

[Cite as *State v. Deleon*, 2010-Ohio-5261.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 09AP-1213
 : (C.P.C. No. 08CR-06-4398)
 Amir D. Deleon, :
 : (REGULAR CALENDAR)
 Defendant-Appellant. :

D E C I S I O N

Rendered on October 28, 2010

Ron O'Brien, Prosecuting Attorney, and *Barbara A. Farnbacher*, for appellee.

Yeura R. Venters, Public Defender, and *Paul Skendelas*, for appellant.

APPEAL from the Franklin County Court of Common Pleas

CONNOR, J.

{¶1} Defendant-appellant, Amir D. Deleon ("defendant"), appeals from a judgment of the Franklin County Court of Common Pleas ordering defendant's commitment to Twin Valley Behavioral Healthcare ("Twin Valley") pursuant to R.C. 2945.39, arguing the statute is unconstitutional. Based upon the Supreme Court of Ohio's decision in *State v. Williams*, 126 Ohio St.3d 36, 2010-Ohio-2453, we affirm the judgment of the trial court.

{¶2} On June 12, 2008, defendant was indicted on the following offenses: one count of robbery as a felony of the second degree, one count of robbery as a felony of the

third degree, and one count of theft, a fifth degree felony. The offenses arose out of two incidents committed on consecutive days. On June 4, 2008, defendant attempted to grab money out of the hand of an ATM customer at a Chase bank. When he was unsuccessful, defendant pushed the customer to the ground. The following day, defendant stole the purse of another customer who had just made a transaction at that same bank.

{¶3} On August 27, 2008, counsel for defendant requested a competency evaluation and the trial court subsequently issued an order for the evaluation. The evaluation revealed defendant had a serious mental illness but was competent to stand trial, so long as he continued to take his psychiatric medication.

{¶4} Nevertheless, defense counsel and the State of Ohio requested a second evaluation. Based upon that second evaluation, on December 17, 2008, the trial court filed an entry stating defendant was incompetent to stand trial, but there was a substantial probability that he would become competent to stand trial within one year if provided with a course of treatment. Consequently, defendant was committed to Twin Valley.

{¶5} Pursuant to R.C. 2945.38(F), Twin Valley provided an updated report to the trial court on May 12, 2009, indicating defendant continued to remain incompetent, but there was a substantial probability that he would become competent within the one-year time period. The trial court journalized an entry reflecting this on May 22, 2009.

{¶6} On October 16, 2009, Twin Valley provided a second updated report to the trial court indicating that defendant continued to remain incompetent and that there was not a substantial probability that he would become competent within the one-year time frame.

{¶7} After receiving this updated report, the trial court held a hearing on December 1, 2009. Counsel for defendant and the State of Ohio stipulated that defendant was incompetent to stand trial but not restorable within the one-year time frame. However, the parties disagreed as to the next course of action. The State of Ohio requested that the trial court retain jurisdiction over defendant pending restoration and commit defendant to a psychiatric facility, pursuant to R.C. 2945.39(A)(2). Counsel for defendant, on the other hand, requested that the trial court dismiss the indictment and allow pursuit of civil commitment pursuant to R.C. Chapter 5122. Counsel for defendant also argued that R.C. 2945.39 violated defendant's due process and equal protection rights, and as a result, was unconstitutional. In addition, defense counsel advised the trial court that the issue of the constitutionality of R.C. 2945.39 was pending before the Supreme Court of Ohio at the time of the hearing.

{¶8} During the hearing, the State of Ohio introduced the testimony of Detective Kimberly Atwood, the investigating detective involved in both the robbery and theft incidents. Detective Atwood testified that both victims identified defendant as the person who took and/or tried to take their money and property outside the Chase bank. Detective Atwood also testified that most of the information she received regarding how the offenses occurred was through the victims, through patrol officers, and through a security surveillance video. She admitted that much of her testimony was not based on first-hand knowledge, as she did not witness the actual robbery or theft. Counsel for defendant objected to the hearsay nature of the testimony, although she acknowledged that the statute, as written, allows for the use of hearsay in these proceedings.

{¶9} Following this testimony, the trial court found by clear and convincing evidence that the defendant committed the charged offenses¹ and that he was mentally ill and subject to court-ordered hospitalization. The trial court further ordered that the defendant be committed to Twin Valley Behavioral Healthcare, Columbus Campus, Civil Unit, as the least restrictive commitment available, consistent with public safety and defendant's welfare.

{¶10} In his timely appeal, defendant asserts the following two assignments of error:

FIRST ASSIGNMENT OF ERROR

The trial court erred in extending its jurisdiction over a defendant who was found incompetent to stand trial and not restorable within the period authorized by statute. The extension of jurisdiction, as permitted by R.C. 2945.39, violates the due process clauses under the state and federal constitutions.

SECOND ASSIGNMENT OF ERROR

The trial court erred in extending its jurisdiction over a defendant who was found incompetent to stand trial and not restorable within the period authorized by statute. The extension of jurisdiction, as permitted by R.C. 2945.39, violates equal protection rights guaranteed under the state and federal constitutions.

{¶11} Because defendant's first and second assignments of error are intertwined, we shall address the two of them together. The crux of his appeal challenges the constitutionality of R.C. 2945.39 and relies heavily upon the decision of the Second District Court of Appeals in *State v. Williams*, 179 Ohio App.3d 584, 2008-Ohio-6245.

¹ As previously indicated, defendant was indicted on June 12, 2008 for robbery as a second degree felony, robbery as a third degree felony, and theft as a fifth degree felony. Later, on December 31, 2008, defendant was indicted on a new felony offense for assaulting a peace officer while in police custody. Pursuant to its December 2, 2009 journal entry, the trial court dismissed the theft and assault on a peace officer charges for time served, leaving only the robbery offenses.

{¶12} Pursuant to R.C. 2945.39 and its related statutes, if a criminal defendant who has been charged with a first or second degree felony offense of violence has also been found incompetent to stand trial and not restorable after the expiration of the one-year time limit for restoring competency, one of two courses of action can be pursued.

{¶13} R.C. 2945.39(A)(1) allows the trial court or the prosecution to file an affidavit in probate court for the civil commitment of the defendant in the manner provided for in R.C. Chapter 5122 or 5123. If this option is pursued, the indictment is dismissed.

{¶14} Alternatively, under R.C. 2945.39(A)(2), a common pleas court is authorized to exercise continuing jurisdiction over a criminal defendant in these same circumstances. Under this subsection, if the trial court finds by clear and convincing evidence that a defendant committed the charged offense(s) and is a mentally ill person subject to court-ordered hospitalization, the trial court can exercise its continuing jurisdiction and order a defendant's continued institutionalization. This period of continued institutionalization cannot exceed the maximum sentence allowed for the most serious offense for which the defendant was indicted. Under this option, the indictment is not dismissed and remains "pending" against the defendant.

{¶15} In his first assignment of error, defendant argues he was denied various fundamental rights at the commitment hearing held to determine whether or not he committed the crime. First, because he was found incompetent to stand trial, defendant argues he was denied the effective assistance of counsel, as he was not able to assist in his defense in any meaningful way. Second, defendant claims he was confined pursuant to the lower, clear and convincing standard of proof, rather than the traditional "beyond a reasonable doubt" standard. Third, defendant argues he was denied the pre-trial and trial protections afforded to others accused of criminal offenses. Fourth, defendant argues he

was denied various other protections, such as the right to confront witnesses against him, the right to a speedy trial, and the right to be protected against cruel and unusual punishment.

{¶16} In his second assignment of error, defendant submits he was denied equal protection of law because he was not afforded the same procedural rights as persons who are civilly committed. Defendant argues a violation of equal protection exists when a person who is found not competent to stand trial is subjected to a different standard of commitment, treatment, and release than a person who is committed through a civil procedure for involuntary commitment.

{¶17} In *State v. Williams*, 126 Ohio St.3d 36, 2010-Ohio-2453, which was decided by the Supreme Court of Ohio after defendant filed this appeal, the court reviewed three propositions of law regarding: (1) whether an involuntary commitment pursuant to R.C. 2945.39 is civil or criminal in nature; (2) whether an involuntary commitment under R.C. 2945.39 violates a defendant's right to equal protection; and (3) whether an involuntary commitment under R.C. 2945.39 violates a defendant's right to due process. *Id.* at ¶10. Resolution of these issues is dispositive to the instant case.

{¶18} In reversing the Second District Court of Appeals, the Supreme Court of Ohio first found that R.C. 2945.39 is a civil statute. *Id.* at ¶37. The court determined the statute is remedial in nature and consistent with the remedial intent to protect the public. *Id.* at ¶36. "Because R.C. 2945.39 is civil in nature, a person committed under the statute need not be afforded the constitutional rights afforded to a defendant in a criminal prosecution." *Id.* at paragraph two of the syllabus.

{¶19} Next, the court determined the statute does not violate equal protection rights because its procedures are justified by the state's interest in confining mentally ill

individuals subject to hospitalization who have committed serious crimes. Id. at ¶44. The Supreme Court of Ohio found the statute's standards for commitment, which require a finding by clear and convincing evidence that the defendant committed the crimes with which he is charged prior to ordering commitment, are actually stricter than the standards found in R.C. Chapter 5122. Id. at ¶47. The court further held those procedures set forth in R.C. 2945.39 and its related statutes which are less favorable to a person facing commitment under R.C. 2945.39 than the procedures governing commitment via the probate court are rationally related to a legitimate government interest. As a result, the court found that involuntary commitment pursuant to R.C. 2945.39 withstood equal protection scrutiny. Id. at ¶51.

{¶20} Finally, the Supreme Court of Ohio determined that an involuntary commitment pursuant to R.C. 2945.39 does not violate due process principles. The court emphasized that the primary goal of the statute is not to punish the defendant or to restore his competency to stand trial; instead, the statute is civil in nature, with a primary goal of protecting the public. Id. at ¶58. The court stressed "[i]t is of great significance to our due-process inquiry that R.C. 2945.39(D)(1) requires the court to order the least-restrictive commitment alternative available consistent with public safety and the defendant's welfare, while also emphasizing that the court 'shall give preference to protecting public safety.' " Id. Furthermore, the court concluded the nature and duration of the commitment under R.C. 2945.39 bears a reasonable relationship to the purpose for which the person is committed, and therefore, R.C. 2945.39 does not violate due process principles. Id. ¶63-64.

{¶21} In light of the decision reached by the Supreme Court of Ohio in *State v. Williams*, 126 Ohio St.3d 36, 2010-Ohio-2453, we overrule defendant's first and second

assignments of error and affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

TYACK, P.J., and McGRATH, J., concur.
