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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-653

Filed: 19 December 2017

Granville County, No. 16 SPC 156

IN THE MATTER OF: T.S.P.

Appeal by respondent from orders entered 19 October 2016 by Judge G. Wayne Abernathy and 5 January 2017 by Judge Henry Hight in Granville County Superior Court. Heard in the Court of Appeals 14 November 2017.

*Attorney General Joshua H. Stein, by Assistant Attorney General Andrew L. Hayes, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender James R. Grant, for respondent-appellant.*

DIETZ, Judge.

Respondent appeals from two involuntary recommitment orders. In those orders, the trial court relied on a judgment from a separate criminal proceeding in which the court found Respondent not guilty by reason of insanity on charges of attempted first-degree murder and assault with a deadly weapon inflicting serious injury.

As explained below, we vacate the recommitment orders because this Court recently vacated the trial court's judgment of not guilty by reason of insanity in the corresponding criminal case. *State v. Payne*, \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_, No. COA16-1193, 2017 WL 5580344 (Nov. 21, 2017). Because the standard for involuntary commitment when a defendant has been found not guilty by reason of insanity is different than the standard applied in ordinary involuntary commitment proceedings, we must vacate and remand the recommitment orders for the trial court to apply the proper legal standard. On remand, the trial court, in its discretion, may conduct a new evidentiary hearing or may issue new involuntary commitment orders based on the existing record and the proper legal standard.

### **Facts and Procedural History**

On 19 May 2016, in a separate criminal action, the trial court entered a judgment finding Respondent not guilty by reason of insanity on charges of attempted first-degree murder and assault with a deadly weapon inflicting serious injury. The court also committed Respondent to Central Regional Hospital for mental health evaluation and treatment. Respondent timely appealed that criminal judgment and commitment order to this Court.

On 19 October 2016, following a hearing, the trial court entered an involuntary commitment order recommitting Respondent to Central Regional Hospital for an additional 90 days based on its conclusion that Respondent "failed to show this Court

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by a preponderance of the evidence that she no longer suffers from a mental illness . . . or that she is no longer dangerous to others.” The trial court applied the standard for involuntary commitment applicable to respondents found not guilty by reason of insanity. Respondent timely appealed the court’s recommitment order.

On 5 January 2017, following another hearing, the trial court entered a second recommitment order, recommitting Respondent for an additional 180 days based on its finding that Respondent again “failed to show this Court by a preponderance of the evidence that she no longer suffers from a mental illness . . . or that she is no longer dangerous to others.” Respondent did not file notice of appeal from the second recommitment order. On 14 July 2017, Respondent filed a petition for writ of certiorari with this Court seeking review of the January 2017 recommitment order in conjunction with her appeal from the October 2016 order.

On 21 November 2017, this Court issued an opinion in Respondent’s criminal appeal. The Court vacated the trial court’s judgment of not guilty by reason of insanity and remanded for further proceedings. *State v. Payne*, \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_, No. COA16-1193, 2017 WL 5580344 (Nov. 21, 2017).

**Analysis**

Respondent challenges the trial court’s two civil orders recommitting her to a mental health facility following her initial commitment in connection with her criminal case. Respondent timely appealed only the first of those two orders but, in

our discretion, we allow Respondent's petition for writ of certiorari to permit review of both orders. N.C. R. App. P. 21(a).

The trial court's two recommitment orders relied on the judgment finding Respondent not guilty of two violent criminal charges by reason of insanity. A judgment finding a defendant not guilty by reason of insanity triggers a different, more lenient standard for involuntary commitment than the one ordinarily applied in these proceedings. Following a judgment of not guilty by reason of insanity, "[t]he respondent shall bear the burden to prove by a preponderance of the evidence that he (i) no longer has a mental illness as defined in G.S. 122C-3(21), or (ii) is no longer dangerous to others as defined in G.S. 122C-3(11)b." N.C. Gen. Stat. § 122C-276.1(c). By contrast, where involuntary commitment is not based on an insanity finding in a criminal case, the petitioner bears the burden of showing by "clear, cogent, and convincing evidence that the respondent is mentally ill and dangerous to self . . . or dangerous to others." N.C. Gen. Stat. § 122C-268(j). The differing standards and burdens of proof reflect "important differences between the class of potential civil-commitment candidates and the class of insanity acquittees." *Jones v. United States*, 463 U.S. 354, 367 (1983).

Here, the trial court's orders were based on the underlying judgment of not guilty by reason of insanity in Respondent's criminal case and the trial court applied the corresponding standard and burden of proof. But this Court vacated that criminal

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judgment on appeal, *State v. Payne*, \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_, No. COA16-1193, 2017 WL 5580344 (Nov. 21, 2017), meaning it is legally void. *Pinewood Homes, Inc. v. Harris*, 184 N.C. App. 597, 602, 646 S.E.2d 826, 830–31 (2007).

As a result, the Court cannot affirm the recommitment orders in this case because they relied on the now-vacated criminal judgment. We therefore vacate the two recommitment orders and remand this case for further proceedings.

**Conclusion**

For the reasons discussed above, we vacate the trial court’s involuntary recommitment orders and remand this matter to the trial court. The trial court, in its discretion, may enter new involuntary commitment orders based on the existing record, or may conduct a new evidentiary hearing.

VACATED AND REMANDED.

Judges BRYANT and DILLON concur.

Report per Rule 30(e).