

J O H N S E N, Judge

¶1 Patient appeals the superior court's order committing him to involuntary treatment for a period not to exceed 365 days, with inpatient treatment not to exceed 180 days. For the following reasons, we affirm the order.¹

FACTS AND PROCEDURAL HISTORY

¶2 A doctor filed a Petition for Court-Ordered Evaluation, stating there was reasonable cause to believe Patient had a mental disorder that caused him to be a danger to others. An Application for Involuntary Evaluation was attached to the petition, as was an Application for Emergency Admission for Evaluation. The petition was granted, and after evaluations by Dr. Evan Duffy and Dr. David Fife, Dr. Duffy filed a Petition for Court-Ordered Treatment that alleged that Patient was a danger to others and persistently or acutely disabled and requested the court to order him to undergo combined inpatient and outpatient treatment. Affidavits by Dr. Duffy and Dr. Fife were attached to the petition.

¶3 In his affidavit, Dr. Duffy diagnosed Patient as suffering from "(Probable Diagnosis) Schizoaffective Disorder, Not Otherwise Specified; Amphetamine Abuse; Opioid Dependence." During Dr. Duffy's evaluation of Patient, Patient admitted that

¹ Patient's motion to accelerate the Court's review of this appeal is granted.

he "doctor shops" to get medications he desires, including amphetamines, Valium, medications for a seizure disorder and morphine for a chronic pain disorder. Dr. Duffy described Patient as "remarkably different" during their second interview, saying Patient was extremely angry at the doctor and repeatedly used profanities. Dr. Duffy noted that Patient "gives no indication he has insight or judgment that isn't grossly impaired" and "his thought process was illogical." He concluded that Patient's "sudden explosive impulsive behavior" could pose a risk to others.

¶4 In his affidavit, Dr. Fife diagnosed Patient as suffering from "(Probable Diagnosis) Posttraumatic Stress Disorder; ADHD; Mood Disorder, Not Otherwise Specified; Psychotic Disorder, Not Otherwise Specified; Polysubstance Abuse," which rendered him a danger to others and persistently or acutely disabled. He stated that Patient has a long psychiatric history with multiple previous psychiatric hospitalizations. While Patient denied to Dr. Fife that he has mental illness or needs treatment, Patient told Dr. Fife he believes a government conspiracy has been involved with his treatment team and has been controlling him since his service with the Marines. Dr. Fife observed that Patient suffers from auditory and visual hallucinations and "does not believe that the current world is the one we live in." He stated that

Patient is irritable and irrational, and that he reports "thoughts of harming treatment staff at his clinic for what they did to him."

¶15 The court issued a detention order for treatment and notice setting a hearing on the petition. At the hearing, both parties stipulated to the admission of the affidavits of the two doctors in lieu of their testimony. At the start of the hearing, after an outburst from Patient, the court reminded him "not to speak out because [Patient's] attorney doesn't want you to speak out. He wants to know what you're going to say." Patient responded by saying, "Well then, fire him." The court informed Patient that if he wanted to say something, he could write it on a piece of paper and hand it to his attorney. Patient requested and was provided a piece of paper. The following exchanges then occurred:

THE COURT: Are we okay, [Patient]? We okay?

PATIENT: If he can read.

THE COURT: He can read, sir. He has a law degree.

PATIENT: I asked him to move.

* * *

THE COURT: Well, no, sir. He has to sit there. He has to sit next to you because if you want to discuss anything with him, he can't discuss it if he's on the other side

of the room. So that's why he's sitting next to you. He's your attorney.

PATIENT: I fired him.

THE COURT: Sir, you can't fire him. Anything else, [Patient]? We're going to proceed.

Those two women in the back are going to testify, and when they testify, if you believe that they're saying something that's not true, you need to write a note to your attorney and he will ask the questions. You understand that, [Patient]? Okay.

PATIENT: I understand I'm not getting justice that I fought for.

THE COURT: Well, that's why you have an attorney to make sure you get justice and so you need to utilize him.

PATIENT: I feel much better with my M-14.

THE COURT: Your who?

PATIENT: With my M-14.

THE COURT: Sir, please do not make statements about that in court.

¶16 The hearing then proceeded, uninterrupted, with testimony from the additional requisite witnesses. Patient did not testify and did not present any evidence. At the close of the hearing, the superior court found by clear and convincing evidence that Patient was suffering from a mental disorder that rendered him persistently or acutely disabled and a danger to others. The court also found Patient was in need of treatment

and unwilling or unable to accept treatment voluntarily. The court ordered Patient to undergo a combination of inpatient and outpatient treatment for a period not to exceed a total of 365 days, with inpatient treatment not to exceed 180 days.

¶17 Patient timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes sections 12-2101(A)(10) and 36-546.01 (West 2012).²

DISCUSSION

¶18 On appeal, Patient does not take issue with any of the superior court's findings and conclusions of law. Instead, he argues only that the court should have interpreted his assertion that he "fired" his attorney as a request to change counsel and should have inquired into his reasons for wanting a new lawyer.

¶19 Under Arizona law, "a patient facing a civil commitment proceeding is entitled to assistance of counsel." *In re MH2010-002637*, 228 Ariz. 74, 81, ¶ 29, 263 P.3d 82, 89 (App. 2011). A criminal defendant has a Sixth Amendment right to change of counsel when he is hopelessly conflicted with his lawyer or there has been a total breakdown in communication. *State v. Torres*, 208 Ariz. 340, 342, ¶ 6, 93 P.3d 1056, 1058 (2004).

² Absent material revision after the relevant date, we cite a statute's current version.

¶10 Citing *Torres*, Patient argues a person facing civil commitment has a similar due-process right to change of counsel upon a showing of good cause. He argues that upon a patient's request for change of counsel, due process requires the court to inquire why the patient requests a new lawyer. Even assuming, however, that due process allows a patient a change of counsel and requires the court to inquire after a patient makes such a request, the superior court did not err because at no time during the commitment proceedings did Patient ask for a new attorney.

¶11 The exchanges recounted above do not constitute a request by Patient for a change of counsel; nor do they contain any expression of dissatisfaction with the particular lawyer assigned to represent him. Instead, at most, they reflect Patient's general dissatisfaction with the legal proceedings on the petition for involuntary commitment. Moreover, the record does not reveal any conflict between Patient and his counsel - counsel communicated with Patient throughout the hearing, and the two consulted regarding whether Patient should testify.

¶12 Accordingly, the superior court did not err by failing to grant Patient a change of lawyer or by failing to inquire further of Patient about the matter.

CONCLUSION

¶13 For the foregoing reasons, we affirm the superior court's order.

/S/

DIANE M. JOHNSEN, Judge

CONCURRING:

/S/

ANN A. SCOTT TIMMER, Presiding Judge

/S/

PATRICIA A. OROZCO, Judge