IN THE SUPREME COURT OF FLORIDA

SUPREME COURT NO.: 77,074

FILED
SID J. WHITE
FEB 11 1991
CLERK, SUPREME COURT
By _____ Deputy Clerk

PHILLIP SALLAS,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

PETITIONER'S REPLY BRIEF ON THE MERITS

LOUIS O. FROST, JR.
PUBLIC DEFENDER
FOURTH JUDICIAL CIRCUIT

JAMES T. MILLER
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FLORIDA BAR NO. 0293679

ATTORNEY FOR PETITIONER

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STATEMENT OF THE CASE AND FACTS

Although the substantive facts of this cause are not crucial to the determination of the legal question of mootness, Appellant cannot accept Appellee's Statement of the Facts because it contains matters not included in the stipulated set of facts agreed to for this appeal. The parties below stipulated to the facts in this cause because the proceedings below were not transcribed. Appellee's Statement of the Facts contains matters outside the stipulation; the statement by Appellee contains factual allegations in the Petition for Involuntary Commitment. In addition to being outside the stipulation, these "facts" are mere allegations, not proof. Appellant accepts Appellee's statement of the procedural facts concerning the preparation of this appeal. However, Appellant disputes the relevance of such facts to this appeal.

ARGUMENT

ISSUE I

THE RELEASE OF A CITIZEN FROM AN INVOLUNTARY HOSPITALIZATION DOES NOT RENDER A PENDING APPEAL MOOT BECAUSE AN INVOLUNTARY COMMITMENT TO A MENTAL HOSPITAL INVOLVES A SIGNIFICANT LOSS OF LIBERTY, CREATES SEVERE SOCIAL CONSEQUENCES, CAUSES A LIFE-LONG STIGMA FOR THE PERSON COMMITTED AND INVOLVES LEGAL ISSUES WHICH ARE CAPABLE OF REPETITION, BUT WHICH COULD EVADE APPELLATE REVIEW.

A. The issue in this cause.

Respondent asserts the present mootness doctrine in Florida achieves a proper balance between the liberty interests of a citizen with the judicial interest in limiting its review to actual controversies. However, the First District Court of Appeal in this cause and Godwin v. State, 557 So.2d 955 (Fla. 1st DCA 1990) limited the mootness doctrine in this field only to proof of adverse legal consequences, following a release from involuntary commitment. Therefore, a case of involuntary commitment is not moot, after release from commitment during the appeal, only if the person committed can demonstrate adverse legal consequences.

This limited view of mootness is an inappropriate balance between liberty and efficiency and ultimately results in time-wasting dismissals of appeals which are timely filed, but are not timely decided because: 1) Most other State jurisdictions have adopted an expansive view of mootness and have held that such cases are not normally moot. The weight of authority in this country is contrary to the position advocated by Respondent, 2)

involuntary commitment involves a deprivation of liberty akin to incarceration for a crime. Public policy and notions of fundamental fairness require a review of such complete losses of liberty, 3) involuntary commitment creates severe adverse social consequences, 4) involuntary commitment creates a stigma, 5) the issues presented in an appeal of an involuntary commitment are capable of repetition, yet could evade review. As Respondent has not directly addressed each of the above reasons, Petitioner will review them again for the Court.

B. An involuntary commitment involves a total loss of liberty akin to a criminal incarceration - public policy requires that such claims be adjudicated to avoid similar losses of liberty in the future.

Respondent misapprehends Petitioner's argument on this issue. Respondent argues this argument is without merit because there is no evidence that Petitioner will be committed in the future. Public policy requires reviews of such complete deprivations of liberty to prevent future deprivations to any citizen, not just the particular litigant whose case has become technically moot. Courts review all criminal convictions, even if the litigant has been released from custody or sentence, for this reason. Several other jurisdictions have found involuntary commitment not moot for precisely this reason. See People v. Nunn, 438 N.E.2d 1342 (Ill.App. 1st Dist. 1982); State v. Lodge,

608 S.W.2d 910 (Tex. 1980); In Re Hatley, 231 S.E.2d 633 (N.C. 1977)

Respondent also argues that Petitioner or others similarly situated cannot face a future commitment based upon a prior commitment. Although it is true that the legal criteria in Section 394.467, Florida Statutes, do not include a prior commitment, the practical reality is that all of a person's prior mental history is considered, including past commitments, by psychiatrists and courts on the issue of involuntary hospitalization. See Statement of Facts in Godwin v. State, supra.

Petitioner does not argue that the facts of one involuntary commitment will lead, by itself, to another commitment. However, the legal and factual issues which lead to one commitment could repeat and lead to another similar commitment. Mentally ill patients often have recurring problems and these repeating problems could lead to multiple commitments. If an appeal of an involuntary commitment is moot once a patient is released, then the issues presented by such cases could repeat.

Respondent also argues that the liberty interest in this cause could have been better protected by a Writ of Habeas Corpus. However, there are certain legal and practical problems which make this alternative inappropriate. First, Section 394.459(10)(a), Florida Statutes, allows a Writ of Habeas Corpus to be issued by a Circuit Court. In this cause, if Petitioner had filed a Writ of Habeas Corpus in Duval County, then another Circuit Judge of equal jurisdiction would have to rule upon the decision of another Circuit Judge. Apart from the legal question

of whether a judge of equal authority can overrule the decision of another judge of equal jurisdiction, this is not a practical solution. See State ex rel. Scaldeferri v. Sandstrom, 285 So.2d 409 (Fla. 1973) (normally, a court lacks habeas corpus jurisdiction to a court over which it does not also have appellate jurisdiction; exception is concurrent bail jurisdiction conferred by constitution). It is likely a court of equal jurisdiction will be reluctant to overrule a court of equal authority.

Another practical problem is that a habeas corpus petition is usually filed in the jurisdiction of the place of custody. Once persons are committed to the state hospitals in Chattahoochee or MacClenny, their prior counsel lacks the authority or resources to represent them in another jurisdiction. New counsel would have to be appointed and this would delay the process so that a habeas corpus may not be faster than an appeal.

Individuals involuntarily committed obviously have the right to appeal their commitments. Generally, a habeas corpus proceeding is not a substitute for direct appeal. State ex rel. Sumrall v. Cochran, 122 So.2d 609 (1960). Respondent's position overlooks this long-standing doctrine of appellate law. Section 394.459(10)(a) is appropriate for detentions prior to an adjudication for involuntary commitment or for changed circumstances which demonstrate that a citizen no longer meets the criteria for involuntary commitment.

Petitioner does agree that generally a habeas corpus proceeding can be resolved faster than an appeal. However, appeals of involuntary commitments are routinely expedited in the

First District Court of Appeal. The First District expedited the appeal in this cause. It is difficult for counsel to decide whether to file a habeas corpus petition or an appeal due to the variable, actual lengths of commitment. Section 394.467 et. seq. permits an initial commitment of up to 6 months. Pursuant to that initial commitment, the patient may be recommitted for another 6 months. Section 394.467(4), Florida Statutes. Consequently, a patient may be in custody for a few weeks or up to a year.

In this case, Petitioner did not file a Petition for a Writ of Habeas Corpus because counsel believed, in good faith, that habeas corpus jurisdiction did not lie in the First District Court of Appeal. If this Court does not adopt Petitioner's view of mootness on appeal, it should construe the original writ jurisdiction of the District Courts of Appeals to include habeas corpus jurisdiction over involuntary commitments.

C. An involuntary commitment creates severe adverse social consequences.

Respondent has not cited any authority which considered this issue and decided an involuntary commitment does not involve severe adverse social consequences. Respondent's arguments that Petitioner has not demonstrated such adverse social consequences begs the question. Social consequences could not begin until after a person is released from an involuntary commitment. While persons are committed they are not in society and cannot attempt to get a job or act like a normal citizen. Consequently, a person

could never show adverse social consequences before or during the appeal.

Respondent misunderstood Petitioner's citation of Furness v. State, 533 So.2d 932 (Fla. 1st DCA 1988) and MacIntyre v. State, 505 So.2d 2 (Fla. 1st DCA 1986). Petitioner agrees that in each case, the First District simply summarily reversed the orders of involuntary commitment. However, as noted in the Initial Brief, the undersigned counsel was counsel in each of these cases. Counsel represents to this Court, as an officer of this court, that each case involved a mootness question of a possible loss of employment for a nurse and lawyer, due to an involuntary commitment. A review of the record and briefs in those cases will confirm this argument.

As Respondent has not directly addressed this issue other than by citing general cases on mootness, Petitioner will rely upon his argument in the Initial Brief on the merits that an involuntary commitment can produce severe non-legal social consequences. Respondent's argument that an appeal cannot remedy the adverse social consequences is not true because a reversal of a commitment could prevent a loss of employment or allow the citizen to not reveal the prior attempt to commit. See State v. Van Tassel, 484 P.2d 1117 (Or. App. 1971).

D. An involuntary commitment creates a stigma which justifies an exception to the mootness doctrine: In Re Sealy, 218 So.2d 765 (Fla. 1st DCA 1969).

Respondent argues that the stigma from involuntary commitments comes from the pronouncement of mental illness, not the commitment itself. As most appeals involve a challenge not to the diagnosis of mental illness but to the criteria of involuntary placement, the degree of stigma is not sufficient to overcome mootness. However, as one must follow the other, as the night follows the day, how can one separate the degree of stigma coming from a diagnosis of mental illness compared to the stigma coming from a involuntary commitment? Respondent attempts to dialectically separate the stigmas - an involuntary commitment must be based upon a mental illness and proof that the person is a danger to themself or others or cannot take care of themselves. This stigma is far greater than mere mental illness alone. Persons who are involuntarily committed are mentally ill and dangerous or cannot take care of themselves. This double form of stigma is great enough to overcome mootness. Respondent again has not cited a case which has considered this issue and decided the stigma attendant to an involuntary commitment did not defeat a mootness claim.

E. The issues presented in an appeal of an involuntary commitment are capable of repetition, yet could evade review.

Respondent has not cited any contrary authority to the cases cited by Petitioner. Respondent's artificial distinction between sufficiency of the evidence and other issues was not recognized in any of the cases cited by Petitioner. Respondent's

argument that the issues capable of repetition must repeat as to the same party was not recognized in the cases cited by Petitioner. While the United States Supreme Court may use this doctrine for state constitutional cases, Florida courts have never used this doctrine. See Sosna v. Iowa, 419 U.S. 393 (1975).

This Court in Kinner v. State, 398 So.2d 1360 (Fla. 1981) specifically rejected the Sosna v. Iowa, doctrine. In Kinner, supra, at 1362, this Court considered a moot case because the resolution of it would affect a significant number of retarded citizens. This Court did not require that the issues repeat as to the same parties, but only that the issue could affect significant numbers of other persons similarly situated. The overwhelming weight of authority which has considered this question concurs with Petitioner's argument.

CONCLUSION

This Court should answer the certified question by deciding that all appeals of involuntary commitments are not moot when the Appellant is released during the pendency of the appeal. As the First District Court of Appeal did not render a decision on the merits of this case, it should be remanded to the First District Court of Appeal for a consideration of the merit of this case.

Respectfully submitted,

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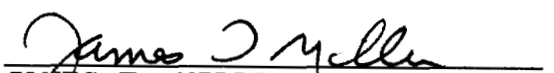
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed to the Office of the Attorney General, The Capitol Building, Tallahassee, Florida 32399-1050 this 8th day of February, A.D. 1991.



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