

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,
Respondent,

v.

CEDRIC JAMARKUS CARTER,
Appellant.

No. 42134-8-II

UNPUBLISHED OPINION

Van Deren, J. — After being found not guilty by reason of insanity (NGRI), Cedric Jamarkus Carter was committed to Western State Hospital (WSH) for care and treatment. The trial court subsequently entered an order authorizing the Department of Social and Health Services (Department) to involuntarily treat Carter with antipsychotic medications. Carter appeals the trial court’s involuntary medication order asserting: (1) the trial court lacked statutory authority to authorize the Department to administer antipsychotic medications over his objection, (2) his trial counsel was ineffective for failing to obtain a qualified expert witness to testify on his behalf, and (3) substantial evidence did not support the trial court’s findings of fact. Because Carter appeals an order that has expired, his appeal is moot and we decline to address it, except to point out that we squarely addressed and rejected the argument Carter raises here in *State v. C.B.*, 165 Wn. App. 88, 265 P.3d 951 (2011), *review denied*, 173 Wn.2d 1027 (2012).

FACTS

On November 14, 2008, the Kitsap County Superior Court found Carter NGRI and involuntarily committed him to WSH under chapter 10.77 RCW. On January 18, 2011, a WSH physician, Charles Harris, petitioned the Kitsap County Superior Court for an order authorizing Carter to be involuntarily treated with antipsychotic medication.¹

At a January 26, 2011, hearing on Harris's petition, Carter's defense counsel requested a continuance to allow him to obtain an expert witness. Carter told the trial court that he would consent to taking the medication pending a further hearing. The Department agreed to the requested continuance based on Carter's representation that he would take his prescribed medications, and the trial court continued the hearing to February 11, 2011.

At the February 11 hearing, Carter's counsel informed the trial court that his expert witness could complete a report within a month. The trial court continued the matter to March 14, 2011.

At the March 14 hearing, defense counsel again requested a continuance because his defense expert was not available due to the expert's mother's recent death. The Department opposed a further continuance, asserting that it had a compelling interest in administering the antipsychotic medication to Carter because Carter was refusing medication, had threatened to assault people, had to be physically restrained by eight staff members, and had bruised his foot by kicking a water fountain. Defense counsel suggested that the trial court could enter a temporary

¹ Concurrent with the petition, the Department filed a motion to intervene in the underlying criminal case for the limited purpose of bringing the involuntary medication petition, which motion the trial court granted. Carter does not appeal the trial court's order granting the Department's limited motion to intervene.

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order pending a further hearing at which his expert witness could testify. The Department agreed that a temporary order would be appropriate under the circumstances, and the trial court proceeded with a hearing. Carter waived his right to be present at the hearing.

At the conclusion of the March 14 hearing regarding a temporary order for administration of the medications to Carter over his objection, the trial court orally ruled that the Department could temporarily administer the medications and set a hearing on April 18 to decide whether it should order the medication administration for a 180-day period based on Harris's petition. The trial court entered its findings of fact, conclusions of law, and 60-day order authorizing the Department to involuntarily treat Carter with antipsychotic medication.

At the April 18 hearing, defense counsel informed the trial court that his expert witness would not testify because his witness "didn't think he could ethically take a position on this as he is not a [medical] doctor, and therefore, he himself is not able to provide prescription medication." Report of Proceedings (Apr. 18, 2011) at 3. Defense counsel also informed the trial court that he had no other expert witness available. The parties then proceeded to present argument on whether a continuing order authorizing involuntary medication was appropriate.

The trial court granted the Department's petition and entered a supplemental order authorizing involuntary treatment with antipsychotic medication, incorporating its March 14 findings and conclusions into the supplemental order. The trial court's supplemental order authorized the Department to administer antipsychotic medication to Carter for up to 180 days from the date of the temporary order, i.e., March 14. The trial court's supplemental order also allowed Carter to present expert evidence in opposition to the order any time prior to its expiration. Carter timely appeals.

ANALYSIS

Carter contends that the trial court erred by concluding that it had authority to authorize the Department to administer antipsychotic medication to Carter under the procedures in RCW 71.05.217(7). Specifically, Carter contends that the trial court lacked statutory authority to authorize such a procedure because authorization to administer medication over the patient's objection under chapter 71.05 RCW applies only to individuals under a civil commitment, not to those committed under chapter 10.77 RCW.

Carter's Appeal Is Moot

Because Carter appeals an order that expired in September 2011, his appeal is moot. *See State v. Gentry*, 125 Wn.2d 570, 616, 888 P.2d 1105 (1995) (“A case is moot if a court can no longer provide effective relief.”). The issue of a trial court's statutory authority to authorize the involuntary administration of medication to an individual found NGRI and committed to a State psychiatric hospital would appear to be an issue of “substantial public interest” warranting appellate review. But we squarely addressed and rejected the argument Carter raises here in *C.B.*²

² In *C.B.*, CB was found NGRI and committed to WSH. 165 Wn. App. at 90. The superior court subsequently entered two orders authorizing the involuntary administration of antipsychotic medication. *C.B.*, 165 Wn. App. at 92-93. CB appealed the involuntary medication orders arguing that the trial court lacked statutory authority to enter such orders for persons committed under chapter 10.77 RCW. *C.B.*, 165 Wn. App. at 94-95. Although recognizing that CB's appeal was moot, we nonetheless addressed her argument because it involved an issue of substantial public interest. *C.B.*, 165 Wn. App. at 94-95. We held that RCW 10.77.120 provided the trial court with statutory authority to authorize the Department to involuntarily treat CB with antipsychotic medications, reasoning:

RCW 10.77.120 reads in relevant part, “The secretary shall *provide adequate care and individualized treatment* to persons found criminally insane at one or several of the state institutions or facilities under the direction and control of the secretary.” RCW 10.77.120(1) (emphasis added). In our view, the legislature's command that the secretary “provide adequate care and individualized treatment” to criminally insane individuals who are under the secretary's control. The dictionary defines “treatment” as “the action or manner of *treating a patient*”

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Thus, addressing Carter’s argument would not provide an “authoritative determination that will provide future guidance to public officers.” *In re Silva*, 166 Wn.2d 133, 137 n. 1, 206 P.3d 1240 (2009).

Accordingly we hold that Carter’s appeal is moot and we decline to further address the issues he raises other than to point out the *CB* controls the outcome and that we have held that the State does have authority to administer antipsychotic medications to those person committed to the Department’s care under chapter 10.77 RCW.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

We concur:

Van Deren, J.

Quinn-Brintnall, J.

Johanson, A.C.J.

medically or surgically” and “medication” as “*treatment* with a medicament.” Webster’s Third New International Dictionary 1402, 2435 (2002) (emphasis added). Medication, in other words, is a form of treatment that may be appropriate to a specific individual depending on his or her medical circumstances. As such, it clearly falls within the statute’s reach. Accordingly, *CB*’s argument that the Department lacked statutory authority to treat her with antipsychotic medications fails.

C.B., 165 Wn. App. at 95-96 (footnote omitted). In so holding, we rejected *CB*’s assertion that the legislature’s explicit mention of “involuntary medication” in the competency restoration statutes, RCW 10.77.092 and RCW 10.77.093, indicated the legislature’s intent to only authorize involuntary medication under those limited circumstances. *C.B.*, 165 Wn. App. at 96-97. Likewise, even if we were to address Carter’s appeal on the merits, we would reject his argument that the legislature’s explicit provisions for involuntary medicating individuals under a civil commitment indicates its intent to not provide involuntary medication procedures for individuals committed under chapter 10.77 RCW.