No. 48752-7-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

IN RE DETENTION OF J.M.,

Appellant.

On Appeal from the Pierce County Superior Court
Cause No. 15-6-00670-3
The Honorable Katherine Stolz, Judge

OPENING BRIEF OF APPELLANT

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TABLE OF CONTENTS

I. ASSIGNMENT OF ERROR 1

II. ISSUE PERTAINING TO THE ASSIGNMENT OF ERROR 1

III. STATEMENT OF THE CASE 1

IV. ARGUMENT & AUTHORITIES 4

V. CONCLUSION 8

TABLE OF AUTHORITIES

CASES

Humphrey v. Cady,
405 U.S. 504, 92 S. Ct. 1048, 31 L. Ed. 2d 394 (1972) 5

In re Det. of M.K., 168 Wn. App. 621, 279 P.3d 897 (2012)..... 6

In re LaBelle,
107 Wn.2d 196, 728 P.2d 138 (1986)..... 5, 6, 8

OTHER AUTHORITIES

RCW 71.05.020 ..... 5, 7

RCW 71.05.310 6

RCW 71.05.320 5

U.S. Const. Amd. 5 4

U.S. Const. Amd. 14 4

Wash. Const. art. 1, § 3 4-5

I. ASSIGNMENT OF ERROR

1. The State failed to establish that J.M. is gravely disabled as a result of a mental disorder.

II. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Did the State establish that J.M. is gravely disabled as a result of a mental disorder?

III. STATEMENT OF THE CASE

J.M. was admitted to Western State Hospital (WSH) for mental health treatment pursuant to a King County Superior Court order of detention entered on March 12, 2015. (CP 1-4; RP 43) On June 8, 2015, a Pierce County Superior Court commissioner found that J.M. suffered from a mental disorder (schizophrenia) and was gravely disabled, and ordered that he be confined for treatment at WSH for an additional 180 days. (CP 12-15)

On November 17, 2015, the State, through doctors William Crinean and Kamran Naficy, petitioned for an additional 180 days of involuntary treatment. (CP 21-23) In support of the petition, the doctors asserted that J.M. was still schizophrenic and "gravely disabled," but "ready for a less restrictive alternative placement" than confinement at WSH. (CP 22) J.M. exercised his right to a jury trial to determine whether he should be further confined or released. (CP

28)

Dr. Crinean, a clinical psychologist, testified at the hearing held on March 23, 2016. Based on his observations and review of J.M.'s history, Dr. Crinean diagnosed J.M as schizophrenic, and possibly also suffering from obsessive-compulsive disorder and anxiety. (RP 47, 63) According to Dr. Crinean, J.M.'s symptoms included delusional thinking, responding to internal stimuli (exhibited by mumbling, talking or laughing to himself), suspiciousness, and an unwillingness to acknowledge his mental health issues. (RP 56, 61) He also exhibited obsessive and repetitive behaviors, such as washing his hands so frequently that they became chapped. (RP 63)

Dr. Crinean also explained that, when J.M was last in the community, he was living in his mother's home with several of her tenants, but:

> he was not allowing [the other] renters to use the stove. He was not allowing the heat to be used in the home. He had plugged the toilet, so it was filled with waste, and he was wandering around the house in his socks and underwear; and there was no -- most of the food within the residence was spoiled and unedible [*sic*.]. He was also refusing contact with mental health providers in the community.

(RP 58) With regular medications and treatment at WSH, J.M.'s behavior had improved, and he was taking care of his daily needs,

following rules, and acting responsibly. (RP 61, 69, 72)

Dr. Crinean testified that J.M. would no longer benefit from being confined at WSH and was ready to be discharged from that facility. (RP 73, 87, 104) However, he was concerned that if J.M. was released into the community without any structure or supervision, he would discontinue his medications and, as a result, would revert to his previous behaviors and be unable to care for his basic needs. (RP 66-67, 68) Thus, Dr. Crinean felt an additional 180-day treatment order and release to a group home would be beneficial. (RP 73)

Dr. Naficy agreed with Dr. Crinean's diagnosis that J.M. suffers from schizophrenia and obsessive-compulsive disorder. (RP 121, 126) Dr. Naficy also expressed concern at J.M.'s refusal to acknowledge his mental disorder, and believed that he would be best served by release to the structured environment of a group home. (RP 136, 137) Dr. Naficy believed J.M. would stop taking medications and that he would rapidly deteriorate if he were released to the community. (RP 137-38, 143)

Both Dr. Crinean and Dr. Naficy agreed that anxiety and obsessive-compulsive disorder, and their associated symptoms, can be symptoms of schizophrenia, but can also exist independent of

schizophrenia. (RP 94-95, 149)

J.M. testified on his own behalf. J.M. does not believe he is schizophrenic, and does not suffer from delusions or hallucinations. (RP 176-77) He does not see any difference between when he takes the prescribed medications and when he does not. (RP 178) He explained that if he is released, he plans to rent an apartment and get a job. (RP 178) He believed he can take care of himself, and he could rely on support from his mother and other family members. (RP 187-88)

The jury found that J.M. suffered from a mental disorder, that he was gravely disabled as a result of that mental disorder, and that a less restrictive alternative to confinement at WSH was in his best interest. (RP 235; CP 73-74) The court ordered that J.M. be detained for up to 180 days and that a less restrictive alternative placement be arranged. (CP 75-76) On April 26, 2016, J.M. was released from WSH to a group home, and ordered to follow specific conditions or risk being confined again at WSH. (CP 93-99) J.M. timely appealed. (CP 82-84)

IV. ARGUMENT & AUTHORITIES

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 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).

RCW Chapter 71.05 provides the authority and the process for the State to involuntarily commit a mentally ill person for treatment. An individual may be detained in a treatment facility for up to 180 days if, after a hearing, a court finds that the person is "gravely disabled." RCW 71.05.320(3)(d), .320(6).

> "Gravely disabled" means a condition in which a person, as a result of a mental 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[.]

RCW 71.05.020(17). "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.

The burden of proving that a person is gravely disabled and in need of treatment is on the petitioner, and the standard of proof is

clear, cogent and convincing evidence. RCW 71.05.310; LaBelle, 107 Wn.2d at 209. "[W]hich means the ultimate fact in issue must be shown by evidence to be 'highly probable.'" LaBelle, 107 Wn.2d at 209 (citing In re Pawling, 101 Wn.2d 392, 399, 679 P.2d 916 (1984)). The jury was not asked to specify which one of these alternative definitions was proved in this case. (CP 68, 73-74; RP 197) Regardless, the evidence presented at trial did not establish either alternative.[1]

A finding under subsection (a) requires "a showing of a substantial risk of danger of serious physical harm resulting from failure to provide for essential health and safety needs." LaBelle, 107 Wn.2d at 204. Further,

> the State must present recent, tangible evidence of failure or inability to provide for such essential human needs as food, clothing, shelter, and medical treatment which presents a high probability of serious physical harm within the near future unless adequate treatment is afforded.

LaBelle, 107 Wn.2d at 204-05.

Dr. Crinean described J.M.'s behavior prior to his being

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[1] Even though J.M.'s 180-day order may expire and he may be released from the conditions of treatment before this appeal is concluded, the appeal will not be moot because collateral consequences flow from the determination authorizing the original detention. In re Det. of M.K., 168 Wn. App. 621, 626, 279 P.3d 897 (2012) *(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)).

detained at WSH: J.M. was verbally abusive to his roommates and his home was dirty and not stocked with fresh foods, and he sometimes walked around the house not fully clothed. (RP 58) While these behaviors may be detrimental to J.M.'s ability to successfully cohabitate with others, they do not establish that J.M. is so unable to provide for his essential human needs that he risks a high probability of serious physical harm.

A finding under subsection (b) requires a showing that J.M.s mental disorder results in a "severe deterioration in routine functioning" as evidenced by "repeated and escalating loss of cognitive or volitional control[.]" RCW 71.05.020(17)(b). J.M. was committed to WSH for treatment for the first time on June 8, 2015, based on the same behavioral incident relied upon for the current 180-day commitment. (CP 5-10, 21-27; RP 58) J.M.'s condition had improved since then, to the point that he was, by Dr. Crinean's own testimony, "doing pretty good" and "ready for discharge." (RP 61, 104) There was no showing of any repeated or escalating loss of cognitive or volitional control.

While Dr. Crinean and Dr. Naficy's testimony undoubtedly established that J.M. is in need of mental health treatment, it did not include "recent, tangible evidence" of J.M.'s failure or inability to

provide for his essential human needs to an extent that "presents a high probability of serious physical harm within the near future[.]" LaBelle, 107 Wn.2d at 204-05. And it did not establish a repeated and escalating deterioration in routine functioning. The State did not show that only involuntary commitment, even to a less restrictive alternative, is necessary to ensure J.M.'s health and safety. Therefore, the statutory requirements for involuntary commitment have not been met.

V. CONCLUSION

The State did not meet its burden of establishing by clear, cogent and convincing evidence, that J.M. suffers from a mental disability that renders him gravely disabled. The trial court's order to involuntarily detain J.M. in a less restrictive alternative for up to 180 days should be reversed.

DATED: September 30, 2016

STEPHANIE C. CUNNINGHAM, WSB #26436
Attorney for Appellant J.M.

CUNNINGHAM LAW OFFICE

September 30, 2016 - 4:56 PM

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IN RE DETENTION OF J.M.,	Appeal No. 48752-7-II
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I, Stephanie C. Cunningham, court-appointed counsel for Appellant J.M., certify that I caused to be placed in the mails of the United States, first class postage pre-paid, a true and correct copy of the OPENING BRIEF OF APPELLANT and this CERTIFICATE OF SERVICE, addressed to Appellant J.M. at:

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Redmond, WA 98052

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: September 30, 2016

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