

[Cite as *State v. Dotson*, 2010-Ohio-3081.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92812

STATE OF OHIO

PLAINTIFF-APPELLANT

vs.

JAMES DOTSON

DEFENDANT-APPELLEE

**JUDGMENT:
REVERSED AND REMANDED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-492209

BEFORE: Dyke, J., Blackmon, P.J., and Cooney, J.

RELEASED: July 1, 2010

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

ANN DYKE, J.:

{¶ 1} The state of Ohio appeals from the order of the trial court that R.C. 2945.38 and R.C. 2945.39 are unconstitutional as applied, and do not authorize the court to retain jurisdiction over proceedings involving James Dotson, an incompetent individual charged with a crime. Pursuant to the Supreme Court's recent opinion in *State v. Williams*, Slip Opinion No. 2010-Ohio-2453, we reverse the judgment of the trial court and remand for further proceedings.

{¶ 2} On February 13, 2007, Dotson was indicted for eight offenses in connection with attacks on Clemmie Mason on December 26, 2006, and January 7, 2007. The state charged defendant with two counts of aggravated burglary, two counts of robbery, and one count of kidnapping, all with two notices of prior convictions and two repeat violent offender specifications. The state also charged defendant with two counts of theft of less than \$500 from Mason, an "elderly person," pursuant to R.C. 2913.01.

{¶ 3} On March 7, 2007, Dotson was referred to the court psychiatric clinic for competency and sanity evaluations. At a subsequent hearing on the matter, the trial court determined that Dotson was not competent to stand trial but restorable to competency within the one-year period set forth in R.C.2945.38 and ordered him to be placed at Twin Valley Behavioral Health Care Center. The trial court later granted the state's application for forced medication. In a December 16, 2008, review of the competency issue,

the state and Dotson stipulated that Dotson was not competent to stand trial and not restorable to competency within the statutory time limits.

{¶ 4} The court referred Dotson to the court psychiatric clinic to determine whether he was eligible for civil commitment. The clinic concluded that he was in fact eligible for civil commitment, and the parties stipulated to this report. With regard to the criminal action, Dotson's counsel moved to dismiss the action and release Dotson, and the state moved for the trial court to retain jurisdiction pursuant to R.C. 2945.38 and R.C. 2945.39. The trial court denied the state's motion to retain jurisdiction and found R.C. 2945.38 and R.C. 2945.29 unconstitutional as applied to Dotson, citing *State v. Williams*, Montgomery App. No. 22532, 2008-Ohio-6245. The state now appeals, assigning the following error for our review:

{¶ 5} “The trial court erred in denying appellant’s motion to retain jurisdiction and finding R.C. 2945.38 and R.C. 2945.39 unconstitutional.”

{¶ 6} Within this assignment of error, the state asserts that the trial court erred in applying the decision of the Second District Montgomery County Court of Appeals in *State v. Williams*, supra. The state argues that the involuntary commitment provisions set forth in R.C. 2945.39 et seq. do not violate Dotson's right to equal protection or due process of law. In opposition, the defense asserts that R.C. 2945.39 differs significantly from the civil commitment procedures set forth in R.C. Chapter 5122, and violates both

the equal protection and due process guarantees.

{¶ 7} Pursuant to R.C.2945.38, a common pleas court presiding over a criminal case involving a defendant charged with a violent first- or second-degree felony who has been found incompetent to stand trial may require the defendant to undergo treatment for up to one year. If the one-year time for treatment expires and the defendant remains incompetent to stand trial, then the trial court must hold additional proceedings. R.C. 2945.38(H)(3). The trial court or the prosecuting attorney may seek to have the defendant civilly committed in probate court under R.C. Chapter 5122. R.C. 2945.39(A)(1).

{¶ 8} The court or prosecuting attorney may also seek to have the common pleas court retain jurisdiction over the defendant. R.C. 2945.39(A)(2). Under this option, the trial court must hold a hearing and determine, by clear and convincing evidence, that the defendant committed the charged offense and that the defendant is a mentally ill person subject to hospitalization by court order. R.C. 2945.39(A)(2)(a) and (b). If the court does not make both findings, it must dismiss the indictment and is required to discharge the defendant unless the court or the prosecuting attorney files for the defendant's civil commitment in probate court under R.C. Chapter 5122. If the court does make both findings, then the court must commit the defendant to a hospital operated by the department of mental health or to

another appropriate facility, and order that the defendant be placed in the least-restrictive commitment alternative available consistent with public safety and the defendant's welfare. R.C. 2945.39(D). All further proceedings are then governed by R.C. 2945.401(i). Id.

{¶ 9} Commitment terminates upon the earlier of (a) the trial court's determination that the defendant is no longer a mentally ill person subject to hospitalization by court order, (b) the expiration of the maximum prison term the defendant could have received if the defendant had been convicted of the most serious offense charged,¹ or (c) the trial court's termination of the commitment under R.C. 2945.401(J)(2).

{¶ 10} In *State v. Williams*, supra, the Second District Montgomery County Court of Appeals determined that R.C. 2945.39 is unconstitutional because it does not contain the constitutional guarantees afforded a defendant in a criminal prosecution, there is no rational basis for the differences between R.C. 2945.39 and R.C. Chapter 5122, and it is fundamentally unfair and offends the guarantee of due process to allow charges to remain pending indefinitely against an incompetent person.

{¶ 11} The Ohio Supreme Court reversed. See *State v. Williams*, Slip Op. No. 2010-Ohio-2453. Applying the intent-effects test, the court

¹ Under this termination, the court or the prosecuting attorney may seek the defendant's civil commitment in probate court under R.C. Chapter 5122. See R.C. 2945.401.

concluded that R.C. 2945.39 is a civil statute. The court then concluded that, because R.C. 2945.39 is civil in nature, a person committed under the statute need not be afforded the constitutional rights afforded to a defendant in a criminal prosecution. *Id.* paragraph two of the syllabus.

{¶ 12} The court also held that an involuntary commitment under R.C. 2945.39 does not violate principles of equal protection or due process. *Id.*, paragraph one of the syllabus. The court explained:

{¶ 13} “The fact that the subject of an R.C. 2945.39 commitment has been found to be a danger to others, and also has been found to have committed a violent felony, such as the rape in this case, fundamentally distinguishes an R.C. 2945.39 commitment from one under R.C. Chapter 5122. It is a distinction that may permissibly be taken into account. Public-safety concerns reasonably justify assigning to the common pleas court that entered the commitment order an important role in the committed person’s possible reduction in restrictions and in the determination of whether the commitment should be terminated. Although a person committed under R.C. 2945.39 may have to wait longer to receive an initial review hearing than a person committed under R.C. Chapter 5122, see R.C. 2945.401(C), that difference is not unreasonable, because such a person has already been subjected to the extensive evaluation procedures of R.C. 2945.38.” *Id.* at _49.

{¶ 14} The court further concluded that the nature and duration of the commitment that occurs under R.C. 2945.39 bears a reasonable relationship to the purpose for which the person is committed, protection of the public.

{¶ 15} The court therefore concluded that where the common pleas court already has had extensive interaction with a defendant pursuant to R.C. 2945.38, the court can continue to exercise jurisdiction over that defendant pursuant to R.C. 2945.39, and involuntary commitment in probate court need not be exclusively pursued.

{¶ 16} In accordance with all of the foregoing, the state's assignment of error is well-taken. The judgment of the trial court is reversed, and the matter is remanded for further proceedings consistent with this opinion.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

ANN DYKE, JUDGE

PATRICIA ANN BLACKMON, P.J., and
COLLEEN CONWAY COONEY, J., CONCUR