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DISTRICT II

November 13, 2013

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Timothy S.
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You are hereby notified that the Court has entered the following opinion and order:

2013AP1310-NM

In the matter of the mental commitment of Timothy S.: Winnebago County v. Timothy S. (L.C. #2012ME23A)

Before Brown, C.J.¹

Timothy S. appeals from orders extending his mental health commitment and requiring involuntary medication and treatment. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, and *Anders v. California*, 386 U.S. 738 (1967). Timothy received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the record, we conclude that the orders

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

On December 3, 2012, Timothy, an inmate at the Wisconsin Resource Center (WRC) and subject to a one-year commitment entered July 12, 2012, petitioned for reexamination under WIS. STAT. § 51.20(16). The circuit court ordered his examination by a licensed psychiatrist and a licensed psychologist. *See* § 51.20(16)(e) (court to proceed in accordance with § 51.20(9)(a) in requiring an examination by two licensed professionals). Each doctor filed a report with the court opining that if WIS. STAT. ch. 51 treatment were withdrawn, Timothy would become the proper subject of treatment and that Timothy was unable to apply an understanding of the advantages and disadvantages of treatment to make an informed choice as to accept or refuse medications.

At the hearing held December 20, 2012, Timothy's attorney indicated that Timothy would stipulate to commitment for treatment but wanted to contest the involuntary medication order. The court proceeded directly to the taking of evidence. Timothy's treating physician testified that Timothy was incapable of applying the advantages and disadvantages of taking the medications to his own situation so as to give informed consent. The doctor explained that Timothy was continually trying to bargain his medication level down and does not appreciate the level of medication necessary to maintain good mental health. At the conclusion of the hearing, corporation counsel pointed out that although there was no petition for an extension of the commitment, Timothy's past petitions for reexamination had been treated as extensions. Timothy's counsel reiterated that Timothy wanted to remain committed for treatment and at the WRC, but that Timothy sought a voluntary medication order and a chance to prove he would voluntarily comply. The court found that Timothy lacked insight to be able to apply the

advantages and disadvantages of the prescribed medications. Based on the stipulation of the parties, the commitment was extended for one year, to December 20, 2013. It also entered a corresponding order for involuntary medication and treatment.

The no-merit report addresses whether the circuit court complied with the statutory procedures and time limits on Timothy's petition for reexamination under WIS. STAT. § 51.20(16), whether trial counsel was ineffective in stipulating to an extension of the commitment order, and whether the evidence offered was sufficient to support the involuntary medication and treatment order. The report sets forth the applicable standards of review and the elements to be proved.² We agree with counsel's analysis that these potential issues lack arguable merit.

We have considered two other potential issues not addressed in the no-merit report. The first is whether the circuit court failed to engage in a personal colloquy with Timothy to establish that his stipulation to the commitment extension was knowingly, intelligently, and voluntarily made. We conclude an argument centered on the notion that a colloquy was required lacks arguable merit. It may be better practice to confirm the person's agreement with the stipulation, but nothing in WIS. STAT. § 51.20, requires any procedure akin to those set forth in WIS. STAT. §§ 48.422(7) and 971.08(1), which require a court, prior to accepting an admission in a parental rights termination proceeding or a guilty plea in a criminal case, to ascertain that the parent or defendant knows and understands certain things and is proceeding voluntarily. Although a

² In addressing the potential claim of ineffective assistance of counsel, the no-merit report reviews the elements to be proven to extend the commitment order and concludes Timothy was not prejudiced by the stipulation because grounds for an extension were established.

person committed under WIS. STAT. ch. 51 is entitled to due process, *see* § 51.20(5), there is no entitlement to the same procedural rights granted to criminal defendants or parents in a termination of rights case. Other procedural safeguards are built into ch. 51 commitment procedures, including the one-year limit on extensions and the opportunity to petition for reexamination.

The second potential issue concerns WIS. STAT. § 51.20(13)(g)2m., which provides that when an inmate of a state prison is committed to the Department of Health Services, “no commitment ... may continue beyond the inmate’s date of release on parole or extended supervision, as determined under [WIS. STAT. §§] 302.11 or 301.113, whichever is applicable.” The record reflects that at the time of the hearing on Timothy’s reexamination petition, his extended supervision date was calculated to be June 22, 2013. The commitment was extended to December 20, 2013, a date beyond Timothy’s release on extended supervision. Even if the length of the commitment order violates § 51.20(13)(g)2m., Timothy is not prejudiced. The record reflects that Timothy was in fact released on extended supervision on June 18, 2013, and venue of his commitment was transferred by court order to the Milwaukee County Department of Health Services. Ostensibly the purpose of § 51.20(13)(g)2m. is to prevent an inmate from being denied release on parole or extended supervision because of an existing commitment to the Department of Health Services. The transfer of venue had the purpose of facilitating Timothy’s release on extended supervision while meeting his continuing need for treatment. There is no arguable merit to challenging the commitment extension under § 51.20(13)(g)2m. *See* § 51.20(10)(c) (“The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings that does not affect the substantial rights of either party.”).

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the order of the circuit court, and discharges appellate counsel of the obligation to represent Timothy further in this appeal.

Upon the foregoing reasons,

IT IS ORDERED that the orders are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Suzanne Hagopian is relieved from further representing Timothy S. in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals