IN THE SUPREME COURT OF FLORIDA

SHIRLEY GODWIN, :

Appellant, :

v. : CASE NO. 75,881

STATE OF FLORIDA, :

Appellee. :

PETITIONER'S BRIEF ON THE MERITS

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IN THE SUPREME COURT OF FLORIDA

SHIRLEY GODWIN,	:	
Petitioner,	:	
vs.	:	CASE NO. 75,881
STATE OF FLORIDA,	:	
Respondent	:	

_____/

PETITIONER'S BRIEF ON THE MERITS

I. PRELIMINARY STATEMENT

SHIRLEY GODWIN was the respondent in the trial court below and the appellant in the district court, and will be referred to in this brief as the petitioner or by her name. The state of Florida was the appellee below and will be referred to as the state. Petitioner will designate references to the record and transcript by the symbols "R" and "T" respectively followed by the appropriate page number in parentheses. All trial court proceedings were in the Second Judicial Circuit Court, Leon County Florida. Initial appeal was before the First District Court of Appeal.

II. STATEMENT OF THE CASE AND FACTS

On July 19, 1989 Godwin was involuntarily committed to the Florida State Hospital, a mental health facility, pursuant to the trial court's ruling on the state's petition for involuntary placement. (R 1-2; R 9).

Dr. Bragado-Spence, a psychiatrist, testified at the hearing that Godwin had been diagnosed with bipolar disorder, a mental illness (T 4). Bragado-Spence recommended placement at Florida State Hospital (T 4). When asked on cross-examination what Godwin did which fit the definition of manic, Bragado-Spence replied, "pressured speech, flighty ideas, screaming, yelling, inappropriate. She's laughing, she's talking, yelling at the walls, yelling at anything, telling the staff members that she has been going through on Route 27, Mexican's with machetes are after her (T 11).

Bragado-Spence opined that commitment to the state hospital was the least restrictive alternative as Godwin was unable to care for herself (T 4).

Bragado-Spence testified that Godwin had been wandering the streets, had been sick, didn't make any sense, had her mother worried. Bragado-Spence further noted that Godwin kept going to the police, the sheriff, or the emergency room to try to get her children back from her ex-husband. The authorities would then bring Godwin to the mental health unit (T 5).

Bragado-Spence stated Godwin had been admitted three times to PATH since March of 1989 (T 5).[1]

The latest incident resulting in Godwin's placement in PATH and recommendation by Bragado-Spence for involuntary placement was Godwin's wandering into the sheriff's office. The sheriff's office brought Godwin to PATH claiming that Godwin was not making any sense (T 5, 9). At the time, Godwin was filthy and her feet were badly blistered (T 9).

In regard to whether Godwin was able to care for herself, Bragado-Spence described Godwin as being a mess when she came to PATH. Bragado-Spence acknowledged that now Godwin looked fine but "she came like a street person" (R 5). Subsequent to Godwin's last discharge from PATH Bragado-Spence received reports that Godwin was seen walking down the streets and sleeping around bus stops (T 5).

Bragado-Spence also noted that Godwin had previously had bronchitis and had to be placed on antibiotics (T 6).

Bragado-Spence said Godwin denied she was living on the streets (T 6).

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[1] PATH is a short term residential program intervention run by the Apalachee Center for Human Services. After the initial crisis intervention, generally individuals are either released from PATH, voluntarily commit themselves to a long term facility, or application is made for their involuntary commitment to a facility such as Florida State Hospital. PATH is an acronym for Positive Alternative to Hospitalization.

According to Bragado-Spence's testimony on direct examination, Godwin's children are in the custody of Godwin's mother (T 6). On cross-examination, Bragado-Spence clarified that Godwin's mother had three of Godwin's children and Godwin's ex-husband had two of Godwin's children (T 10). Bragado-Spence noted that Godwin lost custody of her baby right before the last hospitalization after she was seen strolling down the highway with the child (T 6). Godwin thought a Mexican had kidnapped the child (T 6).

Bragado-Spence noted Godwin refused to take medication on the grounds she was not ill (T 7).

Godwin had a prior work history and was doing well until about five years ago.

Bragado-Spence noted that while Godwin gets angry and escalates and talks, Godwin had never been physically violent (T 7-8).

On cross-examination Bragado-Spence stated that the factors she used to determine Godwin was unable to care for herself was that Godwin wanders throughout the streets and doesn't get treatment when she is sick. She cited as an example Godwin not taking antibiotics which had been prescribed by the emergency room (T 8). Godwin had also told Bragado-Spence in the past that the reason for Godwin's bronchitis was not smoking enough cigarettes (T 9).

On re-direct the state asked Bragado-Spence:

> State: So, then, just to focus then, the standard we are meeting about unable to care for herself, are you concerned that

her physical health, because of her exposure and lifestyle, is such that will result in severe illness to her?

Bragado-Spence: I'm concerned about her, yes (T 12).

Godwin testified that by court order she had custody of her children from June to August (T 13). She noted her ex-husband had previously attempted suicide (T 13).

Regarding custody of her children Godwin further noted,

> ...Because I did not want to start no trouble with him or fight with him. So, I went to the Police Department Friday and he told me to go to the courthouse and get custody -- papers where I have custody of my kids, and I did that, circuit custody of my kids. And when I got my divorce, he told me that any time that he tried to interrupt, that circuit papers override juvenile papers where there is not juvenile dispute, when they have never been in any trouble. And they was only eleven and four. And I only let him have them because he tried to commit suicide (T 15).

Godwin further denied living on the street or being filthy. She did acknowledge blistered feet (T 15).

Godwin said at the time she had bronchitis, she was working at Wendy's (T 16). Godwin described side effects from the lithium as including grossly swollen glands in explaining why she would not take the medication (T 16).

Subsequent to the court order committing her to the Florida State Hospital, Godwin appealed to the First District Court of Appeal, arguing that there was insufficient evidence that she met the criteria for involuntary commitment under the Baker Act.

Godwin was discharged from Florida State Hospital on September 21, 1989 slightly over two months from the date she was committed and one day after undersigned counsel received a copy of the commitment hearing.

The state filed a motion to dismiss, alleging the matter to be moot since appellant was discharged from the hospital during the pendency of the appeal.

The district court issued an opinion granting the motion to dismiss finding the appeal to be moot. In so doing, the court noted,

> [W]e express reservations in applying the mootness doctrine to this case and certify the following question to be one of great public importance: WHEN AN INDIVIDUAL SEEKING REVIEW OF AN ORDER OF INVOLUNTARY COMMITMENT HAS BEEN RELEASED FROM THAT COMMITMENT PRIOR TO DISPOSITION OF THE APPEAL ON THE MERITS, WHAT SHOWING MUST SHE MAKE TO AVOID DISMISSAL OF THE APPEAL ON THE GROUNDS OF MOOTNESS?

Godwin v. State, 15 F.L.W. 667, 557 So.2d 955 (Fla. 1st D.C.A. March 12, 1990).

Godwin filed a timely notice to invoke discretionary jurisdiction and this proceeding follows.

III SUMMARY OF ARGUMENT

The District Court of Appeal erred in finding, as a result of Godwin's intervening discharge from commitment, that Godwin's appeal is moot. Involuntary commitments are a massive deprivation of liberty. Even after the individual is discharged, collateral consequences follow from the commitment. Moreover, as a direct consequence of the commitment, the State of Florida can levy and enforce against against petitioner a lien for the costs of her care while involuntarily confined. Further, involuntary commitments are an exception to the mootness doctrine in that they are capable of repetition yet elude review. As a matter of public policy, this court should except review of mental health commitments from dismissal for mootness.

In the second issue, Godwin argues the trial court erred in ordering appellant involuntarily committed to Florida State Hospital pursuant to Section 394.476, Florida Statutes.

Petitioner submits the state failed to establish by clear and convincing evidence that petitioner was incapable of surviving alone or that her neglect of herself resulted in a real and present threat of substantial harm to her well-being, an essential criteria for lawful commitment.

Testimony established petitioner had been brought to the mental health facility because she was not making sense to the sheriff's office. While this was probative of the issue of mental illness, it did not tend to prove a real and present threat of substantive harm.

Petitioner's other actions, such as walking the streets and being filthy, did not rise to clear and convincing proof of substantial harm. Her refusal to take lithium was a reasonable decision given it's side effects.

While Dr. Bragado-Spence paints a picture of a mentally ill woman whose conduct raises the question of harm to her well-being, the state simply did not present sufficient evidence to meet the criteria of the statute.

The state's evidence was insufficient to meet their burden, and the court's commitment order should be reversed.

IV ARGUMENT

ISSUE I

WHETHER GODWIN'S RELEASE FROM INVOLUNTARY CONFINEMENT DURING THE PENDENCY OF HER APPEAL RENDERS THE CASE MOOT

In Kinner v. State, 398 So.2d 1360 (Fla. 1981) this court declined to rule on whether sufficient evidence was adduced to support Kinner's confinement at a residential retardation facility finding Kinner's discharge had mooted the issue. However, in the same case the court declined to apply the mootness doctrine to another question raised in Kinner's appeal, i.e. the constitutionality of Section 393.11, Florida Statutes.

In so ruling, this court noted,

> It is well established that this Court will not determine a controversy where issues have become moot, unless the questions presented are of general public interest and importance, or unless such judgment as this Court might enter would affect the rights of parties. (citations omitted). We feel that this case raises a question of great public importance, the resolution of which will affect a significant number of retarded citizens who are presently institutionalized as a result of the application of the predecessor statute.

Id. at 1362.

Kinner illustrates that the determination that a cause is moot in some aspect does not leave the court without authority to decide the matter. Given Kinner's release from the institution, the constitutionality of the statute he was committed under, as well as the sufficiency of the evidence for commitment, could be argued to be moot as to him. However, for

what was basically a public policy reason, the statute's impact on other individuals, this Court decided the question of the statute's constitutionality.

Petitioner submits in this brief that as a matter of public policy as well as collateral consequences attendant on commitment, the issue of the sufficiency of the evidence for involuntary commitment should survive an individual's release from that commitment.

The First District Court of Appeal in In re Sealy, 218 So.2d 765 (Fla. 1st DCA 1969) impliedly adopted this position without discussion. There the appellate court reversed the trial court's order finding Sealy to be mentally incompetent and committing him to the state hospital despite noting that Sealy's "judicial sanity having been restored by court order, the only apparent purpose of this appeal is to remove the stigma of incompetency from his record". Id. at 768.

In Madden v. State, 463 So.2d 270 (Fla. 2d DCA 1984) the appellate court declined to dismiss Madden's appeal from involuntary commitment, despite his release, finding that "the Federal Aviation Administration, as a collateral consequence of appellant's involuntary commitment, revoked appellant's medical certificate and suspended his pilot's license." Id. at 271.

The court in Madden distinguished Madden's case from Westlake v. State, 440 So.2d 74 (Fla. 5th DCA 1983) on the basis of the action taken against Madden by the Federal Aviation administration.

In Westlake, the appellate court found since no collateral consequences had been shown and Westlake had been dismissed from his commitment, the appeal was moot.

Both Madden and Westlake accept as a premise that a showing of "collateral consequences" would bar dismissal under the mootness doctrine. However, both also seem to put the burden on the appellant to show collateral consequences rather than placing the burden on the state to show an absence of collateral consequences. Appellant, based on authority and argument infra, submits Madden and Westlake have misplaced this burden.

Moreover, one need only review the statute itself to find a consequence perhaps more aptly described as direct rather than collateral. Section 394.457(8), Florida Statutes, provides "Fees and fee collections for patients in treatment facilities shall be according to 402.33." Section 402.33, Florida Statutes, provides in part,

> The department, in accordance with rules established by it, shall either charge, assess, or collect, or cause to be charged, assessed, or collected, fees for any service it may provide its clients either directly or through its agencies or contractors, except for...[several exceptions are enumerated here]...
>
> Unpaid fees for services provided by the department to a client constitute a lien on any property owned by the client or the client's responsible party which property is not exempt by s.4, Art. X of the State Constitution...

The statute further provides for enforcement of the lien, continuation of the lien for three years beyond the client's death, and interest on the lien.

Thus, this statute alone appears to provide the consequence such that petitioner's claim she was unlawfully committed cannot be deemed moot.

Potential liability for the cost of their care was the partial basis for a New Jersey appellate court's ruling that petitioners' discharge from hospitalization did not moot their appeal contesting the commitment, the court noting,

> The first question is whether these cases have been rendered moot by the discharge from hospitalization of the three patients involved. They have not. The cases present problems that are capable of repetition and yet of evading review. The same problems may be expected to arise in other cases and to continue to divide the trial courts. (citations omitted). Moreover, the liability of these and perhaps many other patients for the cost of their care may arguably be affected by the propriety of their commitment proceedings. N.J.S.A. 30:4-49 et seq. We do not answer question of liability now, because it is not before us. (emphasis supplied).

In re Z.O., 484 A.2d 1287, 1290, 197 N.Super. 330, (N.J. Super. A.D. 1984). See State v. Van Tassel, 484 P.2d 1117, 5 Or. App. 376 (Or. App. 1971) (appeal from commitment proceeding not moot notwithstanding intervening discharge, a decision in petitioner's favor would remove petitioner's potential financial liability for his commitment imposed by state statute).

As discussed below, many courts which have considered the issue of mootness in the context of an involuntary commitment have favored deciding the claim as opposed to dismissing it on what appears to be public policy grounds. In many of these decisions is a concern for the collateral consequences, including unavoidable social stigma, which follow involuntary commitment. Further, there is a repeated concern that such cases fall in the general category of cases which can continually evade review.

In State v. Van Tassel, supra the court discussed at length the policy behind the mootness doctrine and its applicability to cases similar to the one at bar. In declining to dismiss the appeal, the court noted the substantial interest a person has in his reputation as evidenced by tort laws allowing for libel and slander actions. The court found analogous the United States Supreme Court's decision in Sibron v. New York, 392 U.S. 40, 88 S.Ct. 1889, 20 L.Ed.2d 917 (1968) citing its holding that, "a criminal case is moot only if it is shown that there is no legal possibility that any collateral legal consequences will be imposed on the basis of the challenged conviction" 392 U.S. at 57, 88 S.Ct. at 1900 quoted in State v. Van Tassel, supra, 484 P.2d at 1120. In discussing this analogy and collateral consequences of a civil commitment the court stated:

> The criminal and contempt cases referred to ... provide strong analogy to the case at bar. In both types of cases and in the case at bar, the subject was involuntarily committed to the custody of the state. In

> both, a social stigma attaches which affects the person's reputation and earning earning potential. Although ORS 426.160 does put limits on the availability of the judicial record of commitment, it is no secret that defendant was committed to the Oregon State Hospital in Salem, Oregon. Furthermore, inquiry into a person's history of mental health by, for example, a prospective employer or bonding agency, would be legitimate. ORS 426.160 would not prohibit defendant from disclosing anything contained in the court record of his commitment. In fact, if he refused to give a prospective employer or surety such information, he could very well be turned down for that reason. Finally, the fact that defendant has been involuntarily committed as a mentally ill person would not be a secret, irrespective of other material contained in the court record. Whether a society should view mental illness as carrying with it more stigma than any other form of illness, it, in fact, does. A legal commitment for mental illness may have deleterious collateral effects in addition to stigma.

State v. Van Tassel, supra 484 P.2d at 1121, 1122.

Similarly, the North Carolina Supreme Court has rejected a mootness attack on an appeal from a commitment order. In re Hatley 231 S.E.2d 633, 291 N.C. 693 (N.C. 1977). As in Van Tassel, the court in Hatley found Sibron v. New York, concerning mootness of a criminal appeal, analagous. The court further noted that Hatley's commitment order recited that Hatley had a history of prior commitments. The court concluded that "the possibility that respondent's commitment in this case might likewise form the basis for a future commitment, along with other obvious collateral legal consequences, convinces us that this appeal is not moot. In re Hatley, supra, 231 S.E.2d at 635.

The Texas Supreme Court resolved a conflict in the lower appellate courts by concluding the mootness doctrine would not be applied where patients appealing their involuntary commitment would discharged pending review. The lower appellate court in Lodge v. State, 597 S.W.2d 773 (Tex.Civ.App. 4 Dist. 1980) (hereinafter referred to as Lodge I) considered the issue in terms of two general exceptions to a finding of mootness. One, where an issue was capable of repetition, yet evading review and secondly where collateral consequences ensued from the commitment. Lodge I, supra.

The court found:

> appeals from temporary civil commitment orders are deemed to satisfy the 'capable of repetition, yet evading review' requirement because the appellant generally suffers from recurring stages of mental illness which require short-term involuntary confinements which invariably expire before there is an opportunity for appellate review. See In re Ballay, 482 F.2d 648, 651 (D.C. Cir. 1973).

Lodge I, supra, 597 S.W.2d at 775.

The court further found there were collateral consequences as a result of the commitment. In so doing, the court noted:

> [T]he adverse collateral consequences of being adjudicated mentally ill remain to effect the patient long after his release. In re Ballay, 482 F.2d 648, 651-52 (D.C. Cir. 1973).
> ...
> The stigma and adverse consequences flowing from a judicial determination of mental illness are too well known to require repetition here. See Lessard v. Schmidt, 349 F.Supp. 1078, 1094 (E.D. Wis. 1972); Note, Developments in the Law of Civil Commitment of the Mentally Ill, 87 Harv.L.Rev. 1190, 1193-1201 (1974). The

> consequences of a commitment for mental illnes are often barely distinguishable from those collateral consequences which flow from a conviction of crime, or an adjudication of delinquency in the case of a minor. See State v. Turner, 556 S.W.2d 563, 565-66 (Tex. 1977). Comment, Overt Dangerous Behavior as a Constitutional Requirement for Involuntary Civil Commitment of the Mentally Ill, 44 U.Chi.L.Rev. 562, 563 (1977). A person who has been discharged from confinement following involuntary commitment to a mental hospital cannot be said to stand in the same position as one who has "voluntarily" satisfied a judgment in the "ordinary civil case".

Lodge I, supra, 597 S.W.2d at 776.

The decision in Lodge I was affirmed by the Texas Supreme Court in State v.Lodge, 608 S.W.2d 910 (Tex. 1980). In its decision the court noted the massive curtailment of liberty effected by an involuntary commitment, the lack of redress to people so committed if the mootness doctrine were applied, and the collateral consequences which flow from the commitment.

In People v. Nunn, 438 N.E.2d 1342, 108 Ill.App.3d 169, 64 Ill.Dec.23 (Ill.App 1 Dist. 1982) the Illinois appellate court found the mootness doctrine not generally applicable to involuntary commitment cases. The court noted potential collateral legal consequences from the commitment order and the perhaps irredeemable effect on a person's reputation of multiple commitments. The court found no evidence in the record that the commitment order would not "impair respondent's employment opportunities or reputation or increase the probability of recommitment." Id. at 1344. For these reasons the court declined to apply the mootness doctrine. It is

noteworthy that the court's decision assumed that facts showing a lack of collateral consequences must affirmatively appear in the record. See also Matter of Marquardt, 427 N.E.2d 411, 100 Ill.App.3d 741, 56 Ill.Dec. 331 (Ill.App. 1 Dist. 1981) (courts have traditionally applied exception to mootness doctrine in mental health cases; prevent issues capable of repetition from appellate review); In re Riviere, 539 N.E.2d 451, 183 Ill.App.3d 456, 132 Ill.Dec. 141 (Ill.App.3 Dist. 1989) (possibility of collateral consequences bar application of the mootness doctrine); In re Meek, 476 N.E.2d 65, 131 Ill. App. 742, 86 Ill. Dec. 889 (Ill.App. 4 Dist. 1985) (mootness doctrine generally not applicable in mental health cases; case moot only where there are no possible future adverse collateral legal consequences); In re Garcia, 375 N.E.2d 557, 59 Ill.App.3d 500, 16 Ill.Dec. 684 (Ill.App. 1 Dist. 1978) (same); In re Stephenson, 344 N.E.2d 679, 36 Ill.App.3d 746 (Ill.App. 1 Dist. 1976) (declining to hold appeal from mental health commitment moot) affirmed with opinion In re Stephenson, 367 N.E.2d 1273, 67 Ill.2d 544, 10 Ill.Dec. 507 (Ill. 1977).

The Oklahoma court dismissed a claim of mootness in deciding In re D.B.W., 616 P.2d 1149 (Okla. 1980) finding "the legal disabilities and social stigmatization as the result of having been declared in need of mental treatment, and committed to a mental institution, remain" Id. at 1151.

Many courts ruling on the question of mootness in the context of a mental health commitment have cited In re Ballay, 482 F.2d 648 (D.C.Cir. 1973).

The court in In re Ballay was concerned that commitment orders were by nature "capable of repetition, yet evading review" Id. at 651. The court further expounded on the collateral consequences of being adjudged mentally ill noting, inter alia,

> Indeed, such an adjudication, while not always crippling, is certainly always an ominous presence in any interaction between the individual and the legal system. Such evidence will frequently be revived to attack the capacity of a trial witness. Depending on the diagnosis, it may be admissible for impeachment purposes. Indeed, even in a criminal trial it may be available to attack the character of a defendant if he has put character in issue. Most significantly, records of commitments to a mental institution will certainly be used in any subsequent proceedings for civil commitment, a factor which may well have been influential in the present case.

Id. at 652.

Appellant submits that the foregoing citation of authority and argument supports her position that the appeal in this case is not moot.

Mental health commitments have been recognized, because of their often short duration, to be in the class of cases "capable of repetition, yet evading review". Petitioner suggests the shortest stays may well be by those individuals who should not have been committed in the first place, undoubtedly they are the quickest to "recover". Yet the short nature of their stay contributes to the problem of their commitment eluding review.

Moreover, several jurisdictions, as noted above, consider legal commitment to have "collateral consequences" far beyond the "massive deprivation of liberty" imposed at commitment. These consequences survive the patient's discharge.

Finally, under the statutory scheme presently in place, petitioner is potentially liable to the state for the costs of her care. Petitioner submits a finding that petitioner was unlawfully committed should result in her being able to successfully assert non-liability for those costs.

Petitioner respectfully requests this Court reverse the lower court's decision finding her appeal moot and further that this court rule on the issue of whether there is sufficient evidence in the record to support the trial court's order of commitment.

ISSUE II

WHETHER THE STATE MET ITS BURDEN OF SHOWING BY CLEAR AND CONVINCING EVIDENCE THAT GODWIN WAS INCAPABLE OF SURVIVING ALONE AND THAT HER NEGLECT OR REFUSAL TO CARE FOR HERSELF POSED A REAL AND PRESENT THREAT OF SUBSTANTIAL HARM TO HER WELL-BEING

Section 394.467(1), Florida Statutes (1987), which sets out the criteria for involuntary placement of individuals for mental health treatment, states:

> (1) Criteria.- A person may be involuntarily placed for treatment upon a finding of the court by clear and convincing evidence that:
> (a) He is mentally ill and because of his mental illness:
>
> 1.a. He has refused voluntary placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of placement for treatment; or
> b. He is unable to determine for himself whether placement is necessary; and
>
> 2.a. He is manifestly incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services, and, without treatment, he is likely to suffer from neglect or refuse to care for himself, and such neglect or refusal poses a real and present threat of substantial harm to his well-being; or
> b. There is substantial likelihood that in the near future he will inflict serious bodily harm on himself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm; and
>
> (b) All available less restrictive treatment alternatives which would offer an opportunity for improvement of his condition have been judged to be inappropriate (emphasis supplied).

There was testimony that Godwin was mentally ill and suffering from bipolar disorder and that she had refused

voluntary hospitalization. The state's psychiatrist also testified that less restrictive alternatives were not available. This satisfies all but the disjunctive criteria listed in Section 394.467, Florida Statutes (1)(a)2.a and b. (1987).

The record cannot be construed to support the proposition that there was a substantial likelihood Godwin would inflict serious bodily harm on herself or another person as evidenced by recent behavior causing, attempting or threatening such harm. See Section 394.467 (1)(a)2.b., Florida Statutes (1987).

Thus, the issue in this appeal boils down to whether the state produced sufficient clear and convincing evidence that Godwin was incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services, and, without treatment, was likely to suffer from neglect or refusal to care for herself, and such neglect or refusal posed "a real and present threat of substantial harm to her well-being." See Section 394.467 (1)(a)2.a., Florida Statutes (1987).

This statutory criteria must be strictly construed in favor of Godwin, since the liberty interests of Godwin are involved. As noted in In Re Holland, 356 So.2d 1311, 1313 (Fla. 3d DCA 1978), "involuntary hospitalization is a massive deprivation of liberty which the state cannot accomplish without due process of law." The fact that an individual needs treatment, standing alone, does not give the state the authority to commit an individual. See O'Connor v. Donaldson,

422 U.S. 563 (1982); Neff v. State, 356 So.2d 901 (Fla. 1st DCA 1978); In Re L.A., 530 So.2d 489 (Fla. 1st DCA 1988); In re Beverly, 342 So.2d 481 (Fla. 1977); Williams v. State, 522 So.2d 983 (Fla. 1st DCA 1988); In re Reigosa, 362 So.2d 714 (Fla. 3d DCA 1978).

As stated by this court in Williams v. State, supra "Even though the other criteria set out in section 394.467(1) might be met, a non-dangerous individual, capable of surviving safely in freedom by herself or with the help of others, should never be involuntarily committed." Id. at 984. In re Beverly, supra. See In re L.A., supra; Schexnayder v. State, 495 So.2d 850 (Fla. 1st DCA 1986). In fact, the constitution prohibits it. O'Connor v. Donaldson, supra; In re Beverly, supra.

Godwin submits the state failed in carrying their burden of showing she was incapable of surviving alone or that her neglect of herself resulted in a real and present threat of substantial harm to her well-being.

While much of the testimony concerning Godwin's actions dealt with her bout with bronchitis and failure to take antibiotics as prescribed, a careful review of the record shows this was an incident which precipitated a prior admission and not Godwin's latest admission.

The latest admission occurred when Godwin went to the sheriff's office to inquire about visitation rights to her children. The sheriff department's decision to take Godwin to the mental health facility because she was not making sense may have supported the diagnosis of bipolar disorder, but was not

probative of whether Godwin conduct posed a substantial threat to her well-being.

In Smith v. State, 508 So.2d 1292 (Fla. 1st DCA 1987) the state sought to involuntarily commit Smith because Smith had been hospitalized after a fight with police "apparently a result of differences of opinions as to Mr. Smith's lack of attire and appropriateness thereof" Id. at 1293. There was also some evidence of possible force used against Smith by the police on two other occasions. The court found this was not probative of whether Smith was a danger to himself or others and remanded for further evidentiary proceedings on the issue.

Godwin was criticized for not taking lithium. Given the appellant's uncontroverted descriptions of the side-effects of lithium on her physical well-being, it cannot be said she is harming herself by choosing not to ingest the drug.

The other factors mentioned, such as Godwin walking the streets and being filthy may be probative of "substantial harm" to Godwin's well-being, they do not rise to the level of clear and convincing proof.

While Bragado-Spence paints a picture of a mentally ill woman whose conduct raises the question of harm to her well-being, the state simply did not present sufficient evidence to meet the criteria of the statute. The testimony presented was general allegations of wandering, being dirty, and initiating conduct with law enforcement. The reader is left to conjecture that this is resulting in substantial harm to Godwin.

The state's evidence was insufficient to meet their burden, and the court's commitment order should be reversed.

V. CONCLUSION

The trial court's order for involuntary placement should be reversed.

Respectfully submitted,
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SECOND JUDICIAL CIRCUIT

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COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Initial Brief of Appellant has been forwarded by mail to Kathleen E. Moore, Assistant Attorney General, The Capitol, Tallahassee, Florida 32399-1050 and a copy has been mailed to Shirley Godwin this 8th day of June, 1990.

LYNN A. WILLIAMS
ASSISTANT PUBLIC DEFENDER

IN THE SUPREME COURT OF FLORIDA

SHIRLEY GODWIN,	:	
Appellant,	:	
v.	:	CASE NO. 75,881
STATE OF FLORIDA,	:	
Appellee.	:	

APPENDIX

BARBARA M. LINTHICUM
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IN THE DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA

SHIRLEY GODWIN,)	NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND DISPOSITION THEREOF IF FILED.
appellant,)	
vs.)	CASE NO. 89-2143
STATE OF FLORIDA,)	
appellee.)	

Opinion filed March 12, 1990.

An appeal from a final order of the Circuit Court for Leon County, J. Lewis Hall, Judge.

Barbara M. Linthicum, Public Defender, and Lynn A. Williams, Assistant Public Defender, for appellant.

Robert A. Butterworth, Attorney General, and Kathleen E. Moore, Assistant Attorney General, for appellee.

PER CURIAM.

Shirley Godwin seeks review of a circuit court order involuntarily committing her to a state mental health facility, arguing that clear and convincing evidence was not presented that would justify the action. Appellee now moves to dismiss this appeal as moot, showing that appellant has been released from her commitment. In opposition to dismissal, appellant argues that "a myriad of consequences exist in our society as a result of a commitment to a mental health facility--even subsequent to release." She gives as an example difficulties in explaining a gap in her employment history to prospective employers.

We conclude appellee's motion to dismiss should be granted. In Westlake v. State, 440 So.2d 74 (Fla. 5th DCA 1983), it was held that to avoid dismissal in similar circumstances, appellant must at least demonstrate collateral legal consequences from her involuntary commitment. Accord, Taylor v. State, 536 So.2d 1050 (Fla. 1st DCA 1988). Here, appellant relies on potentialities that do not appear to be legal in nature. Accordingly, we grant appellee's motion and this appeal is dismissed as moot. In so doing, however, we express reservations in applying the mootness doctrine to this case and certify the following question to be one of great public importance:

> WHEN AN INDIVIDUAL SEEKING REVIEW OF AN ORDER OF INVOLUNTARY COMMITMENT HAS BEEN RELEASED FROM THAT COMMITMENT PRIOR TO DISPOSITION OF THE APPEAL ON THE MERITS, WHAT SHOWING MUST SHE MAKE TO AVOID DISMISSAL OF THE APPEAL ON GROUNDS OF MOOTNESS?

APPEAL DISMISSED.

ERVIN, WENTWORTH and BARFIELD, JJ., CONCUR.