

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA09-1235

M. E.,

APPELLANT

V.

STATE OF ARKANSAS,

APPELLEE

Opinion Delivered MAY 5, 2010

APPEAL FROM THE SALINE
COUNTY CIRCUIT COURT
[NO. PR-08-210-4]

HONORABLE ROBERT LEO
HERZFELD, JR., JUDGE,

AFFIRMED

KAREN R. BAKER, Judge

Appellant M. E. appeals from an order revoking his conditional release after an acquittal by reason of mental disease or defect pursuant to Ark. Code Ann. § 5-2-316 (b) (Supp. 2009), claiming that there was insufficient evidence that he violated the terms and conditions of his release. We find no error and affirm.

On May 18, 2007, appellant was acquitted by reason of mental disease of the offense of theft of property. He was committed to the custody of the Director of the Arkansas Department of Health and Human Services for evaluation and treatment. Pursuant to sections 5-2-314 and -315 of Arkansas Code Annotated, once a person has been acquitted of a crime by reason of mental disease, the trial court determines whether an individual should be discharged or conditionally released from custody, and determines after a hearing, whether it

found by clear and convincing evidence that the individual has recovered from his or her mental disease or defect to such an extent that his or her conditional release would be in the best interest of both the State and the individual. The court must further find that the individual would not pose a risk of harm to himself or to the person or property of others. See Ark. Code Ann. §§ 5-2-315(a)(2)(C)(ii) and 5-2-314(e). See also *Barnett v. State*, 328 Ark. 246, 248, 942 S.W.2d 860, 860–61 (1997).

On August 22, 2007, following a hearing, the circuit court entered an order granting appellant a conditional release under certain conditions. These conditions included that he comply in all aspects with his therapeutic treatment, including participating in treatment and therapy that may be recommended. His release was further conditioned on his abstaining from using alcohol and illicit drugs, submitting to random drug tests, and remaining in his approved residence and not leaving that approved residence without prior authorization from his treatment team. The circuit court entered modified orders of conditional release on May 6, 2008, and October 27, 2008. Those modifications changed only the location where appellant was to reside, but all other conditions of release remained unchanged.

On June 26, 2009, the State filed a motion to revoke appellant's conditional release based upon appellant's unauthorized departure from his residence, Birch Tree Communities, and several drug and alcohol violations. Arkansas Code Annotated § 5-2-316 applies to conditional releases of individuals acquitted by reason of mental disease and the revocation of those conditional releases. The relevant portion of the statute applying to revocation provides

as follows:

(b)(1) Within five (5) years after the most recent order of conditional release is issued pursuant to § 5-2-314 or § 5-2-315 and after notice to the conditionally released person and a hearing, the court may determine that the conditionally released person has violated a condition of release or that for the safety of the conditionally released person or for the safety of the person or property of another the conditional release should be modified or revoked.

(2)(A) If an order is entered revoking the most recent order of conditional release under subdivision (b)(1) of this section, all conditions of the release shall be abated, including the five-year conditional release time frame in subdivision (b)(1) of this section, and the person shall be ordered to be committed to the custody of the Director of the Department of Human Services or the director's designee.

(B) After the revocation described in subdivision (b)(2)(A) of this section, the person is subject to future discharge or release only in accordance with the procedure prescribed in § 5-2-315.

Ark. Code Ann. § 5-2-316 (Supp. 2009).

Appellant's release required that he attend and participate in therapy meetings. Evidence was presented that he attended an average of only one of the eight hours of required therapy sessions in the established, requisite time period and that when he was present, he refused to participate when prompted. He also left his NA group early and without permission. He denied he had any issues he needed to work on and accused the staff of treating him unfairly. He was also verbally abusive to the staff, calling one supervisor a "b****" on two different occasions. While he acknowledged that he missed some meetings, he claimed he did not know that he was supposed to attend them.

We review proceedings regarding the conditional release and revocation of an acquittee by mental disease de novo, but the decision of the trial judge will not be disturbed unless

clearly erroneous. *Manning v. State*, 76 Ark. App. 91, 92, 61 S.W.3d 910, 911 (2001). In making our review, we give due regard to the superior position and opportunity of the trial judge to determine the credibility of the witness. *Id.* A finding is clearly erroneous when, although there is evidence to support it, the appellate court after reviewing the entire evidence is left with the definite and firm conviction that a mistake has been committed. *Gibson v. State*, 89 Ark. App. 184, 194, 201 S.W.3d 422, 428 (2005).

While appellant argues that the testimony of the State's witnesses was expressly contradicted by the testimony of appellant, the credibility determination was for the trial court to make. Giving credence to the testimony of the State's witnesses, we cannot say with a definite and firm conviction that a mistake has been made. Appellant's release was expressly conditioned upon his complying with his treatment plan. The State presented evidence that appellant was not only noncompliant with treatment recommendations, he was also verbally hostile to individuals attempting to assist him in his treatment. He further indicated his rejection of a need for treatment through verbal opinion, as well as his refusal to attend recommended meetings or participate when present and prompted to do so. Accordingly, we affirm.

Affirmed.

PITTMAN and HART, JJ., agree.