IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

In re C G : No. 15-80056

O P I N I O N A N D O R D E R

Before the Court are two related matters, a petition for involuntary emergency examination and treatment of an incarcerated individual filed by her father[1] under the Mental Health Procedures Act, 50 P.S. § 7101, *et. seq* ("Act") and a motion to dismiss the petition filed by and on behalf of Pennsylvania Department of Corrections, SCI-Muncy (DOC). Argument was held on March 28, 2016. Upon consideration of the record, briefs and argument, for the reasons that follow, the Court is constrained by the Act to grant DOC's motion to dismiss.

FACTUAL BACKGROUND.

This matter concerns the mental well-being of a 34 year old woman, CG, who is currently incarcerated at SCI-Muncy. The petition to impose emergency medical treatment upon Ms. G stems from the following alleged facts. Ms. G has been incarcerated since her 2006 conviction in XYZ County for Homicide by Vehicle while DUI. The offense involved a motor vehicle collision which occurred in 2002 while Ms. G was driving under the influence and her friend was a passenger. Her friend was killed as a result. At the time, Ms. G was about 20 years old and enrolled in XYZ College.

In November of 2012 the Pennsylvania Board of Probation and Parole (Parole Board) denied Ms. G's parole application because of her refusal to accept mental health treatment. As a direct result of her mental illness, the Parole Board determined that Ms. G should serve the remainder of her sentence which expires in December of 2018. While at SCI-Muncy, Ms. G's mental health **markedly** declined. On March 23, 2014, SCI-Muncy had one of its psychiatrists

[1] The Court notes that Ms. G is fixated on DNA and stolen identity. Ms. G does not believe that the petitioner is her father or that any father would petition to have his daughter involuntarily treated. See Ms. G's Answer to Petition, ¶ 1. The Court rejects the DOC's contention that petitioner lacks standing because he is not the guardian of Ms. G.

evaluate Ms. G. Ms. G refused to consent and abruptly walked away. SCI-Muncy's psychiatrist reported that Ms. G presented with "significant psychotic symptoms" and was delusional. The psychiatrist reported that Ms. G had not posed a danger to herself or others **in the unit** and was safe to stay **in her unit.** (emphasis added). The psychiatrist recommended an inpatient psychiatric evaluation and treatment as soon as it is arranged. To date, Ms. G has not received such an evaluation or treatment.

Petitioner secured an independent psychological evaluation of Ms. G on July 28, 2014. At that time, her provisional diagnosis was paranoid schizophrenia with clear psychotic features.[2] The psychologist opined that Ms. G is currently amenable to treatment but that it is "highly unlikely" that Ms. G will "voluntarily consent to treatment unless she is prescribed medication against her will." The psychologist expressed "serious concerns" about Ms. G remaining amenable to mental health treatment by the time she completed her sentence. The psychologist opined that Ms. G was incapable of making a rational decision about treatment. The psychologist further recommended that at some juncture Ms. G receive a MRI and/or neuropsychological assessment in order to rule out any neuroanatomical dysfunction interfering with her mental condition.

DISCUSSION

The issue before this Court is whether Ms. G poses a clear and present danger of harm to others or herself as defined in Act. Petitioner relies on 50 P.S. § 7301(b)(2)(i) of the Act, which provides the following.

> (b) DETERMINATION OF CLEAR AND PRESENT DANGER. --
> ***
> (2) Clear and present danger to himself shall be shown by establishing that within the past 30 days:

[2] Because Ms. G did not consent to personality testing, the evaluator could not make more than a provisional diagnosis.

> (i) the person has acted in such manner as to evidence that he would be unable, without care, supervision and the continued assistance of others, to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety, **and** that there is a reasonable probability that **death, serious bodily injury or serious physical debilitation would ensue within 30 days** unless adequate treatment were afforded under this act [.] 50 P.S. § 7301(b)(2)(i). (emphasis added.)

When evaluating whether the criteria of the Act are met, the Supreme Court of Pennsylvania has cautioned courts to strictly interpret and adhere to the requirements of the Act. In re T.T. Appeal of T.T., 875 A.2d 1123 (Pa. Super. 2005), *citing,* Commonwealth v. Hubert, 494 Pa. 148, 153, 430 A.2d 1160, 1162-63 (Pa. 1981). In Hubert, the Supreme Court of Pennsylvania explicitly stated that "strict adherence to the statutory requirements is to be compelled." Hubert, supra, 430 A.2d at 1163. The Supreme Court of Pennsylvania recognized the obligation of strict adherence to the Act even when the person is already being held in custody. Specifically, the Court stated: "[t]he fact that appellant was already being held in custody in a juvenile detention center, and faced transfer to a mental institution, did not diminish the seriousness of the commitment proceeding." Hubert, supra, 430 A.2d at 1162.

In accordance with strict construction of the Act, the Superior Court has required that the subparts of 50 P.S. § 7301(b)(2) be clearly met. In Commonwealth ex rel. Gibson v. Di Giacinto, 497 Pa. 66, 439 A.2d 105 (Pa. Super. 1981) the Superior Court reversed the commitment of an inmate suffering from schizophrenia with paranoid delusions because the applicable subsections (ii) or (iii) (related to threats of suicide or self-mutilation) were not met. The inmate failed to take scheduled doses of his psychoactive medication, thorazine, and was found extinguishing a burning newspaper in his cell. A search of his cell revealed possession of a twisted piece of coathanger. The Court concluded that the evidence was insufficient to establish attempted suicide or self-mutilation under 50 P.S. § 7301(b)(2)(ii) or (iii).

The Superior Court has held that a mental health condition that aggravates an ongoing and worsening serious physical debilitation can satisfy the requirements under subsection (i) (related to death, serious bodily injury or serious physical debilitation). In re T.T., 875 A.2d 1123 (Pa. Super. 2005). In that case, the Superior Court affirmed the trial court's order committing an inmate to involuntary psychiatric treatment under that subsection of the Act. The inmate suffered from paranoid delusions and consistently refused mediation. The inmate's psychiatric problems interfered with treatment of his physical condition related to an old injury and mild to moderate arthritis in his right knee. This condition required strengthening exercises, but the inmate's mental health condition caused him to refuse to walk for two years, causing limb atrophy. The knee required strengthening exercises to prevent permanent disability. In re T.T., supra, 875 A.2d at 1124. The Court concluded that the worsening of an existing serious physical debilitation satisfies the requirement to show that "serious physical debilitation would ensue within 30 days [.]"

The subsection at issue in the present case unambiguously requires a **physical** debilitation resulting from the mental health condition. In the present case, the petitioner has not shown that a serious *physical* debilitation would ensue without treatment, either as a new physical condition or as a worsening of an existing physical condition. Instead, the petitioner set forth evidence that a serious existing mental health condition would worsen without treatment, possibly irreversibly. Petitioner alludes to Ms. G's severe psychotic break from reality, with severe delusional thinking, as having a physical component. Similarly, the petitioner suggests that Ms. G suffers from a neuropsychological or neuroanatomical disability. The Court cannot find that Ms. G would suffer from a serious physical debilitation or worsening of one based upon the record. The psychologist who evaluated Ms. G recommended that at some juncture Ms. G receive a MRI and/or neuropsychological assessment in order **to rule out** any neuroanatomical

dysfunction interfering with her mental condition. (emphasis added). There was no evidence that Ms. G suffered from such dysfunction. Based on this record, the Court cannot find that all individuals laboring under delusions or all individuals requiring psychological medication suffer physiological changes in the brain. Even if the record established that physiological changes or neuroanatomical dysfunction exists, without expert testimony, the Court cannot make the leap that they would constitute a **serious physical** debilitation.

Despite the above, this Court finds the petition for emergency involuntary extremely compelling. Ordering involuntary treatment now is probably the best chance Ms. G has of ever improving her mental health condition enough to regain her freedom in her lifetime.[3] In addition, it is probably is the most cost- effective approach for the Commonwealth. The evaluating psychologist opined that Ms. G is amenable to treatment now but has serious concerns that she will remain amenable to treatment until the expiration of her maximum sentence. Without treatment, the Commonwealth will likely incur the cost of incarceration until Ms. G serves her maximum sentence. At that time, Ms. G will likely no longer be amenable for treatment. Upon release, the DOC will no longer provide for her need for food, personal or medical care, shelter, or self-protection and safety. As a result, the Commonwealth will likely incur the lifetime cost of involuntary medical treatment because M. G would no longer be amenable to treatment. Ms. G does not belong in prison. Our prisons should not be warehouses for the mentally ill.

[3] The Court notes that the public policy underlying strict compliance with involuntary commitment is that it involves the serious curtailment of a liberty interest. See, e.g., Hubert, supra.

Our Pennsylvania Supreme Court and Legislature have spoken in such a manner so as to obligate this Court to dismiss the involuntary petition for emergency treatment.[4] This issue cries out for a legislative solution.

Accordingly, the Court enters the following order.

ORDER

AND NOW this **27th** day of **May** **2016**, upon consideration of the underlying petition and motion to dismiss, the DOC's motion to dismiss is GRANTED and the Petition for involuntary treatment is DISMISSED. The Prothonotary shall mark the case as closed.

BY THE COURT,

May 27, 2016
Date

Richard A. Gray, J.

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[4] In light of this Court's ruling, the Court can only hope that the professional and administrative staff at SCI-Muncy and/or the DOC will begin to reach out on a repeated and frequent basis to Ms. G to secure voluntary treatment. In particular, the record suggests that Ms. G may be willing to take medication if certain elaborate and special accommodations for packaging and or distribution could be satisfied.