NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK
OCT -2 2012
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE PINAL COUNTY MENTAL HEALTH NO. MH201200073	2 CA-MH 2012-0006 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Honorable Joseph R. Georgini, Judge

AFFIRMED

James P. Walsh, Pinal County Attorney
By Seymour G. Gruber
Florence
Attorneys for Appellee

Mary Wisdom, Pinal County Public Defender
By Lisa M. Surhio
Florence
Attorneys for Appellant

E S P I N O S A, Judge.

¶1 In this appeal from the trial court's order compelling mental health treatment, appellant contends the court erred by denying his motion to dismiss the petition for court-ordered treatment. He argues the petition should have been dismissed because certain statutory time limits had been violated. For the following reasons, we affirm.

Background

¶2 In reviewing an order for involuntary treatment, we view the facts in the light most favorable to sustaining the trial court's findings and judgment. *In re Maricopa Cnty. Mental Health No. MH 2008-001188*, 221 Ariz. 177, ¶ 14, 211 P.3d 1161, 1163 (App. 2009). On May 17, 2012, before MH-201200073, the action currently at issue, was initiated, Dr. Michael Vines, a medical director for Mountain Health and Wellness (MHW), filed a petition for court-ordered evaluation of appellant in MH-201200067. The court granted the petition and ordered appellant taken into custody and evaluated at MHW. Thereafter, Dr. Michael Strumpf, also a medical director at MHW, filed a petition for court-ordered treatment on May 21, alleging appellant was "persistently or acutely disabled" and recommending "combined inpatient and outpatient treatment." The court ordered appellant held in custody until a hearing on the matter, which was scheduled for 9:00 a.m. on May 25, 2012.

¶3 On May 24, Vines determined there was "no reason to continue the evaluation or treatment." But before appellant was released, he assaulted another patient. Apparently because appellant's transport to the hearing had been canceled and some of

the witnesses had already been informed the case would be closed, the petitioners decided to file a new petition for evaluation rather than proceed with the original hearing on May 25. On that date the attorney for the petitioners filed a notice stating, MHW "has released the patient from further involuntary evaluation for the reason that further evaluation is not appropriate at this time" and requesting "that the case be closed." The court ordered the case closed on that date.

¶4 On May 29, 2012, Vines filed a new petition for court-ordered evaluation of appellant, initiating the current action in MH-201200073. The court granted the petition and again ordered that appellant be taken to MHW for evaluation. Thereafter, Strumpf again filed a petition for court-ordered treatment, and a new hearing on the matter was set. The court again ordered appellant held in custody until the hearing.

¶5 Before the hearing, appellant filed a motion to dismiss the petition for court-ordered treatment, arguing that "[t]he filing of serial petitions accompanied by prolonged detention violate[d] [his] due process rights." At the hearing the trial court heard argument on the motion to dismiss and received evidence in support of the petition for court-ordered treatment. It denied appellant's motion to dismiss and granted the petition, ordering appellant to undergo inpatient treatment. This appeal followed.

Discussion

¶6 On review, appellant presents several arguments supporting his broad claim that the trial court erred in denying his motion to dismiss and asks that this court vacate the order for treatment. Because involuntary commitment "may result in a serious deprivation of liberty," strict compliance with the applicable statutes is required. *In re*

Coconino Cnty. Mental Health No. MH 1425, 181 Ariz. 290, 293, 889 P.2d 1088, 1091 (1995). And the determination of "whether there has been sufficient compliance is a question of statutory interpretation, an issue of law that we review de novo." *In re Pima Cnty. Mental Health No. MH-2010-0047*, 228 Ariz. 94, ¶ 7, 263 P.3d 643, 645 (App. 2011). "However, we will only disturb a court order for involuntary treatment if it is 'clearly erroneous or unsupported by any credible evidence.'" *In re Maricopa Cnty. No. MH 2010-002348*, 228 Ariz. 441, ¶ 7, 268 P.3d 392, 395 (App. 2011), *quoting In re Maricopa Cnty. Mental Health No. MH 94-00592*, 182 Ariz. 440, 443, 897 P.2d 742, 745 (App. 1995).

¶7 Appellant maintains MHW violated A.R.S. § 36-531 and his due process rights "by not releasing [him] once it was determined that further evaluation was not appropriate." Section 36-531(A) provides that "[a] person being evaluated on an inpatient basis in an evaluation agency shall be released if, in the opinion of the medical director of the agency, further evaluation is not appropriate unless the person makes application for further care and treatment on a voluntary basis." And, absent a voluntary request or petition for court-ordered treatment, "[a] person being evaluated on an inpatient basis in an evaluation agency shall be released within seventy-two hours . . . from the time that he is hospitalized pursuant to a court order for evaluation." § 36-531(D). Appellant therefore maintains MHW should have released him on May 24, as soon as Vines determined further evaluation was inappropriate. Appellant argues that "[t]he filing of serial petitions" and "prolonged detention violated the time limits" set forth in A.R.S. §§ 36-526 and 36-527, which relate to emergency admission.

¶8 Even assuming arguendo that the statutory time limits were violated, dismissal of the treatment order is not the proper remedy; instead, appellant should have sought release during the period of improper detention.[1] *See In re Maricopa Cnty. Mental Health No. MH 2008-002393*, 223 Ariz. 240, ¶ 12, 221 P.3d 1054, 1057 (App. 2009) (addressing violation of § 36-531); *In re Maricopa Cnty. Mental Health No. MH 2006-002044*, 217 Ariz. 31, ¶ 9, 170 P.3d 280, 282 (App. 2007) (addressing violation of § 36-527); *see also* A.R.S. § 36-546(A) (providing habeas corpus relief). When a violation of the statutory time limits occurs, the subsequent treatment order should only be dismissed if "the patient demonstrates he did not receive a fair hearing because of his illegal detention." *Maricopa Cnty. No. MH 2008-002393*, 223 Ariz. 240, ¶ 15, 221 P.3d at 1057. Appellant has not established that the hearing here was unfair.

¶9 Appellant maintains, however, that a writ of habeas corpus "is not a sufficient remedy" in this case. He contends the decisions cited above are distinguishable from the instant case because in those cases "serial petitions were filed out of necessity," whereas here, "serial petitions were filed because the original hearing date was inconvenient for Counsel for the Petitioner." Even accepting this characterization of the facts, the cited decisions were not contingent upon the reason the statutory time limits

[1]However, unlike § 36-531, which refers to "the time that [a patient] is hospitalized pursuant to a court order for evaluation" and contrary to appellant's argument that "[t]he time limits contained in these statutes all begin with admission to the hospital," § 36-526 refers to "presentation of the person for emergency admission" and § 36-527 refers to "[a] person taken into custody for emergency admission." In view of our conclusion that dismissal of the treatment order is not an appropriate remedy for a violation of the time limits, we need not resolve this issue.

had been violated. Nor do we accept appellant's suggestion that the severity of the violation, that is, the length of the time spent in custody, should alter the remedy available. In both *Maricopa Cnty. No. MH 2008-002393* and *Maricopa Cnty. No. MH 2006-002044*, we made clear that a prolonged detention is a violation of the patient's rights to be released within the statutory time limits, not of his or her due process rights in the subsequent proceedings. *See Maricopa Cnty. No. MH 2008-002393*, 223 Ariz. 240, ¶ 13, 221 P.3d at 1057 ("it was the 'prolonged detention that violates the statute, not the filing of the [second] petition'"), *quoting Maricopa Cnty. No. MH 2006-002044*, 217 Ariz. 31, ¶ 6, 170 P.3d at 282 (alteration in *Maricopa Cnty. No. MH 2008-002393*). Nothing in our decisions suggests that the remedy available for that violation should vary based on its degree.

¶10 We likewise reject appellant's argument that his commitment should be set aside because the purported due process violation here "is akin to a violation of the right to a speedy trial in a criminal proceeding." Assuming arguendo that some sort of "speedy trial" right applied in this context, that right could further support the premise that a petitioner or the state was required to follow the statutory timelines, but appellant has not shown how the presence of such a right would alter the remedy this court has determined is available for a violation of the time limits: habeas corpus relief. Because appellant did not seek such relief, the trial court did not err in denying his petition to dismiss.[2] And,

[2]Appellant also contends that "[r]elease by way of writ of habeas corpus was impossible under the circumstances." He maintains he was too mentally ill to "take action to seek release" and "[h]is counsel was intentionally kept in the dark." And he asserts that dismissal was appropriate because counsel for the petitioners violated

because appellant does not otherwise challenge the court's order, its judgment is affirmed.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

Rule 11, Ariz. R. Crim. P., when he signed the notice indicating appellant had been released and the initial action could be closed. These arguments were not raised below and are therefore waived. *See In re Pima Cnty. Mental Health No. MH-1140-6-93*, 176 Ariz. 565, 568, 863 P.2d 284, 287 (App. 1993) (arguments raised for first time on appeal generally waived); *see also In re Maricopa Cnty. Mental Health No. MH 2008-002659*, 224 Ariz. 25, ¶ 10, 226 P.3d 394, 396 (App. 2010) ("[T]he mere invocation of a liberty interest or due process challenge is not necessarily a sufficient reason to forego application of the waiver rule.").