

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: C.J.K., : **ORPHANS COURT DIVISION**
Petitioner : **No. 41-17-0161**
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OPINION AND ORDER

On April 10, 2017 Petitioner, C.J.K. filed a petition with this Court for the expungement of his Mental Health Records and/or a Petition to Restore his Civil Rights. Petitioner wishes to purchase a firearm which is prohibited after he was committed for emergency examination and treatment under 50 P.S. § 7302 on May 31, 2009. Petitioner requests that the record of his commitment be expunged as there was not sufficient evidence to justify the commitment pursuant to Section 302 of the Mental Health Procedures Act, or in the alternative, reinstate his rights under 18 Pa.C.S.A. Section 6105 (f), as he no longer poses a threat to himself or to the public. Hearings were held on the petition June 16, 2017 and August 18, 2017.

Background

On May 31, 2009, the Petitioner was brought by his father and sponsor to the Williamsport Hospital Emergency Department because he was using drugs, specifically PCP; he was hallucinating, incoherent and his father didn't know what to do with him. While at the hospital still under the influence of controlled substances, Petitioner was heard to say "I just want to die." Petitioner was combative and uncooperative. His father had told staff that he had spoken of killing himself in the past but was not aware if he had the means to do so. Father did state in a written supplement to the petition that he did have access to guns in the family home. Father

also testified that he believed and was told that in order to get help for his son; he needed to say that he believed that his son was a danger to himself and needed immediate emergency mental health intervention. Petitioner's exhibit #1.

Petitioner testified that during this time he was battling a heroin and cocaine addiction. More specifically in May, 2009 he had access to a large amount of money and went on a "three day run" using drugs and smoking a "much more than normal" amount of PCP. He was told that he was found unconscious in his vehicle and transported to the hospital by his father and others in the NA¹ fellowship. The only thing that he remembers was waking up at the Meadows several days later. He never recalled being asked about "signing himself in."

Since his placement at the Meadows he has only been involved in inpatient or outpatient treatment for drug addiction. He is currently self-employed and lives outside Lycoming County. He is engaged to be married and currently has primary custody of his one child. He has been clean for the last 7 years.

Lisa Cox, emergency assessment caseworker for the Lycoming County MH/ID was working when Petitioner was brought in to the Williamsport Hospital. She testified that she had questions about why he was not medically admitted due to the level of drugs that had been reportedly used by Petitioner. Id. at p.9. Petitioner was so combative at the hospital he was given both Haldol² and Ativan³. Ultimately she signed the warrant at 3:45 AM after receiving the 302 paperwork from Petitioner's father. Petitioner was examined by Dr. Fiero at 3:55 AM. Id. at p.5. Petitioner was not

¹ Narcotics Anonymous

² Antipsychotic medication

³ A benzodiazepine used for sedation.

medically cleared until 10:06 AM. Id. at p.9. At 12:27 PM another crisis worker went to speak with Petitioner and his parents. Petitioner was described by the worker as having “not understood his rights” and that he kept falling back asleep while the caseworker was attempting to read him his rights. It was at that time the caseworker advised the family that a search for an inpatient bed would be made. Ultimately Petitioner was transported to the Meadows Psychiatric Center. Id at p.11. It is unclear whether any additional mental health exam was performed by a physician after Petitioner was medically cleared in the Emergency Department.

Petitioner also presented testimony on the issue of lifting the prohibition on his ability to possess a firearm from several witnesses about his dedication and work with those in recovery and his own 7 years of sobriety.

Discussion

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. Petitioner argues that his commitment was not supported by the evidence and therefore illegal and his involuntary commitment should be expunged thereby restoring his right to possess a firearm.

Section 7302 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.

When a person attempts to obtain a firearm and is precluded by involuntary commitment the Court is required to review the “sufficiency of the evidence upon which the commitment was based” as set forth in 18 Pa.C.S. § 6111.1(g)(2).

g) Review by court

(2) A person who is involuntarily committed pursuant to section 302 of the Mental Health Procedures Act may petition the court to review the sufficiency of the evidence upon which the commitment was based. If the court determines that the evidence upon which the involuntary commitment was based was insufficient, the court shall order that the record of the commitment submitted to the Pennsylvania State Police be expunged. A petition filed under this subsection shall toll the 60-day period set forth under section 6105(a)(2). (3) The Pennsylvania State Police shall expunge all records of an involuntary commitment of an individual who is discharged from a mental health facility based upon the initial review by the physician occurring within two hours of arrival under section 302(b) of the Mental Health Procedures Act and the physician’s determination that no severe mental disability existed pursuant to section 302(b) of the Mental Health Procedures Act. The physician shall provide signed confirmation of the determination of the lack of severe mental disability following the initial examination under

section 302(b) of the Mental Health Procedures Act to the Pennsylvania State Police.

The evidence upon which the commitment is based on the information contained in the physician's record of the examination of the individual at the time of commitment, to determine whether the evidence known by the physician at the time, as contained in the contemporaneously create record, supports the conclusion that the individual required commitment to under one (or more) of the specific, statutorily defined circumstances.

50 P.S. § 7301. In re Vencil, Appeal of Pa. State Police, 152 A.3d 235, 2017 Pa. LEXIS 131 (Pa. Jan. 19, 2017).

Under the Mental Health Procedures 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. Because involuntary commitment implicates a significant liberty interest and entails lifelong consequences (e.g. limitations on the individuals 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 brought to the hospital and his father completed an affidavit of sorts to verify. 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 brought to the Williamsport Hospital Emergency Department was seen by a crisis worker at 1:05 AM. Petitioner was first examined by a physician at 3:55 AM after the warrant was issued despite the directive in 50 P.S. § 7302 that the decision occur within the first two hours after the patient arrives at the hospital. The Court notes that the record is unclear as when the actual decision was made to involuntarily commit Petitioner, since there was a statement in the narrative of the Caseworker’s report that the physician wished to commit him because he was “so combative and yelling about suicide and they’re concerned that when he awakens will continue to be combative and refuse treatment”. The inference made by the Court is that it occurred before any exam as the doctor and nurse “want

a 302 warrant issued.” And although the Petitioner was highly under the influence of controlled substances the statute does not provide an exception to the two-hour decision deadline for any reason. It also appears to the Court that the physician was not willing to allow the effects of the drug to wear off before making the determination of the Petitioner’s need for mental health treatment. It is clear from the notes of the caseworker that she was concerned about Petitioner’s suitability for an inpatient mental health placement because of the immediate history of substance abuse creating the present situation.

The Court further notes Petitioner was not even alert or responsive to the Caseworker to be able to be given the opportunity to investigate the option of a voluntary admission for treatment. Petitioner was unresponsive much of the time that the caseworker tried to advise him of his rights. Petitioner testified that the only thing he remembers is waking up at the Meadows much later. Therefore, based upon the timeline established by the exhibits along with the evidence known by the physician at the time, this Court finds there was not a preponderance of the evidence to establish Petitioner was in need of involuntary mental health treatment. In other words, based upon the lack of evidence to show that Petitioner’s acts and statements were not solely the result of his controlled substance use a reasonable person would not accept the information in the possession of the physician to support the decision of the involuntary mental health commitment.

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).

ORDER

AND NOW, this 31st day of October, 2017, after hearing on the Petition for Expungement of Mental Health Records/Petition to Restore Civil Rights the Court finds that the evidence known by the physician at the time does not support the conclusion that the Petitioner required commitment, the Petition is hereby GRANTED.

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 records⁴.

No ruling need be made by this Court on the other relief requested.

By the Court,

Nancy L. Butts, President Judge

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⁴ 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.