

IN THE COURT OF APPEALS OF THE  
STATE OF OREGON

In the Matter of C. J. W.,  
a Person Alleged to have a Mental Illness.

STATE OF OREGON,  
*Respondent,*

*v.*

C. J. W.,  
*Appellant.*

Deschutes County Circuit Court  
17CC00642; A164330

Gregory P. Lynch, Judge pro tempore.

Submitted October 6, 2017.

Alexander C. Cambier and Multnomah Defenders, Inc.,  
filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Benjamin  
Gutman, Solicitor General, and Nani Apo, Assistant  
Attorney General, filed the brief for respondent.

Before Armstrong, Presiding Judge, and Tookey, Judge,  
and Shorr, Judge.

PER CURIAM

Reversed.

## PER CURIAM

Appellant seeks reversal of an order committing him to the Oregon Health Authority for a period not to exceed 180 days. ORS 426.130. Appellant raises two assignments of error. He argues that the trial court erred (1) in finding that he had a mental illness and (2) in denying his motion to dismiss the case because he had been held longer than five days. The state concedes that, under our current case law, appellant's second assignment of error is well taken. We accept the state's concession and reverse.

Under ORS 426.232, a physician may detain a person for treatment for a mental illness, provided that the physician immediately notifies the community mental health program director (director). However, with limited exceptions, the person may not be held longer than five judicial days without a hearing. ORS 426.232(2); ORS 426.234(4); ORS 426.095(2). An exception applies under ORS 426.237(1)(b) when the director seeks diversion within three judicial days by certifying the person to receive 14 days of intensive treatment. The director must immediately deliver the certificate to the court and inform the person orally of the certificate and provide a copy. ORS 426.237(3)(a). On receipt of the certificate, the court must immediately notify the person's attorney, and the attorney must review the certificate with the person within 24 hours. If the person and the person's attorney consent, then the court shall postpone the hearing for 14 days. ORS 426.237(3)(c).

Here, appellant was detained under ORS 426.232 on January 28, 2017, for emergency treatment for a mental illness. The director certified appellant for diversion, and appellant signed the certificate. However, appellant's attorney was not notified and did not review the certificate with appellant. Appellant's attorney was not notified of the certificate until February 8, 2017, after commitment proceedings were initiated, and appellant's hearing was not scheduled until February 10—ten judicial days after appellant was detained—and did not occur until February 13, after the court granted appellant's attorney's request for a continuance under ORS 426.095(2)(c). At the hearing, appellant moved to dismiss the case because he had been held longer

than five judicial days and the procedures for diversion had not been followed. The trial court denied that motion and committed appellant.

We have previously held that a trial court is required to dismiss a commitment proceeding when the hearing takes place later than five judicial days after the person is first detained and requirements for extending that time limit have not been met. *See, e.g., State v. W. B. R.*, 282 Or App 727, 728-29, 387 P3d 482 (2016). Because the diversion procedures were not properly followed in this case, the requirements for diversion were not met. As a result, appellant could not be detained for longer than five judicial days without a hearing, and, because appellant did not timely receive a hearing, the trial court was required to dismiss the case. Accordingly, we agree with the state that the trial court erred in denying appellant's motion to dismiss, and we reverse. Because we reverse on that basis, we do not address appellant's other assignment of error.

Reversed.