



IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE DETENTION OF:)
)
RICHARD HATFIELD,)
)
)
Petitioner.)
_____)

No. 92724-3 RECEIVED BY E-MAIL

ANSWER TO STATE'S
MOTION TO DISMISS
APPEAL AS MOOT

I. IDENTITY OF ANSWERING PARTY

Petitioner, by and through counsel of record, Kevin A. March of Nielsen, Broman & Koch, requests the relief stated in part II.

II. STATEMENT OF RELIEF SOUGHT

Hatfield asks that this court deny the State's motion to dismiss this case as moot and instead consider Hatfield's petition for review in the ordinary course.

III. FACTS RELEVANT TO ANSWER

The State is incorrect when it states Hatfield was committed under chapter 71.09 RCW by a unanimous jury; he was in fact committed after a bench trial. Compare Motion to Dismiss Appeal as Moot at 1 with CP 155-56; RP 816-17 (findings of fact, conclusions of law, and ruling from the bench). This is an important fact, given that the trial court's basis for committing Hatfield was expressly contingent on Hatfield's psychosis being treated correctly, and all evidence presented at trial showed that Hatfield's psychosis was not being treated correctly at all. See Petition for Review at 2-5.

As Hatfield argued in the petition for review, Hatfield's commitment under the 71.09 scheme was flawed because the trial court concluded that Hatfield's qualifying mental abnormality was being "masked" by his acute psychosis. Petition for Review at 10; CP 156; RP 818. In the trial court's own words, Hatfield's commitment under the



71.09 scheme was wholly contingent on adequate treatment for psychosis: “The evidence supports the conclusion that [Hatfield]’s psychotic disorder, if treated correctly, would result in [Hatfield] reverting to actual reality, where he is Richard Hatfield. Richard Hatfield has a mental abnormality.” CP 156 (emphasis added).

In light of the contingent basis for Hatfield’s commitment and the fact that all the evidence at trial demonstrated Hatfield was not receiving any treatment that provided any realistic opportunity for improvement of any condition, Hatfield has argued and continues to argue that the nature of his commitment under chapter 71.09 RCW bears no reasonable relationship to its purpose, thereby violating substantive due process per Jackson v. Indiana, 406 U.S. 715, 738, 92 S. Ct. 1845, 32 L. Ed. 2d 435 (1972), and In re Detention of D.W., 181 Wn.2d 201, 207-08, 332 P.3d 423 (2014). Petition for Review at 5-13; Br. of Appellant at 29-40; Reply Br. at 10-15.

Rather than address Hatfield’s substantive due process claim and the authority supporting it, the State and the Court of Appeals contend that Hatfield is impermissibly challenging the conditions of confinement, and that the only appropriate question is whether Hatfield suffers from a mental abnormality as defined by RCW 71.09.020(8). In re Det. of Hatfield, ___ Wn. App. ___, 362 P.3d 997, 1010-11 (2015); Am. Br. of Resp’t at 26-29. However, they fail to acknowledge that, according to the trial court’s own findings and conclusions, whether Hatfield has a mental abnormality is inextricably intertwined with and contingent upon being adequately treated for psychosis.

Hatfield is now dead. This comes as little surprise given the State’s repugnant mistreatment of him over the last few years, which the record before this court establishes. Indeed, at trial Hatfield presented un rebutted evidence showing the State

locked him in a cell for 23 hours per day, stripped him naked, and forcibly medicated him with a potentially lethal medication that had already proven medically ineffective. RP 543-50, 577-78, 682. As even the State's expert conceded, Hatfield's severe psychosis precluded him from participating in the long-term, goal-oriented treatment modalities directed at treating sexually violent behavior contemplated by the legislature when it enacted chapter 71.09 RCW. See RCW 71.09.010; RP 285, 287.

IV. ARGUMENT

"A case is moot if a court can no longer provide effective relief." In re Det. of Cross, 99 Wn.2d 373, 376-77, 662 P.2d 828 (1983). Because Hatfield died, there is no dispute that this court cannot provide him relief. This case is technically moot.

However, even where an issue is technically moot, this court may nonetheless consider it if it presents matters of continuing and substantial public interest. In re Pers. Restraint of Mattson, 166 Wn.2d 730, 736, 214 P.3d 141 (2009). In making this decision, the courts consider (1) the public or private nature of the question presented, (2) the desirability of an authoritative determination for the future guidance of public officers, and (3) the likelihood that the question will recur.¹ Id. Most technically moot cases considered by appellate courts involve issues of constitutional law or statutory interpretation. Id. Applying these considerations, this court should consider Hatfield's claims despite this case's technical mootness.

First, the validity of Hatfield's commitment presents a significant constitutional question of a public nature. The State's lawful authority to detain a person absent a

¹ In its motion to dismiss, the State does not address these considerations and instead relies on United States Supreme Court case law that is not on point. Motion to Dismiss Appeal as Moot at 3.

criminal charge is strictly limited. D.W., 181 Wn.2d at 207. Persons detained by the State for mental incapacity have a constitutional right to receive individualized treatment that will give them a realistic opportunity to improve their mental condition. Id. at 208. The due process clause of the Fourteenth Amendment indisputably requires that “the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.” Jackson, 406 U.S. at 738. Hatfield claims that his commitment violates substantive due process under the Fourteenth Amendment because there is no reasonable relationship between the nature of his commitment and its purpose, and his commitment to the Special Commitment Center (SCC) provides no realistic opportunity to improve his psychotic condition. These claims present a significant constitutional issue and therefore a question of a public nature.

Second, an authoritative determination on Hatfield’s substantive due process claim is desirable given that no Washington court has addressed a substantive due process claim in the context of chapter 71.09 RCW commitments. Indeed, this court has indicated a substantive due process claim in this context remains open for consideration in a case containing an adequate evidentiary record to assess the reasonableness of the relationship between the commitment’s nature and purpose. In re Det. of McClatchey, 133 Wn.2d 1, 5, 940 P.2d 646 (1997). Because the record here allows for full consideration of Hatfield’s substantive due process claim, it is desirable to provide an authoritative judicial determination to guide lawyers and judges in future cases.

Moreover, this court has recently recognized the importance of substantive due process rights in civil commitments under other schemes. D.W., 181 Wn.2d at 207-08. In no uncertain terms, this court ruled that the Department of Social and Health Services

may not warehouse Washington citizens by detaining them without providing treatment that gives a realistic opportunity to improve their mental condition.² Id. Here, the record establishes Hatfield was warehoused at the SCC without any ameliorating treatment that provided even the barest potential to improve his mental condition. Hatfield has stated a legitimate substantive due process claim, which necessitates an authoritative determination from this court.³

Third, a substantive due process violation in the context of chapter 71.09 RCW will almost certainly recur. If this court refuses to consider this case, any future substantive due process claim will be unduly burdened by the Court of Appeals' cursory and incorrect analysis in this case that mischaracterizes the nature of a substantive due process challenge. Because Hatfield is a published decision, future courts will likely rely on it to reject recurring yet valid substantive due process claims by mislabeling them as challenges to the conditions of confinement. Because this issue is likely to recur, this court should not permit the Court of Appeals' faulty and incomplete analysis to stand. Instead, this court should consider Hatfield's petition for review and substantive due process claim on the merits.

² In addition, the United States District Court for the Western District of Washington has repeatedly reached the same conclusion with respect to the Department of Social and Health Services' constitutionally infirm treatment of Washington citizens in Trueblood v. Washington State Department of Social and Health Services, No. C14-1178 MJP, a class action involving the warehousing of incompetent criminal defendants awaiting restorative treatment. It seems that the more guidance courts can provide to the public officers of the Department of Social and Health Services, the better for protecting the constitutional rights of all Washingtonians.

³ A determination by this court is particularly warranted here because the Court of Appeals refused to address Hatfield's substantive due process claim, instead mischaracterizing it as a challenge to the conditions of confinement. Hatfield, 362 P.3d at 1010-11.

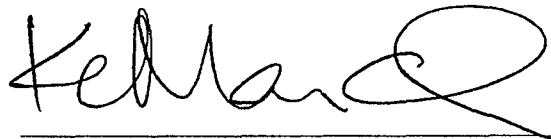
V. CONCLUSION

This court should deny the State's motion to dismiss this case as moot and consider Hatfield's petition for review in the ordinary course.

DATED this 10th day of March, 2016.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC

A handwritten signature in black ink, appearing to read "Kevin A. March", written over a horizontal line.

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Attached for filing today is an answer to state's motion to dismiss appeal as moot for the case referenced below.

State v. Richard Hatfield.

No. 92724-3

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