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71031-1

NO. 71031-1-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

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In re Detention of J.M.,  
STATE OF WASHINGTON,

Respondent,

v.

J.M.,

Appellant.

**COPY RECEIVED**

APR 30 2014

King County Prosecuting Attorney's Office  
Criminal Division  
Civil Commitment Unit

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Beth Andrus, Judge

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BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The superior court erred in finding the appellant should be committed for 14 days because he was gravely disabled. CP 18.

Issues Pertaining to Assignment of Error

1. Did the State present insufficient evidence the appellant was gravely disabled under the first prong of the statute?

2. Even though the commitment order has expired, do its enduring consequences nevertheless call for review on the merits by this Court?

B. STATEMENT OF THE CASE

On September 27, 2013, the State filed a petition to commit J.M. for 14 days of involuntary treatment in a secure facility. CP 1-12; RCW 71.05.230; RCW 71.05.240. The petition alleged J.M. should be committed because, due to a mental disorder, he was “gravely disabled” under both prongs of RCW 71.05.020(17)<sup>1</sup> and because he presented a

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<sup>1</sup> RCW 71.05.020(17) defines “gravely disabled” as

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] 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] actions and is not receiving such care as is essential for [is] health or safety.

substantial risk of harm to himself and others. CP 13. By the September 30 hearing on the petition, the State had abandoned the allegation that J.M. posed a risk of harm to others. RP 29.

Rachel Long, J.M.'s case manager at the Downtown Emergency Services Center (DESC) in Seattle, had known J.M. since 2008 and had served as his case manager since July of 2013. RP 4. When J.M. was doing well, he was organized, his hygiene was better, and he could engage in conversation. RP 4. When he was doing poorly, his speech was disorganized and he made bizarre gestures. RP 5-6, 17. J.M. had been in the latter state for a few years. RP 5. During that time, he had been reluctant to engage in outpatient services through DESC or to even discuss services. RP 4.

J.M. was jailed in August of 2013. RP 6. He received medication while in jail but discontinued it afterward. RP 6. Since release, J.M. visited the emergency room (ER) on numerous occasions. RP 6-7. Each time, Long was called in to evaluate him. RP 7. During the most recent ER visit, J.M. was uncharacteristically despondent and expressed suicidal thoughts. RP 8. But J.M. also denied wanting to hurt himself and his suicidal feelings were apparently related to lack of access to cigarettes. RP 8, 13, 17-18.

The commitment petition was filed in part because J.M. had no plan as to where he would go after leaving the ER. RP 13. J.M. had been barred from staying at DESC and was unwilling or unable to talk to Long about other options for housing. RP 10, 12-13.

Long acknowledged J.M. was known to stay at other shelters and was still free to use the DESC “drop-in” facility for showering and other services. RP 16. But J.M. appeared to be losing weight. RP 13. At a DESC barbecue occurring in late August, Long could see the outline of J.M.’s spine through his shirt. RP 13-14. Despite Long’s concerns, however, J.M.’s hygiene was adequate and he ate at the barbecue. RP 17.

Dr. Rachel Eisenhauer, a clinical psychologist at Navos, evaluated J.M. before the September 30 hearing. RP 20. In Eisenhauer’s opinion, J.M. suffered from schizoaffective disorder. RP 20. In addition, he had a long history of psychiatric hospitalizations and was previously diagnosed with schizophrenia. RP 21, 25.

Eisenhauer believed J.M.’s mental disorder placed him at substantial risk of self-harm. RP 20-21. In reaching that opinion, she relied on Long’s account of J.M.’s most recent ER visit. RP 22-23.

Eisenhauer also opined that J.M. was gravely disabled under both prongs. RP 20-21. In support, Eisenhauer relied on J.M.’s loss of 20 pounds in the previous two and a half months. RP 23-24. In addition, his

frequent trips to the ER indicated he was unable to care for himself in the community. RP 25, 27-28.

The court found the State had failed to prove that J.M. posed a substantial risk of self-harm. The State also failed to prove J.M. was gravely disabled under the second statutory prong. RP 36.

As for the first prong, however, the court found by a preponderance of the evidence that J.M.'s mental disorder adversely affected his cognitive and volitional functioning. RP 36-37. Moreover, he was at a "substantial risk of danger of serious physical harm resulting from his inability to provide for his essential health and safety needs." RP 37; CP 18; RCW 71.05.020(17)(a). In particular, J.M. was unable to adequately feed himself or to obtain shelter, as demonstrated by his weight loss and frequent ER visits. RP 37.

The court therefore committed J.M. for 14 days of inpatient treatment. CP 18-24.

J.M. timely appeals. CP 30-38.

C. ARGUMENT

1. BECAUSE THE COURT ERRED IN FINDING J.M. WAS GRAVELY DISABLED, THE COMMITMENT ORDER SHOULD BE REVERSED.

Involuntary commitment for mental disorders represents a significant deprivation of liberty requiring due process of law. In re

Detention of LaBelle, 107 Wn.2d 196, 201, 728 P.2d 138 (1986); RCW 71.05.360 (listing protected rights at involuntary commitment hearings, including 14-day commitment hearings).

An individual may be involuntarily committed for mental health treatment only if, as a result of a mental disorder, he either (1) poses a substantial risk of harm to himself, others, or the property of others, or (2) is gravely disabled. LaBelle, 107 Wn.2d at 201-02.

In reviewing an involuntary commitment order, this Court considers “whether substantial evidence supports the findings and, if so, whether the findings in turn support the trial court's conclusions of law and judgment.” Id. at 209. The burden at 14-day commitment hearings is by a preponderance of the evidence. RCW 71.05.240.

RCW 71.05.020(17) defines gravely disability as

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] 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] actions and is not receiving such care as is essential for [his] health or safety.

In addition, to prove commitment is necessary under the first prong, 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.<sup>2</sup> To support a finding of grave disability under this definition, the individual's inability to provide for these essential needs must arise from the mental disorder and not other factors. Id. at 205.

Here, the court found J.M. was gravely disabled under the "a" prong based in part on his recent loss of 20 pounds. But the State failed to prove J.M.'s weight loss was detrimental to his overall health.

According to Dr. Eisenhauer, J.M.'s mental health records indicated he was in relatively good physical health. RP 28. Without evidence of the connection between J.M.'s weight loss and his overall health, moreover, the State failed to prove he was at risk of serious physical harm. See LaBelle, 107 Wn.2d at 214 (reversing commitment based on "a" prong and stating that even if petitioner Richardson was not eating well, there was no evidence that he was in any danger therefrom or that it was a result of his mental disorder).

Because the State failed to prove J.M. was gravely disabled, this Court should reverse the commitment order.

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<sup>2</sup> LaBelle addressed former RCW 71.05.020(1), which the legislature recodified at RCW 71.05.020(17) without substantive changes.

2. THIS COURT SHOULD REJECT ANY ARGUMENT BY THE STATE THAT THE CASE IS MOOT.

The order at issue in this case has expired, and the court later entered an agreed order committing J.M. to 90 days of “less restrictive” treatment. CP 21-24, 39-41. J.M.'s appeal is, nevertheless, not moot.

An appeal is moot where it presents merely academic questions and where this court can no longer provide effective relief. In re Detention of M.K., 168 Wn. App. 621, 626, 279 P.3d 897 (2012) (citing In re Cross, 99 Wn.2d 373, 376-77, 662 P.2d 828 (1983)). But release from detention does not render an appeal moot where collateral consequences flow from the determination authorizing such 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)).

Such is the case here. In evaluating petitions for civil commitment under chapter 71.05 RCW, the trial court is directed to consider, in part, a history of recent civil commitments. Each commitment order entered up to three years before the current commitment hearing becomes a part of the evidence against a person seeking denial of a petition for commitment. See RCW 71.05.012 (“[C]onsideration of prior mental history is particularly relevant in determining whether the person would receive, if

released, such care as is essential for his or her health or safety.”); RCW 71.05.212(1)(d) (in evaluation by designated mental health professional, "consideration shall include all reasonably available information from credible witnesses and records regarding . . . [p]rior commitments under this chapter.”); RCW 71.05.245 (““recent”” history of prior commitments “refers to the period of time not exceeding three years prior to the current hearing”). Although current RCW 71.05.245<sup>3</sup> addresses only the trial

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<sup>3</sup> The legislature amended the statute to include, effective in July, commitments based on a finding of grave disability:

(1) In making a determination of whether a person is gravely disabled or presents a likelihood of serious harm in a hearing conducted under RCW 71.05.240 or 71.05.320, the court must consider the symptoms and behavior of the respondent in light of all available evidence concerning the respondent's historical behavior.

(2) Symptoms or behavior which standing alone would not justify civil commitment may support a finding of grave disability or likelihood of serious harm when: (a) Such symptoms or behavior are closely associated with symptoms or behavior which preceded and led to a past incident of involuntary hospitalization, severe deterioration, or one or more violent acts; (b) these symptoms or behavior represent a marked and concerning change in the baseline behavior of the respondent; and (c) without treatment, the continued deterioration of the respondent is probable.

(3) In making a determination of whether there is a likelihood of serious harm in a hearing conducted under RCW 71.05.240 or 71.05.320, the court shall give great weight to any evidence before the court regarding whether the person has: (a) A recent history of one or more violent

court's use of a history of commitments based on “likelihood of serious harm” rather than grave disability, well established case law holds that commitments based on grave disability are also relevant to later commitment determinations. M.K., 168 Wn. App. at 629 (citing LaBelle, 107 Wn.2d 196; In re Meistrell, 47 Wn. App. 100, 108, 733 P.2d 1004 (1987)).

J.M.’s appeal is not moot, despite the expired commitment period, because the consequences of such an order persist long after its expiration. This Court should therefore consider J.M.’s appeal on the merits.

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acts; or (b) a recent history of one or more commitments under this chapter or its equivalent provisions under the laws of another state which were based on a likelihood of serious harm. The existence of prior violent acts or commitments under this chapter or its equivalent shall not be the sole basis for determining whether a person presents a likelihood of serious harm.

For the purposes of this subsection “recent” refers to the period of time not exceeding three years prior to the current hearing.

RCW 71.05.245 (effective July 1, 2014); Laws of 2010, ch. 280, § 3.

D. CONCLUSION

The appeal is not moot. The 14-day commitment order should be vacated and the petition dismissed.

DATED this 30<sup>TH</sup> day of April, 2014.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC



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Attorneys for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO**

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In re Detention of J.M.,	)	
	)	
STATE OF WASHINGTON/DSHS	)	
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Respondent,	)	
	)	
v.	)	COA NO. 71031-1-I
	)	
J.M.,	)	
	)	
Appellant.	)	

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**DECLARATION OF SERVICE**

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 30<sup>TH</sup> DAY OF APRIL, 2014 I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] J.M.  
DESC EMERGENCY SHELTER  
517 3RD AVENUE  
SEATTLE, WA 98104

**SIGNED** IN SEATTLE WASHINGTON, THIS 30<sup>TH</sup> DAY OF APRIL, 2014.

x Patrick Mayovsky

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