

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2001-CA-000092-MR

MICHAEL TOLLEY

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE THOMAS J. KNOFF, JUDGE  
ACTION NOS. 00-CR-002228 & 99-CR-000260

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING  
\*\* \*\*

BEFORE: BARBER, DYCHE, AND MILLER, JUDGES.

MILLER, JUDGE: Michael Tolley brings this appeal from a December 14, 2000, Judgment and Order of the Jefferson Circuit Court. We affirm.

Tolley was indicted in 1986 for the murder of a man who allegedly refused to repair his van. He was found incompetent to stand trial and was committed to Central State Hospital (CSH) for 360 days. Tolley was reindicted in 1991. He again underwent a psychiatric evaluation. Tolley was diagnosed as paranoid schizophrenic and actively psychotic, and again found incompetent to stand trial. He was then committed for 360 days to CSH, and the indictment dismissed. In May, 1992, Jefferson Circuit Court

ordered a specific treatment plan for Tolley. The order was upheld by the Supreme Court in Tolley v. Commonwealth, Ky., 892 S.W.2d 580 (1995).

On October 6, 2000, pursuant to Kentucky Revised Statutes (KRS) Chapter 202A, (Kentucky Mental Health Hospitalization Act) a Verified Petition for Involuntary Hospitalization (Mental Illness) was filed in Jefferson Circuit Court. The petition was filed by a representative of the Kentucky Correctional Psychiatric Center (KCPC) requesting Tolley's hospitalization be continued. The petition stated that Tolley had no insight into his illness, denied his symptoms, manifested illogical thinking, and displayed inappropriate sexual behavior. A second certification by Dr. Frank DeLand noted that Tolley was hostile, exhibited religious, racial and paranoid delusions, and indicated he intended to quit taking his medication when the court order was lifted.

On October 9, 2000, Jefferson Circuit Court issued an order that Tolley undergo a psychiatric examination to determine whether Tolley met the criteria for involuntary hospitalization pursuant to KRS 202A. The examination was performed by Dr. Victoria Yunker, a board certified mental health professional specializing in forensic psychiatry.

On October 17, 2000, Tolley was again indicted by the Jefferson Circuit Grand Jury for the 1986 murder. On November 28, 2000, a final hearing on Tolley's involuntary hospitalization was held in Jefferson Circuit Court.

The cause was heard by the circuit court without a jury under KRS 202A.076(2). At the hearing, Dr. Yunker testified that Tolley suffered from chronic paranoid schizophrenia, still presented a danger or threat of danger to himself and others, was slowly showing improvement from treatment, could benefit from further treatment, and that hospitalization was the least restrictive mode of treatment at that time. Tolley testified on his own behalf, but presented no scientific or expert testimony to refute Dr. Yunker.

At the conclusion of the hearing, Tolley's motion to dismiss was denied. The circuit court found that Tolley met the criteria for involuntary hospitalization pursuant to KRS 202A.026. On December 14, 2000, the circuit court issued a judgment and order for Tolley's involuntary hospitalization for 360 consecutive days. This appeal followed.

Tolley's sole argument on appeal is that the circuit court erred in denying his motion to dismiss.

Tolley maintains a dismissal was appropriate because the Commonwealth failed to prove beyond a reasonable doubt that Tolley could reasonably benefit from further treatment, as required by KRS 202A.026.

KRS 202A.026 provides:

No person shall be involuntarily hospitalized unless such person is a mentally ill person:

- (1) Who presents a danger or threat of danger to self, family or others as a result of the mental illness;
- (2) Who can reasonably benefit from treatment; and

- (3) For whom hospitalization is the least restrictive alternative mode of treatment presently available.

The elements of KRS 202A.026 must be proven beyond a reasonable doubt. KRS 202A.076(2).

Because Tolley's hospitalization involves a deprivation of liberty, constitutional adherence is required. Denton v. Commonwealth, Ky., 383 S.W.2d 681 (1964). Our review is under the reasonable doubt standard enunciated in Commonwealth v. Benham, Ky., 816 S.W.2d 186 (1991).

Having reviewed the record as a whole, in light of the evidence most favorable to the petitioner, we are of the opinion that the precepts of Benham have been met. Tolley essentially argues that his condition has stabilized at a low level and that further treatment would not be beneficial. We reject this argument based on the testimony of Dr. Yunker.

At the hearing, Dr. Yunker testified that Tolley was continuing to improve, albeit slowly. She further opined that in the absence of treatment, Tolley would return to prior behavior patterns. She noted his prior behavior included identifying his peers as demons, tearing up their projects, issuing unprovoked threats, and making sexually inappropriate comments and gestures toward female staff. Further, the petition for involuntary hospitalization was filed based on the KCPC determination Tolley needed further treatment. Dr. DeLand, in the second certification, concurred. The defense presented no expert testimony to the contrary. As such, we believe there is abundant evidence to support the circuit court's finding that the

Commonwealth proved beyond a reasonable doubt that Tolley could reasonably benefit from treatment.

For the foregoing reasons, the judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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