NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: J.R., Appellee APPEAL OF J.R.	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1306 EDA 2012

Appeal from the Order entered April 4, 2012,
in the Court of Common Pleas of Bucks County,
Civil Division at No(s): 2011-40158

BEFORE: PANELLA, ALLEN, and PLATT*, JJ.

MEMORANDUM BY ALLEN, J.: Filed: March 15, 2013

J.R., ("Appellant"), appeals from the trial court's order denying his petition to vacate and expunge involuntary civil commitment. After careful review, we affirm.

On June 20, 2007, the Pennsylvania State Police were called to Appellant's residence after Appellant's wife reported that he had called a suicide hotline and subsequently attempted to shoot himself. The police transported Appellant to Grand View Hospital where Appellant's wife initiated his involuntary commitment pursuant to section 302 of the Mental Health Procedures Act. 50 P.S. § 7302. As a result, Appellant was involuntarily committed to emergency examination and treatment.

Several years later, on May 20, 2011, Appellant filed a petition to vacate and expunge involuntary commitment. The Pennsylvania State Police

*Retired Senior Judge assigned to Superior Court.

filed an answer and new matter on July 11, 2011. The trial court directed the parties to file briefs, and after consideration of the briefs and the record as stipulated by the parties, denied Appellant's petition on April 4, 2012. Appellant filed this timely appeal, and the trial court and Appellant have complied with Pa.R.A.P. 1925.

Appellant asserts that the trial court abused its discretion and committed an error of law by failing to expunge his involuntary civil commitment where: the evidence did not support his commitment because he was not examined within two hours of arrival at the hospital; his Fourth Amendment right to be free of seizure and arrest was violated when he was locked in a room of the hospital for five to six hours; and Appellant admitted himself voluntarily. Appellant's Brief at ii-iii. Appellant additionally contends that expungement is warranted because his reputation has been tarnished. *Id*. He also argues that he was denied "constitutional due process" and lost his Second Amendment right to bear firearms, where "no pre- or post-deprivation hearing was provided." *Id*.

We generally review decisions on expungement matters for an abuse of discretion. ***Commonwealth v. Wolfe***, 749 A.2d 507, 509 (Pa. Super. 2000). Here, we find no abuse of discretion in the present case. We have heard oral argument, and reviewed the record, the parties' briefs, and applicable law, as well as the comprehensive trial court opinion in this matter. Upon review, we conclude that the Honorable Albert J. Cepparulo, sitting as the trial court, did not abuse his discretion or commit an error of

law in denying Appellant's expungement petition. Moreover, Judge Cepparulo has ably and thoroughly addressed Appellant's appellate issues such that further analysis by this Court would be redundant. In his Pa.R.A.P. 1925(a) opinion, Judge Cepparulo analyzed Appellant's claims and correctly determined that: 1.) Appellant was examined within two hours of arriving at the hospital; 2.) Appellant did not request nor was he voluntarily admitted to the hospital; 3.) Appellant's "right to reputation" does not warrant expungement; 4.) Appellant's Fourth Amendment right to be free of unlawful seizure and arrest and his right to substantive due process was not violated. Given the foregoing, we adopt Judge Cepparulo's opinion as our own, and in doing so, affirm the trial court's order.

Order affirmed.

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA
CIVIL DIVISION

IN RE. J.C. [IN RE J.R.]	:	No. 2011-40158
	:	1306 EDA 2012
	:	

OPINION

I. INTRODUCTION

Petitioner J.R. appeals to the Superior Court of Pennsylvania from this Court's denial of his Petition to Vacate and Expunge Involuntary Civil Commitment. We file this Opinion pursuant to Pennsylvania Rule of Appellate Procedure (Pa.R.A.P.) 1925(a).

II. FACTUAL AND PROCEDURAL BACKGROUND

On June 20, 2007, Respondent Pennsylvania State Police ("PSP") responded to the Bucks County home of Petitioner and his wife, C.R., based on C.R.'s report that Petitioner made suicidal threats and attempted to shoot himself. (Resp. Br. at 1.) Specifically, C.R. provided the following, *verbatim*:

> I was home cleaning. [Petitioner] came home around 7:30ish and we immediately started arguing. We argued for awhile. I started mopping the floor in the kitchen. [Petitioner] went outside and started talking on the phone.
>
> Around 10-10:30, I went outside to smoke a cigarette. He hung up the phone and then told me he was sorry to tell me this but he was on the phone with the suicide hotline. He said he can't live without his soulmate and he walked into the house. He started walking up and stairs and headed toward our bedroom.
>
> I was scared and I ran into the bedroom before him. There are 5 guns in the bedroom. I told him that I was going to take the guns and lock them up. I went into the nightstand, grabbed the two handguns and then turned around and grabbed the three rifles.
>
> I went to walk out of the bedroom and [Petitioner] held me back. He grabbed my arms and took the silver gun with the brown handle from me. I begged him not to do anything stupid but he cocked the gun, held the gun to his temple, and he said goodbye and pulled the trigger. Nothing happened. He then cocked the gun again, held the gun to his temple and pulled the trigger again. He then threw the gun on the ground and said, "I can't even kill myself right."

(Exh. A at 31-32.)[1]

At approximately 1:45 A.M., the PSP brought Petitioner to Grand View Hospital in Sellersville, Bucks County, Pennsylvania. (Pet. Br. at 1.) C.R. began the "Application for Involuntary Emergency Examination and Treatment" ("Application") pursuant to Section 302 of the Mental Health and Procedures Act, 50 P.S. § 7302, ("MHPA") and provided the above statement. (Exh. A at 26-36.)

Around this time, a nurse also assessed Petitioner. (Exh. A at 6-8). She noted that Petitioner's behavior was "cooperative," his mood was "stable," his affect was "calm [and] appropriate," his speech pattern was "clear," and that his "mentation" was "alert; oriented; appropriate; follows commands." (Exh. A at 7.) The assessment indicated Petitioner explained that he and his wife were arguing about their impending divorce and stated that "his wife has problems and she said that [he had] a gun and was going to kill [himself]." (Exh. A at 3.) Petitioner denied having a gun, holding it to his head, or experiencing suicidal ideations but admitted to drinking five (5) beers that night. (Id.) After completing this assessment, Petitioner changed into hospital clothes, secured his personal belongings with staff members, and was placed in a locked seclusion room pending approval or denial of the Application. (Exh. A at 8.)

At 2:06 A.M., Dr. Rosalinda DiRienzo examined Petitioner. (Exh. A at 2-3.) In her report, she noted that Petitioner "present[ed] after wife claimed that he threatened to kill himself with a gun. [H]e denies this. [H]e and his wife are arguing." (Exh. A at 2.)

At 2:28 A.M., C.R. finished the Application. (Pet. Br. at 2.) At 4:12 A.M., a warrant authorizing examination of Petitioner was issued. (Resp. Br. at 2.) At 6:10 A.M., Dr. DiRienzo

[1] On August 23, 2011, the parties stipulated to Petitioner's medical records and, on September 19, 2011, filed Petitioner's records from Grand View Hospital and the application for Involuntary Emergency Examination and Treatment, which were designated as Exhibit A (Exh. A) and paginated as one (1) through thirty-six (36). The parties also filed Petitioner's records from Horsham Clinic, which were designated as Exhibit B ("Exh. B") and paginated as one (1) through five (5).

examined Petitioner and found him to be "severely mentally disabled and in need of treatment." (Exh. A at 35.) At 6:25 A.M., Dr. DiRienzo completed the Medical Clearance Certification, a form to be completed only upon a finding that treatment is necessary. (Exh. A at 36.)

At 7:43 A.M., Dr. James Showalter also examined Petitioner. (Exh. A at 24.)[2] At 8:10 A.M., Dr. Showalter agreed with Dr. DiRienzo's finding that Petitioner required treatment and upheld the civil commitment. (Exh. A at 35.) At approximately 11:30 A.M., Petitioner was transferred to Horsham Clinic. (Exh. A at 24.)

On June 22, 2007, Petitioner was discharged from Horsham Clinic. In her discharge report, Dr. Susan Au noted that Petitioner was "alert and oriented x 3," "clean and appropriately dressed," and "cooperative." (Exh. B at 34.) Dr. Au further noted Petitioner's "mood was anxious and depressed" but that his "thought process was normal," he denied suicidal or homicidal ideations, and his "insight and judgment were both fair." (Id.) Dr. Au noted Petitioner stated "I did not put a gun to my head" but admitted he and C.R. were drinking and arguing about C.R.'s request for a divorce, he was hurt by the prospect of divorce, and he called a suicide hotline to upset her. (Exh. B at 5.) Dr. Au concluded no grounds existed for extended involuntary treatment pursuant to Section 303 of the MHPA, and, after Petitioner arranged to live with his parents and staff members confirmed that all guns were "secured and disarmed." Petitioner was discharged. (Id.) Upon discharge, Petitioner was referred to Penn Foundation Behavioral Health Services, but was not prescribed any medications. (Id.)

On May 20, 2011, Petitioner filed *Petition to Vacate and Expunge Involuntary Civil Commitment* ("Petition to Expunge"). On July 11, 2011, PSP filed an Answer and New Matter. On July 18, 2011, Petitioner filed preliminary objections, requesting the PSP's New Matter be

[2] In his brief, Petitioner asserted this examination occurred at 7:50 A.M., which is discussed in greater detail below.

stricken. On August 4, 2011, the PSP filed a reply. Neither party filed a praecipe pursuant to Bucks County Local Rule *208.3(b) to move the preliminary objections for disposition.

On August 23, 2011, the parties stipulated to the admission of Petitioner's medical records, and requested a briefing schedule. Accordingly, on September 23, 2011, we ordered Petitioner to file a brief in support of his Petition to Expunge by November 7, 2011 and the PSP to file a response by December 22, 2011.

On December 20, 2011, Petitioner requested a stay of thirty (30) days in order to perfect notice to the Pennsylvania Attorney General pursuant to Pennsylvania Rule of Civil Procedure (Pa.R.C.P.) 235, which requires a person challenging the constitutionality of an Act of Assembly to serve the Attorney General by registered mail. Petitioner indicated that his original notice to the Attorney General had been sent by regular mail and that he thereafter contacted the Attorney General's Civil Division, which confirmed actual receipt of the Petition to Expunge. (Id.) On January 9, 2012, the PSP filed a response, opposing the grant of a stay.

We declined to formally grant Petitioner's request for a stay but nevertheless delayed issuing an Order. In a telephone call to the undersigned's chambers, Petitioner's counsel represented that he had received a letter from the Attorney General's Office, indicating it would submit no filings in this matter and that Petitioner's counsel would docket this letter forthwith. This letter, however, was not filed with the Bucks County Prothonotary.

On April 4, 2012, after consideration of Petitioner's brief, the PSP's response thereto, and the stipulated record, we denied Petitioner's request to expunge his involuntary civil commitment. On April 26, 2012, Petitioner filed a Notice of Appeal.

III. MATTERS COMPLAINED OF ON APPEAL

Pursuant to this Court's Order of May 4, 2012, Defendant filed his Statement of Matters Complained of on Appeal, raising the following issues, *verbatim*:

1. Whether the Court abused its discretion, committed error of law, or violated constitutional rights of Appellant by denying Petitioner/Appellant's Petition to Vacate and Expunge his Involuntary Civil Commitment when the evidence of record clearly establishes that he was not examined within two (2) hours of arrival at the hospital, contrary to 50 P.S. 7302?
2. Whether the Court abused its discretion, committed error of law, or violated constitutional rights of Appellant by denying Petitioner/Appellant's Petition to Vacate and Expunge his Involuntary Civil Commitment when the evidence of record clearly establishes that he voluntarily admitted himself and as such, it was not an involuntary admission?
3. Whether the Court abused its discretion, committed error of law, or violated constitutional rights of Appellant by denying Petitioner/Appellant's Petition to Vacate and Expunge his Involuntary Civil Commitment when the evidence of record clearly establishes that his reputation has been tarnished by is (sic) unlawful involuntary commitment, pursuant to the Pennsylvania Supreme Court's holding in Wolfe v. Beal, 384 A.2d 1186 (Pa. 1978)?
4. Whether the Court abused its discretion, committed error of law, or violated constitutional rights of Appellant by denying Petitioner/Appellant's Petition to Vacate and Expunge his Involuntary Civil Commitment when the evidence of record clearly establishes that his Fourth Amendment right to be free from unlawful seizure and arrest was violated by him being locked in a room by the hospital for five to six hours, without examination, in violation of 50 P.S. 7302?
5. Whether the Court abused its discretion, committed error of law, or violated constitutional rights of Appellant by denying Petitioner/Appellant's Petition to Vacate and Expunge his Involuntary Civil Commitment when the evidence of record clearly establishes that he was denied procedural due process, since no pre- or post-deprivation hearing was provided, and where he was involuntarily committed, causing him to lose his Second Amendment rights, based solely on the signature of a physician?
6. Whether the Court abused its discretion, committed error of law, or violated constitutional rights of Appellant by denying Petitioner/Appellant's Petition to Vacate and Expunge his Involuntary Civil Commitment when the evidence of record clearly establishes that he was denied substantive due process, since he was involuntarily committed, which resulted in his loss of ability to own, possess, or purchase a firearm or ammunition, and where 50 P.S. 7302 is not narrowly tailored to advance a compelling government interest?
7. Whether the Court abused its discretion, committed error of law, or violated constitutional rights of Appellant by denying Petitioner/Appellant's Petition to Vacate and Expunge his Involuntary Civil Commitment?

IV. ANALYSIS

A. Time of Examination

Petitioner first claims that he was not examined within two (2) hours of his arrival at Grand View Hospital as required by Section 302(b) of the MHPA, 50 P.S. § 7302(b), which provides:

> A person taken to a facility shall be examined by a physician within two hours of arrival in order to determine if the person is severely mentally disabled within the meaning of section 301and in need of immediate treatment.

In his brief, Petitioner asserted that he arrived at Grand View Hospital at 1:45 A.M. and was not examined for five (5) or six (6) hours. (Pet. Br. at 11.) Petitioner noted that "Part VI: Physician's Examination" of the Application indicated he was examined at 6:50 A.M., five (5) hours after his arrival, and Dr. Showalter's notes indicate Petitioner was not examined until 7:50 A.M., six (6) hours after his arrival. (Pet. Br. at 11-12.)

In response, the PSP asserted that Petitioner was secured pending issuance of a warrant, which was issued at 4:12 A.M. (Resp. Br. at 8.) Within two (2) hours, at 6:10 A.M., Dr. DiRienzo examined Petitioner, and, at 6:25 A.M., she completed a Medical Clearance Certification. (Resp. Br. 8; 9, n.6.) The PSP argued that the time of the examination was corrected from 6:50 A.M. to 6:10 A.M. and the completion of the Medical Clearance Certification at 6:25 A.M. indicates Dr. DiRienzo's must have been completed beforehand at 6:50 A.M., not 7:50 A.M. (Id.)

Upon review of the stipulated record, we found the following: At 1:45 A.M., Petitioner was brought to Grand View Hospital. (Exh. A at 5.) At 4:12 A.M., a warrant was issued. (Exh. A at 33.) At 6:10 A.M., Dr. DiRienzo examined Petitioner, determined he was severely mentally disabled, entered her findings on "Part VI: Physician's Examination" of the Application, and corrected the time of the examination from 6:50 A.M. to 6:10 A.M. (Exh. A at 35.) At 6:25

A.M., Dr. DiRienzo completed the Medical Clearance Certificate, which provided the following note: "[t]his completed form is to be attached to the commitment form when the patient is referred for inpatient psychiatric services." (Exh. A at 36.) We found that based on the time of completion of the Medical Clearance Certificate, Petitioner was examined at 6:10 A.M.

At 7:43, A.M., Dr. Showalter examined Petitioner. (Exh. A at 24.) At 7:50 A.M., Dr. Showalter upheld the involuntary commitment. (Exh. A at 35.) We found that Dr. Showalter's notation at 7:50 A.M. reflects a follow-up examination and his agreement with Dr. DiRienzo's earlier conclusion that Petitioner required inpatient psychiatric care.

Moreover, we agreed with the PSP that Defendant's examination took place within two (2) hours as required by Section 302(b) of the MHPA, 50 P.S. § 7302(b). A warrant issued pursuant to Section 302 of the MHPA allows a "[person] to be taken into custody and kept in custody for a maximum of two hours for the purpose of performing an emergency mental health examination." In re J.M., 726 A.2d 1041, 1047 (Pa. 1999). In this case, Petitioner did not "arrive" at Grand View Hospital within the meaning of Section 302(b) of the MHPA until 4:12 A.M. when the warrant authorizing his examination was issued. Part VI: Physician's Examination provides the following certification by Dr. DiRienzo: "I affirm [J.R.] arrived at this facility at...0412 and was examined by me at 0610." (Exh. A at 35.)

Prior to 4:12 A.M., Petitioner was merely secured pending the issuance of the warrant in response to his wife's report that he attempted twice to shoot himself in the head. At 6:10 A.M., within the two (2) hours required by Section 302(b) of the MHPA, Petitioner was examined by a doctor who determined he was severally mentally disabled. (Exh. A at 35.)

Accordingly, we found Petitioner was examined within two (2) hours of his arrival at Grand View Hospital.

B. Voluntary Admission

Next, Petitioner claims this Court abused its discretion, committed an error of law, and violated his constitutional rights by denying his Petition to Expunge when the record clearly established that he *voluntarily* admitted himself.

In his brief, Petitioner argued his records reflect that he was "cooperative and agreeable to treatment" while at Grand View Hospital. (Pet. Br. at 12-13.) The PSP responded by citing In re: Kevin Jacobs, 15 A.3d 509, 511(Pa. Super. Ct. 2011) and arguing that "it is well-established that a patient is not required to be notified of or offered voluntary admission." (Resp. Br. at 8.)

Section 201 of the MHPA, 50 P.S. § 7201, provides that a person "who believes that he is in need of treatment and substantially understands the nature of voluntary treatment may submit himself to examination and treatment." Here, none of Petitioner's medical records reflect that he ever demonstrated a belief that he needed treatment and would admit himself voluntarily. To the contrary, Petitioner stated that his "wife had problems" and that they were arguing about their impending divorce, and he also denied experiencing any suicidal ideations. (Exh. A at 3.)

Moreover, Petitioner failed to provide any authority for the proposition that patients brought to a hospital by police due to an attempted suicide must be offered the opportunity to admit themselves. Nor did Petitioner offer any authority that hospital staff members must infer from a patient's cooperation and agreeableness to treatment that, despite being brought to the hospital in police custody, he has submitted himself for voluntary treatment.

Accordingly, we found that Petitioner did not request to be voluntarily admitted and was not entitled to be offered voluntary admission.

C. Right to reputation

Next, relying on Wolfe v. Beal, 384 A.2d 1186 (Pa. 1978), Petitioner asserts this Court abused its discretion, committed an error of law, or violated his constitutional rights by denying his Petition to Expunge where the record established that his right to reputation was tarnished by his involuntary commitment.

In his petition to expunge, Petitioner noted the Supreme Court in Wolfe, 384 A.2d at 1189, stated, "[w]e cannot ignore the fact that many people in our society view mental illness with disdain and apprehension" and found the continued existence of an appellant's involuntary commitment records posed a threat to her reputation. In response, the PSP asserted that this claim should be deemed waived because Petitioner failed to substantially analyze and develop his claim and, moreover, failed to plead a "causal link to demonstrate how the right to reputation *alone* establishes a right to expunction." (Resp. Br. at 10) (emphasis added).

Although the Supreme Court has recognized the right to reputation includes the right to have mental health records destroyed, this right exists only "where a court finds the commitment null and void." See R.H.S. v. Allegheny County Dep't of Human Serv., 936 A.2d 1218 (Pa. Super. Ct. 2007) (citing Wolfe v. Beal, 384 A.2d 1187, 1189 (Pa. 1978)).

We found Wolfe v. Beal distinguishable from the instant case because the Wolfe appellant sought to have records from an *unlawful* commitment expunged. 384 A.2d at 1189. Here, Petitioner was going through a divorce, drank five (5) beers, called a suicide hotline, told his wife that he was going to kill himself, attempted twice to shoot himself in the head, and possessed five (5) firearms in a home he apparently still shared with his wife. (Exh. A at 6, 36.) As such, we found a sufficient factual basis to support Petitioner's involuntary commitment, and,

accordingly, concluded that Petitioner's commitment was valid and that his right to reputation did not mandate expunction of his commitment.

D. Search and Seizure

Next, Petitioner claims this Court abused its discretion, committed an error of law, or violated his constitutional rights by denying his Petition to Expunge where the record demonstrated that his right to be free from search and seizure was violated when he was "locked in a room by the hospital for five to six hours, without examination." (Concise Statement, at 1.)

In his brief, Petitioner acknowledged that a mental health examination falls into the exigent circumstance exception which permits a warrantless seizure but asserted that this Fourth Amendment right was nevertheless violated when he was not evaluated within two (2) hours as required by Section 302(b) of the MHPA. (Pet. Br. at 14-15.) In response, PSP asserted that Petitioner waived this claim by failing to specify "who committed the alleged unlawful seizure or provide adequate citation for this Court to examine whether a hospital is a state actor subject to the Fourth Amendment." (Resp. Br. at 10.)

As noted above, we found that Defendant was examined within two (2) hours as required by the MHPA. Accordingly, we found that Petitioner's Fourth Amendment right to be free from unreasonable searches and seizures was not violated by his involuntary civil commitment.

E. Procedural Due Process

Next, Petitioner claims that the record establishes that he was denied procedural due process where no pre- or post-deprivation hearing was held and where he was involuntary committed based solely on the signature of a physician.

In his petition, Petitioner asserted that the lack of an adjudication to determine whether a person who has been involuntarily committed must be banned from owning or possessing a

firearm violates the right to procedural due process. (Pet. Br. at 16.) Petitioner conceded that requiring a pre-commitment hearing prior to an involuntary commitment may be impractical but argued a post-commitment hearing must be provided. (Pet. Br. at 19.) Petitioner also claimed he was denied notice when he was (1) "locked in seclusion" without an opportunity to communicate with anyone besides hospital staff, (2) never advised of the legal consequences of his commitment or the available appeal procedures, or (3) not provided with an accessible forum to challenge his commitment or ensuing loss of rights. (Pet. Br. at 23-24.)

In response, the PSP first asserted Petitioner's claim should be deemed waived because he presented few substantive facts, failed to clarify whether he challenged the involuntary commitment process or the collateral consequence of the firearms ban, and provided little factual or legal analysis. (Resp. Br. 10-11.) The PSP further noted that the mentally ill may be disqualified from exercising their Second Amendment rights. (Resp. Br. at 12.) Next, the PSP asserted that the MHPA has been found to comport with Due Process and that Petitioner had been provided with all process that he was due under the MHPA and the Uniform Firearms Act. (Resp. Br. at 13.) The PSP also argued that a person is not entitled to notification of the collateral consequences of an involuntary commitment and that due process is provided by the existence of the commitment process, the ability to challenge the presumption under 18 Pa.C.S. 6111.1(g)(2), and the existence of the prohibiting statute itself.

The United States Supreme Court has held that "the right secured by the Second Amendment is not unlimited." Perry v. State Civil Serv. Comm'n (Dept. of Labor & Indus.), 38 A.3d 942, 955 (Pa. Commw. Ct. 2011) (citing District of Columbia v. Heller, 554 U.S. 570, 626-27, 128 S.Ct. 2783, 2816-17, 171 L.Ed.2d 637 (2008)). In Heller, the Court held that a District of Columbia statute prohibiting handgun possession in a home violated the Second Amendment,

but explained: "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and *the mentally ill*, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings." 554 U.S. at 626-27, 128 S.Ct. at 2816-17 (emphasis added).

In this case, we found Petitioner lacked standing to raise a facial constitutional challenge to the collateral consequence of loss of right to possess firearms. Specifically, Petitioner failed to allege that he sought the administrative remedy of restoration of firearms rights. Although, Section 6105(c)(4) of the Pennsylvania Uniform Firearms Act, 18 Pa.C.S. § 6105(c)(4), ("UFA") prohibits a person who has been involuntarily committed from owning or possessing a firearm, section 6105.1. of the UFA allows a person who has been involuntarily committed to apply for a hearing for restoration of firearms rights. Petitioner has not averred that he has sought restoration of his firearms rights, and we therefore believe that his facial constitutional challenge that the MHPA is a violation of procedural due process should be deemed waived.

F. Substantive Due Process

Finally, Petitioner claims this Court erred in denying his petition to expunge where the evidence established that "he was denied substantive due process, since he was involuntarily committed, which resulted in his loss of ability to own, possess, or purchase a firearm or ammunition, and where 50 P.S. 7302 is not narrowly tailored to advance a compelling government interest." (Pet. 1925(b) Stmt.)

In his brief, Petitioner argued that the right to possess firearms is a fundamental right, the deprivation of which must be narrowly tailored to achieve a compelling government interest. (Pet. Br. at 24-25.) Petitioner asserted that the firearms banned is not narrowly tailored because it presumes that a person who was once mentally-ill will always be mentally-ill, and that, even

though he was involuntarily hospitalized for only forty-eight (48) hours, he will always be presumed mentally-ill. (Pet. Br. at 25.) Petitioner argued that the statute fails to satisfy even the arbitrary and capricious governmental action standard applicable to non-fundamental rights.

In response, the PSP argued that at most, intermediate scrutiny is the appropriate form of scrutiny to be applied in reviewing regulations that burden the Second Amendment. (Resp. Br. at 15.) The PSP then asserted that prohibiting the mentally-ill from possessing firearms is an important government objective and the prohibition is substantially related to that object because it prevents only those who have been involuntarily committed from possessing firearms. (Id.) The PSP explained that those who are involuntarily committed have shown they cannot be trusted to seek help for mental illness (as opposed to those who have voluntarily sought treatment) and are properly subject to greater restriction than those who have voluntarily sought help. (Resp. Br. 15-16.)

We again found that Petitioner had failed to exhaust the administrative remedies for denial of a firearms license set forth in 18 Pa.C.S. § 6111.1(e), as discussed above. Accordingly, we declined to rule that Petitioner's involuntary commitment and collateral loss of his right to possess firearms violated his right to substantive due process.

V. CONCLUSION

The foregoing represents this Court's opinion regarding Petitioner's appeal from the denial of his petition to vacate and expunge his involuntary civil commitment.

BY THE COURT:

Date: _____

ALBERT J. CEPPARULO, JUDGE