

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA

IN RE: M.H.,  
Petitioner. : No. CV 23-00,147  
: :  
: CIVIL ACTION – LAW  
: :  
: Petition for Restoration of  
: Firearms Rights

**OPINION AND ORDER**

AND NOW, this 27<sup>th</sup> day of November, 2023, upon consideration of  
Petitioner's Petition for Restoration of Firearms Rights and Expungement of  
Involuntary Commitment Records (the "Petition") filed on February 7, 2023, it is  
hereby ORDERED and DIRECTED that the Petition is DENIED, for the reasons  
explained below.

***I. BACKGROUND.***

Petitioner, M.H., is an adult individual residing in Williamsport, Lycoming  
County, Pennsylvania.<sup>1</sup> On March 18, 2021, he was involuntarily committed<sup>2</sup> for  
inpatient mental health treatment pursuant to Section 302<sup>3</sup> of the Mental Health  
Procedures Act.<sup>4</sup> As a result of the involuntary commitment, Petitioner's right to  
keep and bear arms is affected, in that he is now prohibited by law from  
possessing, using, controlling, selling, transferring or manufacturing firearms.<sup>5</sup>

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<sup>1</sup> Petition for Restoration of Firearm Rights and Expungement of Involuntary Commitment Records ("Petition"), ¶ 1.

<sup>2</sup> See Involuntary Mental Health Commitment Records for Petitioner, dated March 18, 2021, Respondent's Hearing Exh. PSP A.

<sup>3</sup> 50 P.S. § 7302.

<sup>4</sup> 50 P.S. §§ 7101, *et seq.*

<sup>5</sup> See 18 Pa. C.S. § 6105(c)(4) ("In addition to any person who has been convicted of any offense listed under subsection (b), the following persons shall be subject to the prohibition of subsection (a): ... [a] person who has been ... involuntarily committed to a mental institution for inpatient care and treatment under section 302 ... [of] the Mental Health Procedures Act. This paragraph shall not apply to any proceeding under section 302 of the Mental Health Procedures Act unless the examining physician has issued a certification that inpatient care was necessary or that the person was committable."). Subsection (a) of Section 6105 provides that a prohibited person "shall not

Petitioner contends that his involuntary commitment was improper and that he did not meet the conditions necessary for such involuntary commitment.

Petitioner contends that the involuntary commitment was a result of Petitioner and his ex-fiancé, H.F., getting into an argument after he discovered that she was cheating on him.<sup>6</sup> When police were called because she was attacking him, H.F. informed them that M.H. was intoxicated, had pointed a gun to his head, and was suicidal. Petitioner admitted that he had consumed alcoholic beverages that evening, but he denied then and continues to deny that he pointed a gun at his head or that he was suicidal.<sup>7</sup>

Petitioner contends that his involuntary commitment was based on insufficient evidence. He argues that the sole basis for the commitment was the version of events H.F. communicated to police, which they, then, communicated to the examining physician. He further argues that her version was self-serving and false.<sup>8</sup> He asserts that “[a]t no time was Petitioner afforded any deference, due process, or a chance to speak for himself prior to this involuntary commitment” and that, as a result, he lost his constitutional right to possess a firearm.<sup>9</sup>

The Pennsylvania State Police (“PSP”) appeared in opposition to the Petition. PSP argue that the Petition is a request for restoration for firearm rights upon determination by the court of common pleas that an applicant “may possess

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possess, use, control, sell, transfer or manufacture or obtain a license to possess, use, control, sell, transfer or manufacture a firearm in this Commonwealth.”).

<sup>6</sup> Brief in Support of the Supplemental Petition of M.H. for Restoration of Firearm Rights and Expungement of Involuntary Commitment Records (“Petitioner’s Brief”), filed August 9, 2023, p.1.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

a firearm without risk to [himself] or any other person.”<sup>10</sup> PSP contend that this Court's power to grant relief “is not completely unfettered”<sup>11</sup> and that Petitioner's involuntary commitment was valid because “Petitioner's statements and actions, taken together, form a sufficient basis for an involuntary examination and hospitalization pursuant to [Section 302]”.<sup>12</sup>

The Court conducted a factual hearing and heard argument on the Petition on August 29, 2023.<sup>13</sup> Prior to the hearing and argument, the parties fully briefed their respective positions.<sup>14</sup> Accordingly, this matter is ripe for disposition.

## **II. LAW AND ANALYSIS.**

Petitioner files this Petition pursuant to 18 Pa. C.S. Section 6105(c)(4)<sup>15</sup> and 18 Pa. C.S. Section 6111.1(g)(2).<sup>16</sup> As noted above, one who is under the disability of a firearms prohibition imposed by Section 6105(c)(4) may make application to the court of common pleas, whereupon the court “may grant such

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<sup>10</sup> 18 Pa. C.S. § 6105(f)(1) (“Upon application to the court of common pleas under this subsection by an applicant subject to the prohibitions under subsection (c)(4), the court may grant such relief as it deems appropriate if the court determines that the applicant may possess a firearm without risk to the applicant or any other person.”).

<sup>11</sup> Prehearing memorandum of the Pennsylvania State Police (“Respondent’s Brief”), filed August 24, 2023, pp. 2-3.

<sup>12</sup> *Id.*, pp. 3-8.

<sup>13</sup> The Pennsylvania Office of Attorney General (“OAG”) and the Lycoming County district attorney were given notice of and afforded an opportunity to participate in the hearing, but both deferred to PSP. Petitioner had raised claims alleging unconstitutionality of certain sections of the laws applicable here, see Supplemental Petition for Restoration of Firearm Rights and Expungement of Involuntary Commitment Records, filed June 20, 2023, which prompted OAG to petition to intervene. See Office of Attorney General’s Petition to Intervene and Brief in Support of the Uniform Firearms Act, filed August 21, 2023. Petitioner later withdrew his Constitutional claims prior to the hearing, however, and OAG withdrew its appearance. Office of Attorney General’s Praeceptum to Withdraw Without Prejudice Its Petition to Intervene, filed August 29, 2023; Order approving withdrawal without prejudice, entered September 6, 2023.

<sup>14</sup> See Petitioner’s Brief, filed August 9, 2023; Respondent’s Brief, filed August 24, 2023.

<sup>15</sup> 18 Pa. C.S. § 6105(c)(4) imposes a disability on Petitioner by defining him as a person prohibited from possessing, using, controlling, selling, transferring or manufacturing a firearm. See, *supra*, n.5.

<sup>16</sup> 18 Pa.C.S.A. § 6111.1(a)(2) (“A person who is involuntarily committed pursuant to section 302 of the Mental Health Procedures Act [50 P.S. § 7302] 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....”).

relief as it deems appropriate if the court determines that the applicant may possess a firearm without risk to the applicant or any other person.”<sup>17</sup> The Pennsylvania Supreme Court set out the standard for expungement of Petitioner’s involuntary commitment records in *In re Vencil*.<sup>18</sup> There, the Supreme Court concluded that

[T]he plain language of section 6111.1(g)(2) requires a court of common pleas to review only the sufficiency of the evidence to support the 302 commitment, limited to the information available to the physician at the time he or she made the decision to commit the individual, viewed in the light most favorable to the physician as the original decision-maker to determine whether his or her findings are supported by a preponderance of the evidence.<sup>19</sup>

A person may be committed against his will for inpatient mental health treatment pursuant to Section 302<sup>20</sup> of the Mental Health Procedures Act.<sup>21</sup> Section 302 authorizes involuntary commitment for emergency mental health treatment of a person found to be severely mentally disabled and in need of emergency treatment after examination and certification by a physician.<sup>22</sup> A person is “severely mentally disabled” when, as a result of mental illness, “he poses a clear and present danger of harm to others or to himself.”<sup>23</sup> Once such a finding has been made, the person must be discharged “whenever it is determined that he no longer is in need of treatment and in any event within 120 hours,” unless within such period he is admitted to voluntary treatment or for extended involuntary treatment.<sup>24</sup>

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<sup>17</sup> 18 Pa. C.S. § 6105(f)(1). See, *supra*, n. 10.

<sup>18</sup> *In re Vencil*, 152 A.3d 235 (Pa. 2017).

<sup>19</sup> *Id.*, at 237.

<sup>20</sup> 50 P.S. § 7302.

<sup>21</sup> 50 P.S. §§ 7101, *et seq.*

<sup>22</sup> 50 P.S. § 7302(b).

<sup>23</sup> 50 P.S. § 7301(a).

<sup>24</sup> 50 P.S. § 7302(d).



Here, the documents pertaining to Petitioner's involuntary commitment were introduced as an exhibit at the Hearing.<sup>25</sup> The documents state that "the County Administrator issues a warrant authorizing a policeman or someone representing the County Administrator to take the patient to a facility for examination and treatment."<sup>26</sup> The specific behavior within the last thirty days cited in support of the warrant is described as follows:

[Petitioner] had bad relationship news today which led to him drinking, yelling & then sitting down at the kitchen table yelling with a gun to his head. [H.F.] came down stairs as [Petitioner] was yelling and saw him w/ the gun to his head. [H.F.] wrestled the gun away and noticed the gun was fully loaded w/ a round in the chamber. After this, [Petitioner] cornered [H.F.] in the house, assaulted her and then drank more. Police were called & [Petitioner] was taken to ER.<sup>27</sup>

The warrant specifies that the County Administrator's representative issues it "Based upon representations made to [him] by [H.F.]"<sup>28</sup> Petitioner arrived at the hospital at 8:10 p.m. and was examined by a physician at 8:50 p.m.<sup>29</sup> the examining physician made the following findings:

[Petitioner] presented with police for agitation and suicidal ideation. [Petitioner] recently found out his wife was cheating on him. He drank alcohol and then held a gun to his head. Wife took the gun away and then he got a second gun. On arrival here [Petitioner] is agitated and threatening. Appears to be an imminent danger to himself and others.<sup>30</sup>

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<sup>25</sup> Involuntary Mental Health Commitment Records for Petitioner ("Commitment Records"), dated March 18, 2021, Respondent's Hearing Exh. PSP A.

<sup>26</sup> *Id.*, at 5 of 9. Importantly, a warrant for emergency mental health treatment may issue on less than probable cause, as it is not subject to the same standard as a warrant in a criminal matter. The County Administrator or representative need only demonstrate that "reasonable grounds" exist to believe that a person is severely mentally disabled and in need of immediate treatment. *In re J.M.*, 726 A.2d 1041 (Pa. 1999).

<sup>27</sup> Commitment Records, at 5 of 9.

<sup>28</sup> *Id.*, at 7 of 9.

<sup>29</sup> *Id.*, at 9 of 9.

<sup>30</sup> *Id.*

As a result of those findings, the examining physician determined that the treatment Petitioner needed was “inpatient psychiatric care.”<sup>31</sup> He further stated that, in his opinion, Petitioner was “severely mentally disabled and in need of treatment” and that he should be admitted to a designated facility for a period of treatment not to exceed 120 hours.<sup>32</sup>

Having been called upon to review the sufficiency of the evidence to support the commitment, this Court’s task is to determine whether the examining physician’s findings are supported by a preponderance of the evidence, limited to the information available to him at the time of the commitment and viewed in the light most favorable to him as the original decision-maker.<sup>33</sup> Specifically, this Court must

review the physician’s findings, made at the time of the commitment, to determine whether the evidence known by the physician at the time, as contained in the contemporaneously-created record, supports the conclusion that the individual required commitment under one (or more) of the specific, statutorily-defined circumstances.<sup>34</sup>

This inquiry is a pure question of law requiring review of the facts before the physician at the time of the commitment, viewed in the light most favorable to the physician.<sup>35</sup> The appropriate standard of proof applicable to the physician’s findings is a preponderance of the evidence standard.<sup>36</sup>

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *In re Vencil, supra*, 152 A.3d at 237.

<sup>34</sup> *Id.*, at 242.

<sup>35</sup> *Id.*, at 242-43. Hearsay evidence may be considered in the physician’s decision to admit a patient to treatment upon a Section 302 commitment “[i]n light of the emergency nature, therapeutic purpose and short duration’ of [the] commitment.” *Commonwealth v. Smerconish*, 112 A.3d 1260, 1266-67 (Pa. Super. 2015) (quoting *In re J.M.*, 726 A.2d 1041, 1046-47 n.9 (Pa. 1999); *In re R.D.*, 739 A.2d 548 (Pa. Super. 1989)).

<sup>36</sup> *In re Vencil, supra*, 152 A.3d at 246. “[T]he appropriate standard of proof applicable to the physician’s record findings is a preponderance of the evidence standard, which is generally applicable to civil matters and has been classified as ‘a more likely than not inquiry,’ supported by the greater weight of the evidence; something a reasonable person would accept as sufficient to

At the time of the involuntary commitment, the treating physician was confronted with a report that Petitioner had recently found out H.F. was cheating on him, which led him to drink alcohol, assault H.F. and hold a loaded gun to his head that had a round in the chamber. The report further noted that when the gun was taken from him, he procured a second firearm and continued to drink. Petitioner arrived at the emergency room with police presenting with agitation and suicidal ideation. Upon examining him, the doctor noted he was agitated and threatening and concluded that he "[a]ppears to be an imminent danger to himself and others."<sup>37</sup>

Petitioner argues now, and has argued at least since shortly after his release from treatment, that he is not suicidal now and was not suicidal at the time of his involuntary commitment or at any other time.<sup>38</sup> Petitioner's account of the events leading up to his commitment may or may not be accurate, but this Court is neither called upon nor empowered to decide that question. Petitioner's version of events was not in the record available to the treating physician at the time of commitment and, thus, is not material to the physician's decision this Court has been asked to review.<sup>39</sup>

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support a decision." *Id.* (quoting *Samuel-Bassett v. Kia Motors America, Inc.*, 34 A.3d 1, 35 (Pa. 2011) and citing *J.S. v. Com., Dep't of Pub. Welfare*, 528 Pa. 243, 596 A.2d 1114, 1115 (1991)).

<sup>37</sup> *Id.*

<sup>38</sup> See Petitioner's Letter to Jessica Hermann, Director of Medical Records, dated June 3, 2021, Petitioner's Hearing Exh. 6, wherein Petitioner argues that he denied "from the start" that he put a gun to his head or attempted suicide. He contends that he and H.F. were struggling over a cell phone and not over a weapon. He further notes that in his discharge papers he "denied any history of suicidal ideation or any suicidal thought."

<sup>39</sup> One could also argue that even if Petitioner put a gun to his head, he did not actually take any steps in furtherance of a suicide attempt, such as pulling the trigger, and, thus, that there is no proof that he really intended to kill himself. Our courts have held, however, that an actual suicide attempt is not required to show that a person is severely mentally disabled. See, e.g., *Smerconish, supra*, 112 A.3d at 1260 (upholding involuntary commitment to mental health treatment of appellant who had sent emails and messages to his sister threatening suicide, who had threatened suicide in telephone calls with his mother and father, and who had researched on the internet methods of painlessly killing himself, but who never took any affirmative steps toward suicide because, he claimed, he decided that he was afraid of the acts necessary to kill himself).

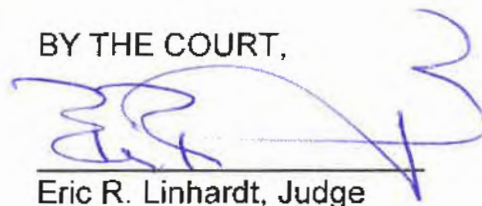
Based on the information known to the treating physician at the time of commitment and the notes he took of his own observations, and viewing all of that in the light most favorable to the physician, this Court can only conclude that the physician's findings are supported by a preponderance of the evidence. As such, this Court cannot expunge the records of Petitioner's involuntary commitment to mental health treatment pursuant to 18 Pa. C.S. Section 6111.1(g)(2). Based upon the foregoing, this Court need not, and will not, reach the question of whether Petitioner is a threat to himself or others.

### **III. CONCLUSION.**

For the reasons explained above, the Petitioner's Petition is DENIED. As the standard of review applicable to involuntary commitments pursuant to Section 302 of the Mental Health Procedures Act precludes this Court from expunging the record of Petitioner's involuntary commitment, this Court is not able to remove the disability imposed upon Petitioner by 18 Pa. C.S. Section 6105(c)(4).

IT IS SO ORDERED.

BY THE COURT,



Eric R. Linhardt, Judge

ERL/bel

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