

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-001792-MR

WILLIAM A. WOLFORD

APPELLANT

v. APPEAL FROM PIKE CIRCUIT COURT
HONORABLE CHARLES E. LOWE, JR., JUDGE
ACTION NO. 98-H-00026

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: COMBS, DYCHE, and KNOPF, Judges.

COMBS, JUDGE: William Wolford appeals the June 14, 2001, judgment of the Pike Circuit Court ordering him to be involuntarily hospitalized for a period not to exceed 360 days pursuant to a jury verdict. Wolford challenges that order of commitment. First, he argues that the underlying probable cause hearing was not conducted within six days as required by KRS¹ 202A.071(1). He also contends that the evidence presented at trial was insufficient to support the finding of the jury that he met all the criteria for involuntary hospitalization set forth in

¹Kentucky Revised Statutes.

KRS 202A.026. After considering Wolford's arguments and reviewing the record, we affirm.

There is no dispute that Wolford has been an involuntary patient at Central State Hospital since 1998. He was also admitted after the Pike Circuit Court determined him to be incompetent to stand trial on a 1995 indictment charging him with two counts of first-degree wanton endangerment. Those charges arose from his alleged firing of a weapon into the home of a neighbor. There is no dispute that at the time of this petition for involuntary hospitalization, Wolford had been a patient at Central State for approximately three years – although the exact dates of his previous commitments are not contained in the record.

On May 15, 2001, a petition was filed pursuant to KRS Chapter 202A, the Kentucky Mental Health Hospitalization Act, by a psychologist at Central State Hospital seeking to retain Wolford as a patient at the hospital for an additional 360 days. Wolford and his counsel attended the preliminary hearing conducted on May 24, 2001. At that hearing, the court reviewed reports of two recent examinations of Wolford attached to the petition as well as the testimony of Larry Curl, Ph.D., a psychologist at Central State treating Wolford. The trial court found probable cause to believe that Wolford should continue to be involuntarily hospitalized. It set the matter for trial on June 13, 2001. Neither Wolford nor his attorney complained about the timing of the preliminary hearing.

At the conclusion of the trial on June 14, 2001, the jury returned its verdict and found that Wolford was in need of hospitalization for up to 360 days, the maximum period allowed by KRS 202A.051. A final judgment reflecting that verdict was entered that day. Wolford's appeal followed.

Preliminarily, we note that neither of the errors raised by Wolford was preserved for review. Wolford, however, contends that they rise to the level of palpable error under RCr² 10.26. Because of the liberty interest at stake and the due process right implicated by an involuntary hospitalization proceeding, the issues that he has raised have been previously characterized as matters possibly involving palpable error. See Schuttemeyer v. Commonwealth, Ky.App., 793 S.W.2d 124, 127-28 (1990). However, any decision by this court is now moot since more than one year has elapsed following entry of judgment. The order has expired by its own terms. The only alternative forms of relief sought by Wolford are reversal of the judgment or a remand for a new trial. Neither avenue would afford him any meaningful relief from the expired order. We do not know from the record before us whether Wolford is still hospitalized at Central State. However, if he remains there involuntarily, he does so as the result of a new petition and a different judgment rather than as a consequence of the judgment before us.

We have nonetheless carefully reviewed the record of this case and Wolford's arguments. We are satisfied that the error alleged as to the timing of the hearing is harmless under

²Kentucky Rules of Criminal Procedure.

the circumstances of this case. A one-day delay occurred in holding the hearing (excluding a Saturday and Sunday in computing time), and no objection was raised. Additionally, he was already at that time subject to a prior order of involuntary hospitalization and was not entitled to be released. He would have had to seek a writ of *habeas corpus* to challenge the delay. Commonwealth v. Brown, Ky.App., 911 S.W.2d 279, 280-81 (1995). We cannot agree that his due process rights were prejudiced where the preliminary hearing occurred as soon as (if not sooner than) a hearing on a *habeas* petition could have been conducted.

We also disagree with Wolford's argument that the verdict was not adequately supported by the evidence. The evidence at trial was more than sufficient to support the finding of the jury pursuant to our guiding standard as set forth in Commonwealth v. Benham, Ky., 816 S.W.2d 186 (1991). Wolford's own expert witness, Dr. Paul Evans, testified that he did not recommend that Wolford be released from the hospital. Dr. Larry Curl presented compelling testimony with respect to all the statutory criteria. He testified that Wolford suffers from a profound mental illness, paranoid schizophrenia; that in addition to his history of violent behavior exhibited toward others, Wolford had physically harmed himself; that he did not cooperate in taking his medication, conduct requiring the staff to mix it in his food; that he has no insight into his mental condition. Dr. Curl concluded that in his opinion, Wolford was not currently able to function in a less structured environment. Dr. Curl also testified that Wolford was not yet ready for release into the

community -- although it is hoped that he will eventually be eligible for out-patient treatment.

The judgment of the Pike Circuit Court is affirmed.

ALL CONCUR.

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