2d at 582)

FACTUAL BACKGROUND

Smith was declared a sexually violent predator in 2004 and was subject to a fifth annual review hearing. His treatment records showed little or no progress: he remained in Phase I of treatment, had regressed after briefly reaching Phase II, and continued to exhibit diagnosed paraphilia, alcohol dependence, and personality traits associated with risk. Treatment personnel and Dr. Dennis reported that Smith had resisted treatment, had not fully engaged in prescribed activities, and presented a high risk of reoffending without continued inpatient treatment.

PROCEDURAL HISTORY

Smith had been declared a sexually violent predator in 2004. At his fifth annual review hearing, the circuit court found that he remained a sexually violent predator and continued to need secure inpatient hospitalization, and ordered his commitment to the custody of the Commissioner of the Department of Mental Health, Mental

Retardation and Substance Abuse Services. The Supreme Court of Virginia rejected his evidentiary and sufficiency challenges and affirmed.

DISPOSITION

affirmed

CASES CITED

- Shivaee v. Commonwealth, 270 Va. 112, 613 S.E.2d 570 (2005)
- Jenkins v. Director, Va. Ctr. for Behav. Rehab., 271 Va. 4, 624 S.E.2d 453 (2006)
- Commonwealth v. Wynn, 277 Va. 92, 671 S.E.2d 137 (2009)
- McDowell v. Commonwealth, 273 Va. 431, 641 S.E.2d 507 (2007)
- Eckhart v. Commonwealth, 222 Va. 213, 279 S.E.2d 155 (1981)
- Commonwealth v. Allen, 269 Va. 262, 609 S.E.2d 4 (2005)