

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)
)
 v.) DEF. ID NOS.: 0904009813,
) 0904017419, 0809015212,
 CHRISTOPHER STEIMLING,) 0810006176 & 0901012306
)
 Defendant.)

Date Submitted: August 31, 2010
Date Decided: October 12, 2010

MEMORANDUM OPINION

*Upon recommendation of the Delaware Psychiatric Center
to Transfer Defendant to the Custody of the
Department of Correction Pursuant to 11 Del C. § 408(c).*

GRANTED.

Ilona M, Kirshon, Deputy Attorney General, Department of Justice, Wilmington, Delaware. Attorney for Delaware Psychiatric Center.

Aaron Goldstein, Deputy Attorney General, Department of Justice, Wilmington, Delaware. Attorney for Delaware Department of Correction.

Jennifer-Kate Aaronson, Esquire. Aaronson, Collins & Jennings, LLC. Wilmington, Delaware. Attorney for Defendant.

SLIGHTS, J.

I.

By report dated March 2, 2010, and transition plan dated April 12, 2010, the Delaware Psychiatric Center (“DPC”) has recommended that the defendant, Christopher Steimling (“Mr. Steimling”), be transferred from DPC to the custody of the Department of Correction (“DOC”) to serve the balance of his sentence for multiple convictions, including Car Jacking 2nd Degree and Burglary Third Degree. Mr. Steimling was sentenced pursuant to Delaware’s Guilty But Mentally Ill statute, 11 *Del. C.* § 408, which provides, in essence, that the Court shall remand the defendant to the custody of DPC for treatment until such time as he is stable enough to be placed in the custody of the DOC. As stated, DPC has advised the Court that Mr. Steimling is stable enough to serve the balance of his Level V sentence in a prison setting. At Mr. Steimling’s request, on August 31, 2010, the Court conducted a hearing to receive evidence from the State and Mr. Steimling regarding his current mental health condition, treatment, prognosis and treatment plan going forward. For the reasons that follow, the Court is satisfied that Mr. Steimling should be remanded to the custody of DOC where he will serve the balance of his Level V sentence, subject to the conditions stated below.

II.

The State called three witnesses in support of its request that Mr. Steimling be

transferred from DPC to DOC. The first two witnesses, Clarence Watson, M.D. (Clinical Director of Forensic Services at DPC) and Charlotte Selig, Psy. D. (Mr. Steimling's psychologist), testified regarding their views of Mr. Steimling's psychiatric diagnoses, past treatment and proposed treatment plan. Both witnesses agreed that Mr. Steimling suffered from polysubstance abuse dependence and personality disorder (with narcissistic and antisocial traits). And, both agreed that Mr. Steimling can continue to receive appropriate mental health treatment at DOC. The State's third witness, Vinnie Faber, Treatment Administrator for DOC, testified regarding DOC's ability to implement the treatment/transition plan proposed by DPC. Ms. Faber shared the view that Mr. Steimling was ready to leave DPC to serve the balance of his sentence at DOC.

For his part, Mr. Steimling called Abraham J. Mensch, Ph.D., a psychologist who performed a neuropsychological and psychological evaluation of Mr. Steimling. Dr. Mensch disagreed with the diagnosis rendered at DPC, and opined that Mr. Steimling should remain at DPC in order to maintain a "continuity of treatment" that has been lacking for Mr. Steimling in the past. Dr. Mensch also recommended that Mr. Steimling might benefit from a different approach to psychotherapy and further recommended that Mr. Steimling's treating psychiatrist at DPC explore pharmacotherapy as an additional modality.

At the conclusion of the hearing, it became clear to the Court that the positions of the parties could accurately be summarized as follows: the State contended that Mr. Steimling was not in such an acute mental health state that he required the more intensive resources of DPC, and that DOC was more than capable of continuing to address Mr. Steimling’s long term mental health needs; Mr. Steimling, on the other hand, contended that the relevant statute provides that DPC may not transfer him to DOC until such time that it can establish that Mr. Steimling “no longer needs nor could benefit from treatment for [his] mental illness...”¹ Mr. Steimling also took the position that DPC has not (and cannot) sustain its burden of establishing that his transfer from DPC to DOC was “in [his] best interests.”² In reply, DPC and DOC argued that Delaware’s “Guilty, But Mentally Ill” statutory scheme is not intended to allow a defendant to remain in DPC to receive treatment when DOC is fully capable and prepared to render appropriate mental health treatment to that defendant within the confines of a prison facility.

III.

The relevant statute, 11 *Del. C.* § 408, provides in pertinent part:

(b) In a trial under this section a defendant found guilty but mentally ill,

¹ 11 *Del. C.* § 408(c).

² 11 *Del. C.* § 408(b).

or whose plea to that effect is accepted, may have any sentence imposed which may be lawfully be imposed upon any defendant for the same offense. Such defendant shall be committed into the custody of the Department of Correction, and shall undergo such *further evaluation and be given such immediate and temporary treatment* as is psychiatrically indicated. The Commissioner shall retain exclusive jurisdiction over such person in all matters relating to security. The Commissioner shall thereupon confine such person in the Delaware Psychiatric Center. Although such person shall remain under the jurisdiction of the Department of Correction, decisions directly related to treatment for the mental illness...shall be the joint responsibility of the Director of the Division of Substance Abuse and Mental Health and those persons at the Delaware Psychiatric Center who are directly responsible for such treatment. The Delaware Psychiatric Center...shall have the authority to discharge the defendant from the facility and return the defendant to the physical custody of the Commissioner whenever the facility believes that such a discharge is in the *best interests of the defendant*. (emphasis supplied)

(c) Where the Psychiatric Center...discharges an offender prior to the expiration of such person's sentence, the treating facility shall transmit to the Commissioner...a report on the condition of the offender which contains the clinical facts; the diagnosis; the course of treatment; the prognosis;...and recommendations for future treatment. []Where the Court finds that the offender, before completing the sentence, *no longer needs nor could benefit from treatment for the offender's mental illness*, the offender shall be remanded to the Department of Correction. The offender shall have credited towards the sentence the time served at the Psychiatric Center or other facility. (emphasis supplied)

The Court's first reaction upon reviewing Section 408 is that it is, to be kind, less than clear. Indeed, this Court previously has noted that the statute is ambiguous with regard to whether a hearing like the one the Court conducted in this case is even

necessary.³ A literal reading of Section 408(b) would indicate that DPC would have the authority to discharge a defendant to the custody of DOC “whenever [DPC] believes that such a discharge is in the best interest of the defendant.” There is no indication in this provision that Court approval of the transfer is required. Moreover, nothing in this provision suggests that DPC’s discretion to make the determination of the defendant’s “best interests” is fettered in any way by what others (including a defense expert or, for that matter, the Court) might think about the matter. And yet, Section 408(c) suggests that the Court *does* have a role to play in the determination of whether a defendant should be transferred to DOC by providing that the Court should determine whether a defendant “no longer needs nor could benefit from treatment” at DPC prior to sanctioning a transfer to DOC. Herein lies the ambiguity.

Having determined that there is ambiguity in the statute, the Court is obliged to attempt to construe it in order to fulfill the intent of the General Assembly.⁴ Several canons of statutory construction guide the Court along the way of determining legislative intent. For instance, the Court should construe ambiguous statutes in a

³ See *Fotakos v. Ikbarr*, 604 A.2d 1387, 1390 (Del. Super. 1992) (withdrawn from N.R.S. bound volume but available on Westlaw®) (“[T]he statute under which Fotakos was confined to DSH is ambiguous about whether a further court order is needed [prior to transfer to DOC].”).

⁴ *Coastal Barge Corp. v. Coastal Zone Indus. Control Bd.*, 492 A.2d 1242, 1246 (Del. 1985) (“To apply a statute the fundamental rule is to ascertain and give effect to the intent of the legislature.”).

manner that will avoid “unreasonable or absurd consequences.”⁵ The Court also must strive to give meaning to all provisions of a statute in order to avoid a construction that renders certain provisions superfluous.⁶ And, one statutory provision cannot be construed without regard to the statute’s remaining provisions.⁷

With these canons in mind, the Court begins its construction of Section 408 by noting that the statute sets forth an entire scheme by which individuals adjudicated “Guilty, but Mentally Ill” should be sentenced for their crime(s). Our Supreme Court has observed that this scheme contemplates that “both treatment and punishment” are appropriate responsive measures for those who commit criminal acts while suffering from mental illness.⁸ With respect to the “treatment” aspect of the statute, Section 408(b) states that a defendant “shall undergo...evaluation and be given such *immediate and temporary* treatment as is psychiatrically indicated.”⁹ Once this treatment has been provided, DPC is authorized “to discharge the defendant from the facility and return [him] to the physical custody of [DOC] [if] such a discharge is in

⁵ *Id.*

⁶ *Keeler v. Hartford Mut. Ins. Co.*, 672 A.2d 1012, 1016 (Del. 1996).

⁷ *X Comp, Inc. v. Ropp*, 200 WL 6803062 at *3 (Del. Ch.) (“A statutory provision cannot be construed without regard to the statute’s remaining provisions nor can it be interpreted in a manner that would render the remaining provisions superfluous or ineffectual.”).

⁸ *See Sanders v. State*, 585 A.2d 117, 126 (Del. 1990).

⁹ 11 *Del. C.* § 408(b) (emphasis supplied).

the best interests of the defendant.”¹⁰

Needless to say, a defendant could always mount a credible argument that, at least from his perspective, a transfer from a therapeutic environment (DPC) to a more custodial environment (DOC) is *never* in his “best interests.” This construction of the statute, of course, would ignore the punitive element of Section 408 and would substantially hinder DPC’s ability to determine when it has provided the “immediate and temporary treatment” contemplated by the statute. It would also render the transfer provisions of Section 408(b) superfluous because a defendant would almost never be eligible for transfer if the “best interests” standard focused solely on where a defendant would prefer to receive his treatment or where he believes the State’s treatment resources would best suit his needs. The Court declines, therefore, to interpret Section 408(b)’s “best interest” provision from the subjective perspective of the defendant. Instead, the Court concludes that Section 408(b) contemplates that DPC will engage in an objective measure of the defendant’s “best interests” that takes into account not only the defendant’s acute and long-term treatment needs but also the dual purposes of Section 408 and the best utilization of DPC’s limited resources in fulfilling its many statutory mandates.¹¹

¹⁰ *Id.*

¹¹ *See Sanders*, 585 A.2d at 128 (noting that Section 408 “clearly reflects an intention to vest treatment decisions in the hands of mental health professionals rather than prison officials.”).

Once it has been determined that a defendant’s “best interests” justify a transfer from DPC to DOC, Section 408(c) requires DPC to prepare a report which summarizes, *inter alia*, the defendant’s clinical history, diagnosis, course of treatment and prognosis and also proposes a plan for future treatment.¹² The report, once prepared, must be transmitted to DOC.¹³ This requirement appears to relate to the authority granted to DPC in Section 408(b) to transfer a defendant from its facility for continued treatment when it determines that to do so would be in the defendant’s “best interests.” The report called for in Section 408(c) facilitates the transfer and allows for and informs a continuity of care for the defendant’s mental illness. Up to this point in the statutory scheme, there is no indication that the court should play any role, beyond its initial sentence, in the decision to transfer a defendant from DPC to DOC. Indeed, the report contemplated by Section 408(c) is to be made by DPC after the decision to discharge has already been made.¹⁴ Simply stated, the Court can discern no legislative intent in Section 408(b) that DPC confer with the court regarding discharge of a defendant to DOC for continued treatment or that it send the

¹² 11 *Del. C.* § 408(c).

¹³ *Id.*

¹⁴ *Id.* (providing that the report shall be prepared “[w]hen the Psychiatric Center or other treating facility designated by the Commissioner *discharges* an offender prior to the expiration of such person’s sentence....”) (emphasis supplied).

Section 408(c) report to the sentencing court either prior to or after the transfer.¹⁵

The first mention of the court's involvement in the transfer process comes at the very end of Section 408(c), and this involvement appears to be triggered by DPC's determination, prior to the expiration of a defendant's sentence, that the defendant "no longer needs nor could benefit from treatment for the offender's mental illness."¹⁶ Under these circumstances, the court is called upon to review that determination prior to DPC's transfer of a defendant to DOC without a plan for further treatment. This provision of Section 408(c) does not, however, articulate any role for the court to play when DPC concludes that further treatment for mental illness *is* indicated but that it is not necessary for such treatment to be provided at DPC. Stated differently, the statute does not require the court to review DPC's determination that a defendant's "best interests" will be served by continuing his long-term treatment for mental illness at DOC in accordance with a specified treatment plan.

Having carefully reviewed Section 408 in accordance with established tenets

¹⁵ Of course, the sentencing court has the inherent authority to direct in its sentencing order that DPC provide regular status reports to the court in particular cases should the court wish to monitor the treatment status of a defendant sentenced pursuant to Section 408. *See State v. Sloman*, 886 A.2d 1257, 1258 (Del. 2005) (addressing the sentencing court's "inherent authority" with respect to sentencing issues).

¹⁶ *Id.*

of statutory construction, the Court holds that DPC may transfer a defendant sentenced pursuant to Section 408 from its facility to DOC without court approval when: (1) it determines that it has provided the “evaluation” and “such immediate and temporary treatment as is psychiatrically indicated,” as required by Section 408(b); (2) after providing such evaluation and treatment, it determines that the defendant’s “best interests” would be served by further long term care in a facility managed by the DOC; and (3) it prepares the report, with all requisite elements, as mandated by Section 408(c) and delivers it to the Commissioner of the DOC or his/her designee. Of course, once a defendant is placed in the custody of DOC he may seek appropriate relief from the court to the extent he believes he is not receiving the treatment called for in the report mandated by Section 408(c). He may not, however, seek a judicial review of the DPC’s decision to transfer him to the custody of DOC for further treatment unless he has a basis to allege that DPC has failed to evaluate and treat him for his acute mental health needs as required by Section 408(b).¹⁷

In cases where DPC has determined that a defendant should be transferred from its facility, but has not provided for “future treatment” as contemplated by Section 408(c), DPC must first seek a determination from the court as to whether the

¹⁷ See *Sanders*, 585 A.2d at 128 (suggesting that Section 408(b) requires that a defendant be held at DPC “until the *hospital staff* [not the court] determines that confinement in a correctional institution would be in his best interests.”) (emphasis supplied).

defendant “needs” or “could benefit from” future treatment, either at DPC or DOC, before initiating a transfer. The court would then likely convene a hearing at which it would receive evidence regarding both the defendant’s continued need for treatment for his mental illness and, if necessary or beneficial, the most appropriate location for this treatment to be rendered.

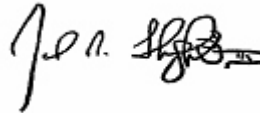
In this case, the Court conducted a hearing that, according to the construction of Section 408 set forth above, it did not need to conduct. Nevertheless, the evidence received at the hearing indicates that while the mental health professionals might disagree as to Mr. Steimling’s precise psychiatric diagnosis, and they might disagree as to the optimal modalities to treat his mental illness, they do not disagree that DOC has the capability to offer reasonable long term treatment to Mr. Steimling for his substance abuse and mental illness issues. That Mr. Steimling might prefer to receive this treatment at DPC, or that DPC might offer modalities that DOC does not offer, are not, alone, grounds to undermine DPC’s determination that a transfer to DOC is in Mr. Steimling’s “best interests.” The Court specifically finds that “the defendant no longer needs continued in-patient treatment for his mental illness, but would benefit equally from treatment available in the DOC’s custody.”¹⁸

¹⁸ *State v. Fotakos*, 599 A.2d 753, 756 (Del. Super. Ct. 1991) (holding that a defendant may be transferred from DPC to DOC pursuant to Section 408(b) after conducting an evidentiary hearing).

IV.

Based on the foregoing, the Court directs that Mr. Steimling be **REMANDED** to the custody of the Department of Correction, in accordance with the treatment plan prepared by the Delaware Psychiatric Center, dated April 12, 2010, and that the Department of Correction take custody of Mr. Steimling and provide such services as directed in the April 12, 2010, treatment plan.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "J.R. Slights, III". The signature is written in a cursive style with a horizontal line at the end.

Judge Joseph R. Slights, III

Original to Prothonotary

JRS, III/sb