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Division II
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COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

IN RE DETENTION OF C.E.M.,
Appellant.,

On Appeal from the Pierce County Superior Court
Cause No. 18-6-00546-9
The Honorable K.A. van Doorninck, Judge

OPENING BRIEF OF APPELLANT

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I. ASSIGNMENTS OF ERROR

1. The trial court erred when it concluded that one basis for involuntary commitment is that C.E.M. is gravely disabled as a result of a mental disorder.
2. The trial court's conclusion that C.E.M. is gravely disabled is not supported by the trial court's findings of fact.

II. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Did the trial court err when it concluded that one basis for involuntary commitment is that C.E.M. is gravely disabled as a result of a mental disorder, where the trial court's findings of fact supporting this conclusion do not address any of the elements or evidence required to determine that a person is gravely disabled? (Assignments of Error 1 & 2)
2. Should this Court address C.E.M.'s appeal even if the 180-day order expires before the appeal is concluded, and even though C.E.M. does not challenge all three grounds for involuntary commitment, where a finding of grave disability could have adverse consequences in future commitment proceedings? (Assignments of Error 1 & 2)

III. STATEMENT OF THE CASE

A Grays Harbor Superior Court judge court found that

C.E.M. was incompetent to face felony criminal charges related to his alleged possession of a stolen vehicle. (CP 1-2, 4) The criminal charge was dismissed without prejudice, and C.E.M. was sent to Western State Hospital (WSH) to be evaluated under RCW 71.05 for civil commitment. (CP 1-2)

The State subsequently petitioned to have C.E.M. involuntarily committed for up to 180 days. (CP 3-5) The trial court granted the State's petition on June 14, 2018, after concluding that C.E.M. was both gravely disabled and likely to repeat the type of acts that resulted in the dismissed felony charges. (CP 17-20) A Commissioner ordered two additional 180-day treatment periods after finding that C.E.M. continued to be gravely disabled. (CP 24-27, 42-45)

The State filed the most recent Petition for Involuntary Treatment on February 10, 2020. (CP 77-88) The State asserted that, as a result of a mental disorder, C.E.M. (1) is gravely disabled; or (2) has threatened, attempted or inflicted physical harm upon the person of another during the current period of detention and presents a likelihood of serious harm; or (3) continues to be in custody pursuant to RCW 71.05.280(3) and continues to present a likelihood of repeating acts similar to the charged criminal behavior.

(CP 78)

In support of the petition, WSH psychologist Dr. Edward Coyle testified that he first evaluated C.E.M. in November of 2019. (RP 178, 181) Dr. Coyle's primary diagnosis of C.E.M. was schizoaffective disorder with symptoms of psychosis, including hallucinations, delusional thinking, mania and excess energy, and depressive components. (RP 182-83) According to Dr. Coyle, C.E.M.'s most prominent symptom is impaired impulse control. (RP 183) He has difficulty stopping himself from acting on his thoughts, of exercising judgment, and of appreciating the consequences of his actions. (RP 183-84, 191, 216-17)

This manifests itself in violent acts towards others and towards C.E.M. himself. (RP 184, 191) For example, on February 17, 2020, C.E.M. punched a staff member in the face, and declared it was "God's will." (RP 186, 188; Exh. 7) According to Dr. Coyle, this also indicates C.E.M.'s delusional process. (RP 188)

WSH psychiatrist Dr. Daniel Ruiz Parades also testified that he has treated C.E.M. several times since he was first admitted to WSH. (RP 233) At the start of the current treatment period, C.E.M. was "acutely decompensated," and was extremely agitated, irritable, and assaultive. (RP 234-35) C.E.M. had to be in

seclusion or restrained frequently. (RP 235) Dr. Paredes concurred with the diagnosis of schizoaffective disorder, or schizophrenia and bipolar disorder, with paranoia, grandiose beliefs, and hallucinations. (RP 239)

Both doctors believe that C.E.M. has poor insight into his condition, and his need for medications, and that prevents C.E.M. from making realistic plans to care for himself. (RP 190, 196, 243, 246) They testified that C.E.M. has not demonstrated an ability to attend to his basic needs without supervision or structure. (RP 195, 197, 244) They believe that C.E.M. presents a danger to himself and others. (RP 195, 197, 245-46, 247) They also testified that C.E.M. was likely to engage in acts similar to the alleged criminal acts. (RP 213-14, 251-52) They do not believe C.E.M. is ready for a less restrictive alternative placement. (RP 216, 253)

However, both doctors agreed that C.E.M. has shown significant improvement since beginning treatment. (RP 220-21, 240, 263) He voluntarily takes his medications, and frequently requests his medications. (RP 189-90, 241-42, 265) He is also better at organizing his thoughts and an engaging with staff. (RP 225)

C.E.M. testified that he wants to be released and live with his

mother. (RP 270) He would continue to take his medications and would engage in mental health treatment. (RP 271) He would like to return to school and believes he would make a good mental health advisor to others in the mental health system. (RP 271-72)

The trial court found that, as a result of a mental disorder, C.E.M. (1) continues to present a likelihood of serious harm; (2) continues to present a likelihood of repeating acts similar to the charged criminal behavior; and (3) is gravely disabled. (RP 288-92; CP 123-27) The court ordered up to 180 additional days of involuntary treatment. (CP 123) C.E.M. filed a timely Notice of Appeal. (CP 129)

IV. ARGUMENT & AUTHORITIES

- A. THE TRIAL COURT'S FINDINGS OF FACT DO NOT SUPPORT ITS CONCLUSION THAT C.E.M. IS GRAVELY DISABLED.

The trial court concluded that C.E.M. continues to be gravely disabled, but the facts listed to support that conclusion do not establish grave disability.

No person may be deprived of life, liberty, or property without due process of law. U.S. Const. Amd. 5, Amd. 14; Wash. Const. art. 1, § 3. The involuntary commitment of a person based on mental illness constitutes a significant deprivation of liberty and

therefore must satisfy due process standards. *In re Det. of LaBelle*, 107 Wn.2d 196, 201, 728 P.2d 138 (1986); *Humphrey v. Cady*, 405 U.S. 504, 509, 92 S. Ct. 1048, 31 L. Ed. 2d 394 (1972).

Generally, under the voluntary commitment statute, RCW 71.05, a person may be involuntarily committed for treatment of mental disorders for several reasons, including if they are “gravely disabled.” RCW 71.05.320(4)(a)(d). The burden of proof at 180-day involuntary commitment proceedings is by clear, cogent and convincing evidence, which means the ultimate fact at issue must be shown by evidence to be highly probable. *LaBelle*, 107 Wn.2d at 209 (citing RCW 71.05.310).

When reviewing an order for involuntary commitment, this Court should determine whether substantial evidence supports the court’s findings of fact and, if so, whether the findings in turn support the trial court’s conclusions of law and judgment. *LaBelle*, 107 Wn.2d at 209; *In re Det. of Clark*, 187 Wn. App. 303, 313, 348 P.3d 1231 (2015). When a court includes its grave disability determination in its findings of fact, we treat the finding as a conclusion of law. *In re Det. of M.K.*, 168 Wn. App. 621, 623 n. 3, 279 P.3d 897 (2012).

In its written findings of fact, the trial court listed as one of its

reasons for commitment that C.E.M. is or continues to be gravely disabled. (CP 125) RCW 71.05.020(23) defines “gravely disabled” as:

a condition in which a person, as a result of a behavioral health disorder: (a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety[.]

“To justify commitment, such care must be shown to be essential to an individual’s health or safety and the evidence should indicate the harmful consequences likely to follow if involuntary treatment is not ordered.” *LaBelle*, 107 Wn.2d at 208 (emphasis in original).

The “facts in support” of the grave disability finding listed by the trial court in its written order do not address any of these factors. Instead, the trial court’s findings of fact state the following:

GRAVE DISABILITY

Prong (a): Respondent still at risk of serious physical harm due to impulsive behavior and poor judgment, disorganized thoughts, reference Pet’rs. Exhibit 7, showing ongoing delusions and assaultive behavior. Exhibit 7 contains two chart notes; the first shows that [C.E.M.] struck a Western State Hospital staff member in the chin. The second chart note shows that he attempted to strike and spit at staff members even after “contracting” to maintain safe behavior. In

the community he could provoke others resulting in harm to himself.

Prong (b): Court incorporates findings from prong (a) of grave disability. Improvement in daily life skills; impulsivity and lack of insight/judgment could lead to “revolving door” of mental health treatment.

(CP 125; a complete copy of the trial court’s written findings and conclusions are attached in the Appendix)

These findings do not address whether or why C.E.M. is unable to provide for his essential human needs of health or safety, or whether he manifests a severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control. In fact, there is no evidence that his issues are escalating. To the contrary, his overall behavior and self-care routines have been improving. (220-21, 222-23)

The findings of facts do not address or establish any of the elements required to conclude that a person is gravely disabled under RCW 71.05.020(23). The trial court’s conclusion that C.E.M. is in danger of serious physical harm resulting from a failure to provide for his essential human needs of health or safety, or that he manifested severe deterioration in functioning to the point where he required hospitalization, is not supported by its findings of fact. The remedy is to vacate the commitment order and remand for a new

trial.

B. C.E.M.'S APPEAL IS NOT MOOT AND THIS COURT SHOULD ADDRESS HIS CHALLENGE TO THE TRIAL COURT'S CONCLUSION THAT HE IS GRAVELY DISABLED.

Even though C.E.M.'s 180-day order may expire and he may be released from WSH before this appeal is concluded, the appeal will not be moot because collateral consequences flow from the determination authorizing detention. *M.K.*, 168 Wn. App. at 626 (citing *Born v. Thompson*, 154 Wn.2d 749, 762-64, 117 P.3d 1098 (2005); *Habeas Corpus of Monohan v. Burdman*, 84 Wn.2d 922, 925, 530 P.2d 334 (1975)). C.E.M.'s appeal is also not moot even though he does not challenge the trial court's alternative ground for recommitting him, because the trial court's conclusion that C.E.M. was gravely disabled or likely to cause harm or repeat acts similar to the criminal charges could have adverse consequences in future commitment proceedings. See *In re Det. of B.L.R.*, 2020 WL 3254142, at *4 (2020) (where this Court held that an appeal challenging the trial court's gravely disabled finding but not the alternative ground for commitment was not moot because "it is possible that the trial court's finding that BLR was gravely disabled could be considered by other courts in future involuntary commitment hearings even though the trial court also ordered

commitment on an alternative ground.”)¹

V. CONCLUSION

The trial court erred when it concluded that C.E.M. remained gravely disabled at the time of his recommitment hearing because that conclusion is not supported by the findings of fact. C.E.M. respectfully requests that this Court vacate the order recommitting him for an additional 180 days of involuntary detention.

DATED: July 31, 2020



STEPHANIE C. CUNNINGHAM

WSB #26436

Attorney for C.E.M.

CERTIFICATE OF MAILING

I certify that on 07/31/2020, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: C.E.M., Western State Hospital, 9601 Steilacoom Blvd. SW, Lakewood, WA 98498-7213.

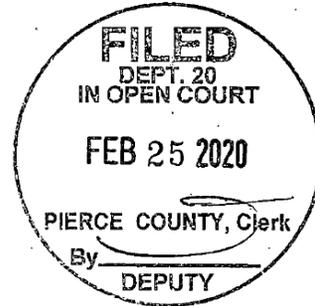


STEPHANIE C. CUNNINGHAM, WSBA #26436

¹ *B.L.R.* is an unpublished opinion and therefore has no precedential value and is not binding on any court, but is cited only for such persuasive value as this Court deems appropriate. See GR 14.1; *Crosswhite v. Washington State Dep't of Soc. & Health Servs.*, 197 Wn. App. 539, 544, 389 P.3d 731 (2017).

APPENDIX

FINDINGS, CONCLUSIONS, AND ORDER COMMITTING RESP. FOR INVOLUNTARY TREATMENT



Superior Court of Washington
County of Pierce

<p>In re the Detention of: CHRISTIAN MAHAN, Respondent</p> <p>Petitioners: Daniel Ruiz-Paredes, M.D. and Edward Coyle, Ph.D.</p>	<p>Case No. 18-6-00546-9</p> <p>Findings, Conclusions, and Order Committing Respondent for Involuntary Treatment</p> <p><input type="checkbox"/> 90-day commitment (FNOR 90) <input checked="" type="checkbox"/> 180-day commitment (FNOR 180)</p>
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Hearing

- The court held a hearing on the petition for up to 90 Days 180 Days of involuntary treatment:
At the hearing:
 - Respondent appeared in person did not appear
 - Respondent waived his/her appearance
 - Separate appearance waiver has been filed.
 - Respondent has orally waived his/her appearance to defense counsel, and the court accepts this waiver.
 - The Court separately finds Respondent has waived his/her appearance.
 - Petitioner appeared and was represented by Doug Boling, AAG.
 - Respondent's Attorney, Amanda Fernandez, DAC, appeared.
- The Court heard testimony from and considered evidence per the Clerk's Memorandum of Journal Entry.
- In addition to the findings of fact and conclusions of law written below, the court incorporates by reference the oral findings of fact and conclusions of law.

Findings of Fact

The court makes the following findings of fact by clear cogent and convincing evidence:

1. Medication Rights.

- The Respondent was advised of the right to refuse medication 24 hours prior to the hearing of this petition and those rights were respected.

2. Reason/s for Commitment. Respondent suffers from a mental disorder. The diagnosis is Schizoaffective Disorder, Bipolar Type.

The Respondent Has a Developmental Disability.

Felony Charges Dismissed.

- The Respondent was determined to be incompetent and felony charges were dismissed. Respondent committed the following acts , which constitute the felony/felonies of within the meaning of RCW 71.05, and as a result of a mental disorder, Respondent presents a substantial likelihood of repeating similar acts.

- The acts Respondent committed constitute a violent offense under RCW 9.94A.030.

- Respondent is in custody pursuant to RCW 71.05.280(3) and as a result of a mental disorder continues to present a substantial likelihood of repeating acts similar to the charged criminal behavior.

- The Court previously made a special finding that the underlying offense was a violent offense under RCW 9.94A.030.

- During the current period of court ordered treatment has threatened, attempted, or inflicted physical harm upon the person of another, or substantial damage upon the property of another, and as a result of a mental disorder presents a likelihood of serious harm.

- Respondent was taken into custody as a result of conduct in which he or she attempted or inflicted serious physical harm on the person of another, or substantial damage upon the property of another, and as a result of a mental disorder presents a likelihood of serious harm.

- After having been taken into custody for evaluation and treatment, Respondent has threatened, attempted, or inflicted physical harm upon the person of another or himself/herself or substantial damage upon the property of another, and as a result of mental disorder presents a likelihood of serious harm. **(90 day commitment only)**

Is/Continues To Be Gravely Disabled and Respondent:

- as a result of a mental disorder is in danger of serious physical harm resulting from the failure to provide for his/her essential needs of health or safety.
- as a result of a mental disorder manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over actions, is not receiving such care as is essential for health and safety.

Facts in Support:

The Court finds the following facts support the allegations in the petition based on the testimony of the petitioning doctors and the Respondent:

The court finds that the testifying doctors were credible.

GRAVE DISABILITY

Prong (a): Respondent still at risk of serious physical harm due to impulsive behavior and poor judgment, disorganized thoughts; reference Pet'r's Exhibit 7, showing ongoing delusions and assaultive behavior. Exhibit 7 contains two chart notes; the first shows that Mr. Mahan struck a Western State Hospital staff member in the chin. The second chart note shows that he attempted to strike and spit at staff members even after "contracting" to maintain safe behavior. In the community he could provoke others resulting in harm to himself.

Prong (b): Court incorporates findings from prong (a) of grave disability. Improvement in daily life skills; impulsivity and lack of insight/judgment could lead to "revolving door" of mental health treatment.

LIKELIHOOD OF SERIOUS HARM

Respondent presents with challenges with judgment, unprovoked assaults, court notes he is young and physically fit and could cause serious harm. Has caused physical harm to others during this treatment period. The Court reference Exhibit 7 for this finding.

IN CUSTODY PURSUANT TO RCW 71.05.280(3) AND AS A RESULT OF A MENTAL DISORDER CONTINUES TO PRESENT A SUBSTANTIAL LIKELIHOOD OF REPEATING ACTS SIMILAR TO POSSESSION OF A STOLEN VEHICLE

Court notes stipulation that Respondent is in custody pursuant to previous finding that a felony charge had been dismissed due to a determination of incompetency and has committed acts constituting the felony of Possession of a Stolen Vehicle. Court notes that there is no evidence that he has stolen from others during the commitment period, and that there is no indication that violence was inflicted during charged offense. He has poor judgment and is impulsive, which could lead to unlawful behaviors, including property offenses or assault, due to not following the rules.

LESS RESTRICTIVE ALTERNATIVE

The Court finds that less restrictive alternatives to secure hospitalization are not in the Respondent's best interests or the best interests of others. The Court notes his continued

improvement and stabilization indicate that he could be appropriate in the future if he continues to improve and his problematic behaviors abate.

3. Less Restrictive Alternative Treatment.

Less restrictive alternatives to involuntary detention are / are not in the best interests of the Respondent or others

Conclusions of Law

1. Jurisdiction. The court has jurisdiction over the parties and subject matter of this mental illness proceeding.

2. Detention Criteria. The Respondent as a result of a mental disorder:

- presents/continues to present a likelihood of serious harm.
- presents/continues to present a substantial likelihood of repeating acts similar to the charged criminal behavior.
- is/continues to be gravely disabled.

3. Other: Oral ruling incorporated by reference. bad
AF

The Court Orders

1. Involuntary Treatment as follows:

- Inpatient Treatment.** The court orders up to **90 Days** **180 Days** of intensive inpatient treatment. Respondent is remanded into the custody of DSHS for placement at WSH or other facility certified by DSHS for long term care.
- Less Restrictive Alternatives:** The Court having previously found that less restrictive conditions are in the Respondent's best interest, see separate Order Detaining Under Less Restrictive Conditions.

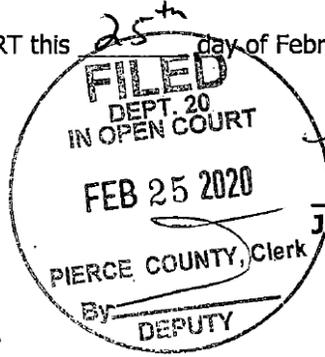
2. Escape and Recapture. If the Respondent escapes from the treatment facility, any Peace Officer shall apprehend, detain, and return the respondent to this treatment facility or to the evaluation and treatment facility designated by a Designated Mental Health Professional.

3. Right to Full Hearing or Jury Trial. If involuntary treatment beyond a 14 day period is sought Respondent will have the right to a full hearing or jury trial as required by RCW 71.05.310.

4. Firearms Possession Prohibited. Respondent has been detained pursuant to RCW 71.05.240 or 71.05.320 and is prohibited from possessing, in any manner, a firearm as defined in RCW 9.41.010. Respondent is required to immediately surrender any concealed pistol license. Respondent may not possess a firearm until his/her right to do so has been restored by a court of record.

5. Notice to Department of Corrections. If Respondent is, or becomes, subject to supervision by the Department of Corrections, Respondent must notify the treatment provider and Respondent's mental health treatment information must be shared with the Department of Corrections for the duration of the Respondent's incarceration and supervision, under RCW 71.05.445. Upon a petition by a person who does not have a history of one or more violent acts, the court may, for good cause, find that public safety would not be enhanced by the sharing of this information.

DONE IN OPEN COURT this ^{25th} day of February 2020.



[Signature]

 JUDGE Kitty-Ann van Doorninck

Approved for entry

 Doug Boling, WSBA No. 47081
 Attorney for Petitioner

Approved for entry as to form:

 Amanda Fernandez, WSBA No. 42553
 Attorney for Respondent

July 31, 2020 - 3:23 PM

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