

¶1 Appellant requests that we remand this case for clarification as to whether the maximum duration of Appellant's court-supervised treatment is 180 days or 365 days. Because we are unable to determine the intent of the superior court, we remand for clarification.

Facts and Procedural History

¶2 In April 2010, the superior court held a hearing on a petition for court-ordered treatment. After the presentation of evidence, the court found by clear and convincing evidence that Appellant was suffering from a mental disorder and, as a result, was persistently or acutely disabled. The court ordered that Appellant undergo supervised treatment.

¶3 Regarding the duration of the supervised treatment, the hearing transcript reads as follows:

Therefore the Court is ordering that [Appellant] undergo treatment in a combined inpatient and outpatient treatment program until he's found to no longer be persistently or acutely disabled. *The maximum amount of time that's ordered for treatment will be in effect, is [sic] 180 days.*

(Emphasis added.) In contrast, the court's written order states:

[Appellant] shall undergo: Treatment in a program of combined inpatient and outpatient treatment until said patient

is found to be no longer persistently or acutely disabled, or is otherwise discharged in accordance with law, for a period of time not to exceed a total of 365 days, and with the period of inpatient treatment under this combined order not to exceed 180 days

(Emphasis added.) The minute entry for the hearing is consistent with the written order and not the oral pronouncement.

¶14 Appellant filed a timely notice of appeal from the treatment order. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 36-546.01 (2009), 12-120.21(A)(1) (2003), and 12-2101(K) (2003).

Discussion

¶15 There is a discrepancy between the court's oral pronouncement of supervised treatment and the court's written order. The hearing transcript states that the maximum duration of Appellant's supervised treatment is 180 days, and the court's written order states that the total maximum duration is 365 days, with 180 days being the maximum for inpatient treatment.

¶16 When we encounter such a discrepancy, it is appropriate to remand unless we can discern the court's actual intent by reference to the record. *State v. Bowles*, 173 Ariz. 214, 216, 841 P.2d 209, 211 (App. 1992); see also *State v. Rockerfeller*, 9 Ariz. App. 265, 267, 451 P.2d 623,

625 (1969) ("When there is a Conflict [sic] between the minutes and a reporter's transcript, the circumstances of the particular case determine which shall govern.").

¶7 Here, Appellant argues that the record fails to adequately clarify the superior court's actual intent in setting the maximum duration of Appellant's treatment. Having reviewed the record, we agree.

¶8 Appellee argues that the following references to the record reveal that the court intended to set the maximum duration of treatment at 365 days: (1) the court appeared to adopt the recommended treatment plan - which recommended a total period of 365 days for treatment - by stating that the plan "appear[ed] appropriate"; (2) a post-judgment letter from the outpatient treatment provider stated in its introduction that Appellant had been ordered to receive treatment for one year; and (3) the 45-day status report from the outpatient treatment provider stated that Appellant's treatment began on 04/09/2010 and would end on 04/08/2011.

¶9 It may well be that the court intended to order 365 days of total treatment time. However, in Arizona, oral pronouncements take precedence over written pronouncements. *State v. Hanson*, 138 Ariz. 296, 304-05, 674 P.2d 850, 858-59 (App. 1983) ("Where there is a

discrepancy between the oral sentence and the written judgment, the oral pronouncement of sentence controls."). The oral pronouncements in this case refer to a maximum time of 180 days. Therefore, out of an abundance of caution, we remand for clarification of total treatment time.

Conclusion

¶10 For the foregoing reasons, we remand this case to the superior court to clarify the maximum total duration of Appellant's supervised treatment.

/S/

DANIEL A. BARKER, Presiding Judge

CONCURRING:

/S/

MARGARET H. DOWNIE, Judge

/S/

MICHAEL J. BROWN, Judge