

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: T.N.L., :
Petitioner : **No. 07-00,242**
: **CIVIL ACTION**

OPINION AND ORDER

Before this Honorable Court, is the Petitioner's February 1, 2007 Petition for Return of Seized Property and Related Claims. Specifically, the Petitioner is seeking the return of his firearm, by way of an exemption from the prohibitions enumerated in 18 P.S. § 6105. The firearm was seized after he was committed for emergency examination and treatment under 50 P.S. § 7302. In the alternative, the Petitioner requests that the Court order that the record of his commitment be expunged for failure to follow proper procedure thereby, all things being equal, lifting the prohibition on his ability to possess a firearm. For the following reasons, the Court hereby GRANTS the latter of the Petitioner's requests.

Background

On May 8, 2005, the Petitioner and his then girlfriend, who, at the time, had been living with him at his residence, began arguing about her intent to end the relationship. When the Petitioner's girlfriend attempted to leave the property, the Petitioner threw a note inside her car that said, "(name omitted) I love you. I will not let any mess to clean up. It's time for me to go. God wants me now. He will set me free. Always remember me. I will love you forever." Respondent's Exhibit #2. The Petitioner then retrieved a gun from inside the residence, returned to the front porch, and asked his girlfriend if she wanted to watch. The Petitioner's girlfriend left the property and promptly telephoned the Muncy Police; her call was received at 2:47 P.M.. Police were dispatched to the Petitioner's residence; they arrived at 3:08 P.M. After the

Petitioner admitted to writing the above quoted note, the Police took him into custody and requested that his girlfriend, because she had more information, pursuant to 50 P.S. § 7302(a), petition for him to be taken to a hospital for an emergency involuntary examination and/or treatment. Officer Dangle and Judicial Actions Coordinator Joseph H. Radley located the Petitioner's girlfriend and had her complete an Application for Involuntary Emergency Examination and Treatment. The Petitioner's girlfriend checked box (ii) on the application, which states, in relevant part, "the person has attempted suicide and that there is a reasonable probability of suicide unless adequate treatment afforded under this act." Respondent's Exhibit #1. She also described the specific behavior of the Petitioner that supported her concerns: "Todd and I have been living together for about one year. On 5/7, I was late coming home. He's accusing me of infidelity which is not true. This A.M., he threatened to kill himself. He had a rifle and stood on the porch and asked me if I wanted to watch. He gave me a note alluding to suicide. He gave me flowers to put on his grave. I feel he's a danger to himself and needs treatment." *Id.* Based on the Petitioner's girlfriend's application, Coordinator Radley issued a warrant, at 4:00 P.M., authorizing the police to take the Petitioner to the hospital for emergency involuntary examination and treatment.

The Petitioner arrived at Divine Providence Hospital Behavioral Health Unit (hereinafter, the "Unit") at 4:40 P.M. where he was, pursuant to 50 P.S. § 7302(c), notified of his rights. The Petitioner's blood and urine was also drawn when he arrived. At 4:52 P.M., the Petitioner was examined by Dr. James C. Edwards; no decision regarding whether the Petitioner was "severely mentally disabled within the meaning of 50 P.S. § 7301 and in need of immediate treatment," 50 P.S. § 7302(b), was made following that examination. At 6:00 P.M., the results of the Petitioner's blood and urine tests showed a B.A.C. of .129. Dr. Edwards did not examine the

Petitioner again until 9:00 P.M. when, some over four hours after the Petitioner first arrived at the Unit, Dr. Edwards decided, pursuant to 50 P.S. § 7302(b), to involuntarily admit the Petitioner for inpatient treatment. Two hours later, at 11:00 P.M., the Petitioner consented to being admitted to Divine Providence Hospital for inpatient mental health evaluation and treatment. On May 10, 2007, the Hospital discharged the Petitioner with no medical restrictions.

As a consequence of the Petitioner's commitment under 50 P.S. § 7302, pursuant to 18 P.S. § 6105(c)(4), his firearm was seized and the police have denied his requests for its return prompting the Petitioner to file the instant Petition for Return of Seized Property and Related Claims. In his Petition, the Petitioner seeks to have the Court grant him an exemption (i.e. despite his commitment under 50 P.S. § 7302, the Court finds that he may possess a firearm) or, in the alternative, expunge his mental health record because his involuntary commitment was improper thereby eliminating any bar to his ability to possess a firearm. Since the Court will order that the record of the Petitioner's involuntary commitment be expunged, it will only discuss that portion of the Petitioner's argument.

Discussion

As a preliminary matter, the Court finds that, although the term of the Petitioner's commitment has since expired, the issue of whether said commitment was procedurally sound is not, as argued by the Lycoming County Solicitor at the March 9, 2007 hearing on the instant Petition, moot. "Involuntary commitment affects an important liberty interest, and because of their nature, most involuntary commitment orders expire before appellate review is possible," *citations omitted*; furthermore, to dismiss such appeals as moot would permit the challenged procedure to continue and evade proprietary review." *In re Condry*, 304 Pa. Super. 131, 133 450 A.2d 136, 137 (Pa. Super. Ct. 1982), *citations omitted* and *In re S.O. and In re R.T.*, 342 Pa.

Super. 215, 227, 492 A.2d 727, 732 (Pa. Super. Ct. 1985), *citations omitted*. Although the previously cited cases involve extended involuntary commitments (i.e. those exceeding the initial 120 hours commitment under Section 7302 of the Mental Health Procedures Act), this Court finds that the essential elements to be persuasive and applicable to the issue *sub judice*.

Section 6105 of the Crimes Code provides, in relevant part, that,

[a] person who has been . . . involuntarily committed to a mental institution for inpatient care and treatment under section 302, 303 or 304 of the provisions of the . . . Mental Health Procedures Act shall not possess, use, control, sell, transfer or manufacture or obtain a license to possess, use, control, sell, transfer or manufacture a firearm in this Commonwealth.

18 P.S. § 6105. The Respondent argues that because the Petitioner was committed under Section 302 of the Mental Health Procedures Act (hereinafter, the “Act”), he is not entitled to the return of his firearm that was seized as a result of said commitment; the Petitioner argues that his commitment was procedurally infirm and therefore illegal and, therefore, his firearm should be returned to him upon his request.

Section 302 of the Act states, in relevant part, that,

[an] emergency examination may be undertaken at a treatment facility upon the certification of a physician stating the need for such examination; or upon a warrant issued by the county administrator authorizing such examination; or without a warrant upon application by a physician or other authorized person who has personally observed conduct showing the need for such examination. . . . A person taken to a facility shall be examined by a physician within two hours of arrival in order to determine if the person is severely mentally disabled within the meaning of section 301 (A person is severely mentally disabled when, as a result of mental illness, his capacity to exercise self-control, judgment and discretion in the conduct of his affairs and social relations or to care for his own personal needs is so lessened that he poses a clear and present danger of harm to others or to himself, 50 P.S. § 7301) and in need of immediate treatment. If it is determined that the person is severely mentally disabled and in need of emergency treatment, treatment shall be begun immediately. If the physician does not so find, or if at any time it appears there is no longer a need for immediate treatment, the person shall be discharged and returned to such place as he may reasonably direct. The physician shall make a record of the examination and his findings.

50 P.S. § 7302.

Therefore, under the Act, when the substantive requirements of Section 7301 and the procedural requirements of Section 7302 are satisfied, a person can be involuntarily committed to a treatment facility and because involuntary commitment implicates a significant liberty interest and entails lifelong consequences (e.g. limitations on the individual's ability to own a firearm), this Court finds that the procedural requirements enumerated in the Act must be strictly and precisely satisfied in order for an involuntary commitment, effectuated under the Act, to be legitimate. *In re Condry*, 304 Pa. Super. 131, 450 A.2d 136 (Pa. Super. Ct. 1982) and *In re T.T.*, 2005 PA Super 182; 875 A.2d 1123 (Pa. Super. Ct. 2005), both citing *Commonwealth v. Hubert*, 494 Pa. 148, 430 A.2d 1160 (1981).

Here, it is clear to the Court that there was sufficient evidence for a warrant to issue. The Petitioner verbally threatened to kill himself more than once on the day he was committed and memorialized this intent in a note he gave to his then girlfriend. However, "it is not enough to find that the patient was truly in need of the services provided," *In re S.O. and In re R.T., supra*, 342 Pa. Super. at 233, 492 A.2d at 737 (Pa. Super. Ct. 1985); there must be adequate protections provided, and followed, to ensure the patient is afforded due process – "the Act was intended to create a treatment scheme under which a patient's procedural protections expand progressively as deprivation of his liberty gradually increases," *In re S.O. and In re R.T., supra*, 342 Pa. Super. at 233, 492 A.2d at 737, citing *In re C.B.*, 307 Pa. Super. 176, 452 A.2d 1372 (Pa. Super. Ct. 1982), and, because a significant liberty interest is at stake, strict adherence to the treatment scheme set forth in the statute must be enforced. *Commonwealth v. Hubert*, 494 Pa. 148, 430 A.2d 1160 (1981); *Commonwealth v. Blaker*, 293 Pa. Super. 391, 446 A.2d 976 (Pa. Super. Ct.

1981); *In re Condry*, 304 Pa. Super. 131, 450 A.2d 136 (Pa. Super. Ct. 1982); *In re S.O.*, *supra*, 342 Pa. Super. 215, 492 A.2d 727 (Pa. Super. Ct. 1985); and *In re Chiumento*, 455 Pa. Super. 376, 382, 688 A.2d 217, 220 (Pa. Super. Ct. 1996).

Here, the Petitioner, after being taken to the Unit, was examined by Dr. Edwards within two hours of his arrival; however, and most importantly, the decision to involuntarily commit the Petitioner was not made until over four hours after his arrival at the Hospital contrary to 50 P.S. § 7302 that the decision occur within the first two hours the patient arrives at the hospital. The Respondent argues that the determination was delayed because the Petitioner was intoxicated upon his arrival; however, the statute does not provide any exception to the two-hour decision deadline. The Respondent also argues that the Petitioner actually consented to his commitment. While this is true, the Petitioner did not initially consent to being committed against his will; his consent was obtained at 11:00 P.M., two hours after the decision to involuntarily commit him was already made. The Court finds that, based on the timeline of events, the Petitioner would not have consented to inpatient treatment but for the earlier decision to involuntarily commit him. The Court believes that, based on the timeline, the Petitioner was deprived of his liberty well in excess of the statutory limits thereby tainting his consent to be admitted.

Accordingly, because this Court finds that the Petitioner's commitment was illegal, we order that all record of said commitment shall be destroyed – “justice demands that the [aggrieved party] be returned to a position as near as possible as that which he enjoyed prior to the illegal commitment; namely, an unsullied record.” *In re R.F.*, 2006 PA Super. 375, P3, 914 A.2d 907, 908 (Pa. Super. Ct. 2006) citing, *Commonwealth v. J.T.*, 279 Pa. Super. 127, 420 A.2d 1064 (Pa. Super. Ct. 1980) and *Wolfe v. Beal*, 477 Pa. 477, 384 A.2d 1187 (Pa. Super. Ct. 1978).

Therefore, the Petitioner's rights shall be restored to him as though the events of May 8, 2005 never occurred.

ORDER

AND NOW, this _____ day of June 2007, the Court hereby **ORDERS** and **DIRECTS** as follows:

1. All record of the Petitioner's involuntary committed shall be **EXPUNGED**; this includes, but is not limited to, hospital/medical records, Pennsylvania State Police Records, and Court records¹; and
2. The law enforcement agency that is in possession of the Petitioner's firearm is hereby **ORDERED** and **DIRECTED** to return said firearm to the Petitioner upon his request and presentment of the instant Order.

By the Court,

Nancy L. Butts, Judge

xc: Bradley Hillman, Esq.
Charles F. Greevy, III, Esq.
Divine Providence Hospital Behavioral Unit (via the Petitioner)
Joseph H. Radley, Judicial Actions Coordinator
PSP, PICS Unit, 1800 Elmerton Avenue, Harrisburg, PA 17710
Lycoming County Sheriff's Department
William J. Burd, Prothonotary
Hon. Nancy L. Butts
Judges
Laura R. Burd, Esq. (Law Clerk)
Gary L. Weber, Esq. (Lycoming Reporter)

¹ Because all record of the Petitioner's commitment is hereinafter non-existent, he is no longer obligated to report or disclose this information upon request.