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IN THE SUPREME COURT OF FLORIDA

SUPREME COURT NO.: 79,070

CHRISTINE SWIDA,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

PETITIONER'S BRIEF ON THE MERITS

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FOURTH JUDICIAL CIRCUIT

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PRELIMINARY STATEMENT

Petitioner, Christine Swida, was the Appellant before the First District Court of Appeal and the Respondent to the Petition for Involuntary Placement, pursuant to Section 394.467, Florida Statutes, filed in the Circuit Court of Duval County. Respondent, the State of Florida, was the Appellee in the First District Court of Appeal and prosecuted the Petition for Involuntary Placement. Petitioner will designate any references to the Record on Appeal filed in the First District Court of Appeal as "R.", followed by the appropriate page number(s). References to the decision of the First District below will be found in Appendix I to this brief.

STATEMENT OF THE CASE AND FACTS

On March 13, 1991, the administrator of the Mental Health Resource Center (MHRC) of Jacksonville filed a petition for involuntary placement of Petitioner, pursuant to Section 394.467 (2), Florida Statutes (R. 1-2). Petitioner asked for the assistance of counsel and the Public Defender's office was appointed to represent her (R. 6). The case proceeded to a hearing and produced the following relevant facts for this appeal. Dr. Michael Solloway, the State psychiatrist, examined Petitioner at MHRC (T. 3-4). Petitioner was brought to MHRC based upon an ex parte order under Chapter 394 sought by Petitioner's mother (T. 5). Solloway diagnosed Petitioner as a schizophrenic, chronic, paranoid type (T. 6). Petitioner had a "flattened" affect; her thought processes were disorganized and when she spoke she did not really make sense, according to Solloway (T. 6). Petitioner was able to answer questions, if Solloway kept the question goal directed and made sure he got a specific answer from Petitioner (T. 6-7).

Petitioner also had delusions - she thought she was an Ambassador from Malta and had royalty in her life and family (T. 7). Although Solloway thought this belief was delusional, he did not know that Petitioner had diplomatic status through a passport from the Knights of St. Johns organization (T. 11-12). He also didn't know that there was some royalty in Petitioner's family history (T. 12). Solloway further testified that Petitioner had zero insight into her mental illness (T. 7). She would sometimes stop taking her medication (Id). When Petitioner stops taking her medication, her thoughts become disorganized and she stops eating

eating and taking care of herself (Id). The last time Solloway saw Petitioner, she wasn't eating or bathing herself (Id). However, Petitioner was not clinically dehydrated or malnourished (T. 16). She was thin, bedraggled and dirty, according to Solloway (T. 16). Petitioner's condition was not life-threatening (T. 16-17). Petitioner would not refuse to eat - she was apathetic and she would have to be encouraged to eat or bathe (T. 19).

Solloway noted that Petitioner had been at MHRC five (5) times since January, 1990 (T. 7). According to Solloway, she refused voluntary placement at a ACLF (Adult Congregate Living Facility) (T. 8). Petitioner did not want to go to an ACLF as her first choice, because she wanted to go home to care for her ill mother (T. 8). An ACLF was not appropriate for Petitioner because Solloway believed she would leave it (T. 43). Solloway stated she had previously left an ACLF - Renaissance House (Id). However, Solloway did not know the details of the departure; he also didn't know that the admission at Renaissance was voluntary - Petitioner did not leave from a court-ordered admission (T. 47).

Dr. Louis Legum, a court-appointed psychologist, also examined Petitioner. He agreed with Dr. Solloway that Petitioner suffered from chronic, paranoid schizophrenia (T. 29). However, Legum noted that Petitioner had improved since he saw her in July 1990 (T. 31). She was not as agitated and not as floridly delusional (Id). Her thought content was singular and straightforward - she wanted to go home and rejoin her mother (T. 31).

Dr. Legum reviewed several less restrictive alternatives (than incarceration in the State hospital) for Petitioner. Dr.

Legum talked with the owner of the apartment where Petitioner's mother lived and where she resided before her last admission at MHRC (T. 29). Petitioner could live there; the resident manager would check on her (T. 30,35). A case manager from MHRC would also check on Petitioner once a week (T. 36). Petitioner could also use MHRC outpatient services in St. Johns County (T. 36). Dr. Legum also talked with Petitioner's mother's doctor - he learned that she (Petitioner's mother) was not in a life-threatening situation and although she was chronically ill, she was convalescing and hoped to return home soon (T 30). Petitioner's mother told Legum she would like Petitioner to come live with her (T. 30-31).

Petitioner had also been accepted at an ACLF in St. Augustine. A registered nurse would be able to give her 24 hour care at the facility (T. 30). Petitioner would receive round the clock supervision to ensure that she would eat and receive her medication (T. 39).

Dr. Legum then specifically addressed the criteria for an involuntary hospitalization. Petitioner is mentally ill, needs treatment and is unable to provide that for herself (T. 32). He also agreed Petitioner has no insight into her illness (T. 35). However, Dr. Legum noted that he was not sure at all that Petitioner is a danger to herself (T. 32). He further noted that although she stopped eating for a couple of weeks, Petitioner still took fluids or liquids, according to her mother (T. 32). Legum conceded that it was, at best, a "very dicey" proposition as

to whether Petitioner would continue to take her medication on her own (T. 37).

Legum agreed that if Petitioner stopped her medication, her physical appearance would deteriorate (T. 34). He also believed the landlord and the caseworker from MHRC could help ensure that Petitioner took her medication (T. 36). He stated that he was not sure what the consequences would be if she should stop taking medication and he was not sure that lack of medication would put her, or anyone else, in a devastating situation (T. 37). The court then asked Dr. Legum what would happen if Petitioner stopped taking her medication (T. 37-38). Legum answered that Petitioner would remain delusional, but he didn't think she would necessarily act in a self-destructive or other destructive fashion upon those delusions (T. 38). Legum believed residence at her mother's home or an ACLF was appropriate (T. 32).

Dr. Legum next testified that an involuntary hospitalization would be harmful to Petitioner. Legum opined that an admission to the State hospital would be devastating because she would be away from her mother; Petitioner and her mother have a very curious and symbiotic relationship, a need to stay in touch with one another (T. 32). Petitioner and her mother recently lived 7 years together and Legum was concerned about her if she was separated from her mother (T. 32-33). Petitioner could become substantially depressed (T. 33).

Petitioner then testified on her own behalf. She testified that she would continue to take her medication because she has been directed to do so (T. 40). She also stated she would not

run away from an ACLF, if it was close to her mother and the doctors felt she needed it (T. 40). (Petitioner's mother lives in St. Augustine and the ACLF is in St. Augustine) (T. 40). Petitioner admitted she would rather go home, but she knew the doctors did not believe that was appropriate (T. 41).

Petitioner stated she stopped eating because she was on a diet (T. 41). However, the diet (to lose weight) was over and she stopped dieting once she reached a certain level (T. 41). The State then asked Petitioner if she would leave the ACLF if she was not happy with it; she said no, unless someone discharged her (T. 42).

The Court then addressed some further questions to Dr. Solloway concerning an ACLF. Solloway told the Court that an ACLF was not appropriate because Petitioner was free to leave (T. 43). Solloway also noted that although Petitioner would agree to reside at an ACLF, she could then leave. For example, Petitioner left Renaissance ACLF under such circumstances. However, Solloway conceded that the admission to Renaissance was voluntary and was not based upon a court order (T. 47).

According to Solloway, control over medication at an ACLF would probably be marginally better than at home. An ACLF would not have nurses; the pill bottle is simply put out and the patients must take their own medicine (T. 44). The court then noted to Solloway that the ACLF in St. Augustine did have a registered nurse (Id). Despite this fact and his earlier statement, Solloway stated his opinion was still the same because Petitioner would not stay and she would not comply with her medication

(Id). Solloway also testified that further treatment would help Petitioner and the revolving door (presumably referring to admissions to MHRC) was not helping her.

The court then asked Solloway about the possible adverse consequences to Petitioner due to separation from her mother (T. 45). Solloway simply responded that Petitioner had been separated from her for over a month (at MHRC) and would not be more separated from her by being at the State hospital (T. 45). Separation would not be as destructive as lack of supervision and medication (T. 46). Solloway then stated that the chance of Petitioner having a better relationship with her mother could come from her treatment (T. 46).

The parties then argued their respective positions on whether Petitioner met the criteria for involuntary hospitalization (T. 48-53). The court then weighed the evidence and announced his decision and the reasons for it:

> THE COURT: I must confess, I'm willing -- this is a very difficult case for me to make a decision on. Both the doctors, the psychologist and psychiatrist in this case are pretty much down the line with each other until we get to the divergence of opinion as to whether or not there is -- a less restrictive environment would be a suitable alternative.
>
> Dr. Solloway is pretty adamant in his opinion that it would not be. Dr. Legum says that there are other alternatives, but he qualified it some ways -- I don't want to go into a long speech, I'm trying to talk this out a little bit to enable myself to come to a

> conclusion on this -- he qualifies his opinion as to place by saying that there are no -- he has no unequivocal or sure recommendations as to place.
>
> He's walking back in the room. I'm quoting from you. Okay.
>
> The other thing he said that gives me pause, is that, at best it's a, quote, a dicey proposition, close quote, whether she would take her medication in a less restrictive environment. Given that and Dr. Solloway's much more determined opinion to the contrary and with considerable reluctance on my part, I'm going to order that she be committed to the mental health -- Northeast Florida State Hospital. (T. 53-54).

Later, the Circuit Court entered a written order committing Petitioner to the State hospital until October 4, 1991 (R. 13).

The case was then appealed to the First District Court of Appeal. During the pendency of the appeal, Petitioner was released from her involuntary commitment. Counsel notified the First District of this fact on December 9, 1991. The court certified the following question to this Court (Appendix I - opinion of First District Court of Appeal):

> "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?"

On December 18, 1991, this Court entered an order postponing decision on jurisdiction and issuing a briefing schedule.

SUMMARY OF ARGUMENT

The certified question in this case is identical to the certified question in Godwin v. State, Case No. 75,881. The Court recently decided in Godwin, supra, that an appeal from a Baker Act commitment does not become moot solely because the person subject to the commitment has been released because of the collateral legal consequences of the filing of a lien for services provided by The Department of Health and Rehabilitative Services (HRS) under Section 402.33(8), Florida Statutes (1989). The majority opinion in Godwin decided that the other possible consequences raised in this brief are not collateral legal consequences. Three members of this Court, Kogan, Barkett, J.J. and Shaw, C.J., accepted Petitioner's arguments about the other adverse consequences which flow from a Baker Act commitment. Petitioner urges this Court to reconsider its decision in Godwin and adopt the opinion of Justice Kogan and the arguments presented in this brief.

This Court should answer the certified question by deciding that all appeals of involuntary commitments are not moot when the Appellant is released from commitment before the appeal is decided. Florida courts have previously held that an involuntary commitment appeal is moot after the citizen is released, unless there are adverse legal consequences. See Madden v. State, 463 So.2d 270 (Fla. 2d DCA 1984). This Court should reject this limited view of mootness. Most, if not all, state and federal courts have decided such appeals are not moot for the following four reasons:

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

The United State Supreme Court in O'Connor v. Donaldson, 422 U.S. 563, 95 S.Ct. 2486, 45 L.Ed.2d 396 (1975), decided that an involuntary commitment is a deprivation of liberty, akin to incarceration for a crime, which requires a court to follow due process. Fundamental fairness requires a review of a case which results in a complete deprivation of liberty. If an appellate court does not review such a case because of mootness, a citizen could face several commitments without an opportunity to have his or her case reviewed on appeal. Public policy requires a review of any case where a person is deprived of his or her liberty. This Court in Kinner v. State, 398 So.2d 1360 (Fla. 1981), decided that a court could consider a mental health case which was moot, if the case raises a question of great public importance and will affect a significant number of future cases. Several out-of-state jurisdictions have considered this issue and decided the significant loss of liberty, coupled with the possibility of future commitments based upon the unreviewed commitment, defeated a mootness claim. 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).

2. An involuntary commitment creates severe adverse social consequences.

An involuntary commitment creates severe adverse social consequences such as a loss of employment or a damage to reputation. An Oregon Court in State v. Van Tassel, 484 P.2d 1117 (Or. App. 1971), specifically decided a case was not moot because the involuntary commitment could affect future employment. An Illinois appeals court in People v. Nunn, 438 N.Ed.2d 1342 (Ill. App. 1st Dist. 1982), also followed this principle. Although these consequences are not legal collateral consequences, they are pernicious enough to defeat a mootness claim.

3. An involuntary commitment creates a stigma which justifies an exception to the mootness doctrine.

The First District in In Re Sealy, 218 So.2d 765 (Fla. 1st DCA 1969), held that the stigma of an adjudication of incompetence was sufficient to overcome the technical mootness of an appeal. The First District Court of Appeal in this case and in Godwin v. State, 557 So.2d 995 (Fla. 1st DCA 1990), did not expressly overrule nor discuss In Re Sealy. The principle enunciated in In Re Sealy is the better view of this issue because other state courts have followed it. See State v. Van Tassel, supra; State v. Lodge, supra; In Re D.B.W., 616 P.2d 1149 (Okla. 1980); Lessard v. Schmidt, 349 F.Supp. 1078 (E.D. Wisc. 1972); Note, "Developments in the Law of Civil Commitment of the Mentally Ill," 87 Harv.L.Rev. 1190 (1974).

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

The greater weight of authority in this country has decided appeals of involuntary commitments are not moot because

the issues presented by such cases are capable of repetition, yet could evade review. Counsel has been unable to find a case which considered this issue and decided the appeal was moot. The following state and federal courts have used the capable of repetition, yet evading review doctrine to overcome a claim of mootness: California - Conservatorship of Manton, 803 P.2d 1147 (Cal. 1985); Massachusetts - Hashimi v. Kalil, 446 N.E.2d 1387 (Mass. 1983); Minnesota - In Re Cordie, 372 N.W.2d 24 (Minn. App. 1985); New Jersey - In Re Z.O., 484 A.2d 1287 (N.J. Super. A.D. 1984); New Mexico - In Re Bunnell, 668 P.2d 1119 (N.M. App. 1983); North Carolina - In Re Hatley, 231 S.E.2d 633 (N.C. 1977); Oregon - State v. Smith, 692 P.2d 120 (Or. App. 1984); Pennsylvania - In Re S.O., 492 A.2d 727 (Pa. Super. Ct. 1985); Tennessee - In Re Helvenston, 658 S.W.2d 99 (Tenn. App. 1983); Texas - Lodge v. State, 597 S.W.2d 773 (Tex.Civ.App. 4th Dist. 1980); Washington - In Re McLaughlin, 676 P.2d 444 (Wash. 1984); Wisconsin - In Re W.J.C., 369 N.W.2d 162 (Wisc. App. 1985); and Federal - In Re Ballay, 482 F.2d 648 (D.C. Cir. 1973).

For all of the above-described reasons, appeal of involuntary commitments should never become moot when the citizen is released during the pendency of an appeal. Fundamental fairness and public policy require that this Court adopt a mootness principle which is identical to the mootness standard used in criminal appeals because involuntary commitment involves a similar deprivation of liberty and creates many of the same adverse social consequences arising from a criminal conviction and incarceration.

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.

The First District Court of Appeal in Godwin v. State, supra, decided that an appeal of an involuntary commitment would not be moot following a release from commitment, if the appellant could demonstrate collateral legal consequences from the commitment. See also Taylor v. State, 536 So.2d 1050 (Fla. 1st DCA 1988); Westlake v. State, 440 So.2d 74 (Fla. 5th DCA 1983). As Florida courts have previously decided that collateral legal consequences overcome mootness, the First District obviously was concerned about whether non-legal consequences could overcome mootness. In this cause and in Godwin, supra, there are no apparent collateral legal consequences. Therefore, the question for this Court is limited to whether non-legal consequences will defeat a mootness claim.

This Court should resolutely reject a principle of mootness limited only to the proof of adverse collateral legal consequences. The unique nature of an involuntary commitment based upon mental illness renders the collateral legal consequences

doctrine inappropriate because an involuntary hospitalization is a complete loss of liberty akin to incarceration for a crime. Moreover, the fact of an involuntary commitment can prevent individuals from holding/keeping certain professional jobs. The involuntary hospitalization can keep a citizen from having other jobs or renting/owning property. A lifelong stigma will usually follow an individual involuntarily committed to a state mental hospital.

Involuntary commitments to a state hospital, pursuant to Section 394.467, Florida Statutes, last for up to 6 months. It is almost impossible for busy courts and counsel to complete an entire appeal, from preparation of the record to the opinion of the court, in 6 months. In this case, the First District expedited the appeal by Petitioner. Despite this action, the case was still not decided within 6 months. Cases involving involuntary commitments involve significant legal and constitutional issues. The District Courts of Appeal and this Court has reviewed and reversed many cases involving such issues. See, e.g., Welk v. State, 542 So.2d 1343 (Fla. 1st DCA 1989); Williams v. State, 522 So.2d 983 (Fla. 1st DCA 1988); Schexnayder v. State, 495 So.2d 850 (Fla. 1st DCA 1986); Reigosa v. State, 362 So.2d 714 (Fla. 1st DCA 1978); In Re Beverly, 342 So.2d 481 (Fla. 1977).

These issues are obviously capable of repetition because appellate courts have had to adjudicate similar issues on the legality of an involuntary commitment, despite prior precedent on the issue. See and compare Welk v. State, supra; L.A. v. State, 530 So.2d 489 (Fla. 1st DCA 1988); Schexnayder v. State, supra. However, a narrow view of mootness, based upon release from the

commitment, would cause these issues to escape appellate review. Courts from other jurisdictions have directly considered the doctrine of "capable of repetition, yet evading review" in involuntary commitment cases. Those cases decided an appeal of an involuntary commitment was not moot because of the capable of repetition, yet evading review principle. See e.g. Lodge v. State, 597 S.W.2d 773 (Tex.Civ.App. 4th Dist. 1980), aff'd, 608 S.W.2d 910 (Tex. 1980); In Re Ballay, 482 F.2d 648 (D.C.Cir. 1973).

The question certified by the First District asks what showing (other than legal consequences) must an appellant make to avoid dismissal of the appeal on the grounds of mootness. In light of this question and the above-described case law, this Court must decide what non-legal collateral consequences will overcome the technical mootness of an appeal. Petitioner will individually address each of these consequences to demonstrate that release from involuntary commitment should not make an appeal moot, despite of the lack of any collateral legal consequences.

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.

An involuntary commitment to a state mental hospital involves a loss of liberty similar to incarceration for a crime. The United States Supreme Court in O'Connor v. Donaldson, 422 U.S. 563, 95 S.Ct. 2486, 45 L.Ed.2d 396 (1975), considered under what

circumstances a state could incarcerate a mentally ill person. The Supreme Court found mentally ill persons could not be deprived of their liberty and constitutional right to freedom unless the person was dangerous and incapable of surviving safely by himself or with the help of willing and responsible family members or friends. 422 U.S. at 576, 95 S.Ct. at 2494.

Involuntary hospitalization involves a significant liberty interest protected by the Fourteenth Amendment to the United States Constitution. The practical reality of an involuntary commitment is that it is almost identical to a confinement for a criminal act. The state hospital has locked fences around it and inmates there are not free to come and go as they wish. They are literally imprisoned due to their mental illness.

The short period of a usual hospitalization (up to 6 months, unless there is a recommitment of up to another 6 months) makes it difficult to appeal the legality of an involuntary commitment. If discharge from commitment automatically makes a case moot, the legality of the commitment cannot be challenged. Prior commitments to a state hospital often serve as the basis for another future commitment. If a person is recommitted for the same reasons and is released before the adjudication of an appeal, the person could be caught in a revolving door of involuntary commitments without any opportunity to challenge the bases of such commitments and avoid future commitments.

Several out-of-state jurisdictions have considered this issue and decided that the significant loss of liberty, coupled with the possibility of future recommitments based upon the unre-

viewed commitment, defeated a mootness claim in an involuntary commitment case. 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). Public policy requires that individuals deprived of their liberty be given an opportunity to challenge their commitments. The extremely busy appellate dockets make it likely that many individuals may never have their cases heard.

The Florida Supreme Court in Kinner v. State, 398 So.2d 1360 (Fla. 1981), recognized this public policy interest exception to mootness in the mental health field. The Supreme Court decided to consider the constitutionality of Section 393.11, Florida Statutes, despite the fact that Kinner had been discharged from his confinement at a residential retardation facility. The Kinner court noted the court would not determine a moot issue, unless the questions presented were of general public interest and importance or unless the judgment would affect the rights of the parties. 398 So.2d at 1362. The Court then noted:

> "We feel that this case raises a question of great public importance, the resolution of which will affect a significant number or retarded citizens who are presently institutionalized as a result of the application of the predecessor statute." (Id.)

The adjudication of an issue which could prevent or allow the involuntary commitment of a mentally ill citizen is obviously an issue of general public interest. The resolution of such issues also affect a significant number of individuals who are or might be institutionalized. Fundamental fairness requires

the opportunity for a person incarcerated or committed to challenge his or her confinement. The Supreme Court in O'Connor v. Donaldson, supra, acknowledged this principle and decided:

> "There can be no doubt that involuntary commitment to a mental hospital, like involuntary confinement of an individual for any reason, is a deprivation of liberty which the State cannot accomplish without due process of law." (Citations omitted) 422 U.S. at 580, 95 S.Ct. at 2496.

This Court should adopt the mootness and due process doctrines enunciated by Kinner, supra, and O'Connor v. Donaldson, supra, and hold that release from involuntary commitment does not make moot a pending appeal on the legality of the confinement.

C. An involuntary commitment creates severe adverse social consequences.

A mootness doctrine limited solely to collateral legal consequences will not take into account the pernicious social affects of an involuntary commitment. The commitment could prevent an individual from keeping/getting a professional license to practice a certain profession. The undersigned counsel handled two such appeals before the First District Court of Appeal. In these cases, a lawyer and nurse faced the loss of their professional licenses due to an involuntary commitment. See Forness v. State, 533 So.2d 932 (Fla. 1st DCA 1988), and MacIntyre v. State, 505 So.2d 2 (Fla. 1st DCA 1986). In each case, the Appellant had been released prior the adjudication of the appeal. In each case,

counsel argued the possible loss of a professional license was a collateral consequence which would overcome a mootness claim. The First District apparently agreed because it summarily reversed the commitment orders in each case.

A loss of a professional license is probably a collateral legal consequence. See Madden v. State, 463 So.2d 270 (Fla. 2d DCA 1984). However, an involuntary commitment could easily prevent individuals from getting more ordinary jobs which are not licensed by law. An Oregon Court of Appeal in State v. Van Tassel, 484 P.2d 1117 (Or. App. 1971), directly considered this point. The Van Tassel, supra, court rejected a mootness claim and found:

> "...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 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." 484 P.2d at 1121-22.

An Illinois court also adopted this in People v. Nunn, 438 N.E.2d 1342 (Ill. App. 1st Dist. 1982).

Involuntary commitments could also affect a person's ability to rent a place to live or buy certain items. These impediments may not be legal consequences because there will be no legal right/duty to enforce. A prospective employer may simply refuse to hire a person with a prior involuntary commitment. Most employment applications contain a question concerning mental illness and prior commitments to a hospital or mental health instit-

ution. Consequently, a person wrongfully committed who is released before her appeal is decided may not be able to remove this crippling disability.

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).

The First District Court of Appeal in In Re Sealy, 218 So.2d 765 (Fla. 1st DCA 1969), reversed an adjudication of incompetence even though Sealy had been released from the hospital and his judicial sanity had been restored. The Sealy court recognized that the only apparent purpose of the appeal was to remove the stigma of an incompetency adjudication from Sealy's record. 218 So.2d at 768. The First District reversed the funding of incompetence, despite the technical mootness of the issue; the Court obviously found that the social stigma from an adjudication of incompetency defeated a mootness claim. In this cause and Godwin v. State, supra, the First District did not explicitly overrule nor discuss In Re Sealy. Therefore, In Re Sealy is valid Florida precedent for the principle that the mere stigma of a past commitment, with its attendant finding of incompetency, is sufficient to overcome a mootness claim.

Most state courts which have considered the issue have held that the social stigma of an involuntary commitment justified an exception to the mootness doctrine. An Oregon appeals court in State v. Van Tassel, supra, explicitly found that an involuntary

commitment created a social stigma which affected a person's reputation and earning potential. The Van Tassel court expressly found a substantial interest in a person's reputation as demonstrated by tort laws which allow libel and slander actions. It would be cruelly ironic if a person could sue for libel and slander for a false statement that she had been involuntarily committed to a mental hospital, but could not legally challenge an actual illegal commitment.

The Texas Supreme Court in State v. Lodge, 608 S.W.2d 910 (Tex. 1980), affirmed a lower decision which found that the stigma of involuntary commitment defeated a mootness claim. See also Lessard v. Schmidt, 349 F.Supp 1078 (E.D.Wisc. 1972); Note, "Developments in the Law of Civil Commitment of the Mentally Ill," 87 Harv.L.Rev. 1190 (1974). The Oklahoma Supreme Court in In Re D.B.W., 616 P.2d 1149 (Okla. 1980), also rejected a claim of mootness because of the consequences of the social stigmatization and legal disabilities of involuntary commitments.

The stigma of mental illness has been a curse throughout history. The Texas Court of Appeals in Lodge v. State, supra, at 776, decided the stigma flowing from a judicial determination of metal illness was too well-known to require repetition in the court's opinion. Therefore, this Court should take judicial notice of the stigma which flows from an involuntary commitment. This Court should decide that all cases in this class are not moot, even if the person has been released before the appellate decision is rendered by the court.

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

The greater weight of authority in this country has decided that appeals of involuntary commitments are not moot, when the citizen had been released from confinement, because the issues presented by such cases are capable of repetition, yet could evade appellate review. Counsel has been unable to find an opinion which considered this issue and decided the appeal was moot. The following state and federal courts used the capable of repetition, yet evading review doctrine to defeat a mootness claim:

1. California - Conservatorship of Manton, 803 P.2d 1147 (Cal. 1985);
2. Massachusetts - Hashimi v. Kalil, 446 N.E.2d 1387 (Mass. 1983);
3. Minnesota - In Re Cordie, 372 N.W.2d 24 (Minn. App. 1985);
4. New Jersey - In Re Z.O., 484 A.2d 1287 (N.J. Super. A.D. 1984);
5. New Mexico - In Re Bunnell, 668 P.2d 1119 (N.M. App. 1983);
6. North Carolina - In Re Hatley, 231 S.E.2d 633 (N.C. 1977);
7. Oregon - State v. Smith, 692 P.2d 120 (Or. App. 1984);
8. Pennsylvania - In Re S.O., 492 A.2d 727 (Pa. Super. Ct. 1985);
9. Tennessee - In Re Helvenston, 658 S.W.2d 99 (Tenn. App. 1983);
10. Texas - Lodge v. State, 597 S.W.2d 773 (Tex.Civ.App. 4th Dist. 1980);
11. Washington - In Re McLaughlin, 676 P.2d 444 (Wash. 1984);
12. Wisconsin - In Re W.J.C., 369 N.W.2d 162 (Wisc. App. 1985); and
13. Federal - In Re Ballay, 482 F.2d 648 (D.C. Cir. 1973).

In light of the above-cited authority, this Court should follow the dominant trend in this country and find that all

appeals of involuntary commitments are not moot because the issues presented in such appeals are capable of repetition, yet could evade appellate review.

CONCLUSION

If the Court decides to reconsider its opinion in Godwin it should answer the certified question by deciding that all appeals of involuntary commitment are not moot when the Appellant is released during the pendency of the appeal. This cause should be remanded to the First District Court of Appeal for a consideration of the merits of this cause.

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 this 13th day of January, 1992.

James T Miller

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