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WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

February 7, 2018

To:

Hon. Stephen E. Ehlke
Circuit Court Judge, Br. 15
Dane County Courthouse
215 S. Hamilton St., Rm. 7107
Madison, WI 53703

Carlo Esqueda
Clerk of Circuit Court
Dane County Courthouse
215 S. Hamilton St., Rm. 1000
Madison, WI 53703

Gregory Bates
Bates Law Offices
P.O. Box 70
Kenosha, WI 53141-0070

Richard Greenlee
Asst. Corporation Counsel
Rock County Courthouse
51 S. Main St.
Janesville, WI 53545

M. J. M.
2080 Allen Blvd.
Middleton, WI 53562

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

2017AP709-NM

In the matter of the mental commitment and involuntary medication
of M.J.M.: Dane County v. M.J.M. (L.C. # 2016ME353)

Before Blanchard, J.¹

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Attorney Gregory Bates, appointed counsel for appellant M.J.M., has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

arguable merit to: (1) any procedural challenges to M.J.M.'s WIS. STAT. ch. 51 commitment proceedings; (2) a challenge to the sufficiency of the evidence to support the commitment order; or (3) a challenge to the sufficiency of the evidence to support the order for involuntary medication.² M.J.M. was sent a copy of the report, but has not filed a response. Upon my independent review of the entire record, as well as the no-merit report, I agree with counsel's assessment that there are no arguably meritorious appellate issues.

On September 6, 2016, law enforcement took M.J.M. into custody pursuant to an emergency detention under WIS. STAT. § 51.15(1). According to the Statement of Emergency Detention by Law Enforcement Officer, police were called to a health care center on a report that M.J.M. was causing a disturbance. At the health care center, M.J.M. told police that if he were going to kill a police officer, he would use a specific kind of knife. A circuit court commissioner held a probable cause hearing on September 9, 2016. The court commissioner determined that there was probable cause to believe that the criteria for commitment were met. A final hearing was held on September 19, 2016. Two mental health professionals testified as to their recent mental status examinations of M.J.M., and M.J.M. testified on his own behalf. Following the hearing, the circuit court entered orders for commitment and involuntary medication and treatment for six months.

The first issue addressed in the no-merit report is whether there would be arguable merit to any procedural challenges to the commitment proceedings. I agree with counsel that this issue lacks arguable merit. Under WIS. STAT. § 51.15(1)(ar), a law enforcement officer may take an

² Although the order for involuntary commitment has expired, this appeal is not moot because the commitment subjects M.J.M. to a continuing firearms restriction.

individual into custody under an emergency detention if the officer has cause to believe that the individual is mentally ill, drug dependent, or developmentally disabled, that custody is the least restrictive alternative necessary, and the individual evidences a substantial probability of physical harm to himself or herself or others. The officer must file a statement of emergency detention, which has the same effect as a petition for commitment under WIS. STAT. § 51.20. Section 51.15(5). A probable cause hearing must be held within seventy-two hours after the individual is taken into custody. *Id.*; WIS. STAT. § 51.20(7)(a). If the court finds probable cause to believe the allegations in the petition for commitment, the court must schedule a final hearing within fourteen days of the detention of the individual. WIS. STAT. § 51.20(7)(c). Because the required process and timelines under WIS. STAT. ch. 51 were properly followed, I agree with counsel that any procedural challenges would lack arguable merit.

Next, the no-merit report addresses whether there would be arguable merit to a challenge to the sufficiency of the evidence to support the commitment order. The criteria for mental health commitment are that the individual is: (1) mentally ill; (2) a proper subject for treatment; and (3) dangerous. *See* WIS. STAT. § 51.20(1)(a) and (am). Here, the examining mental health professionals both testified that M.J.M. has been diagnosed with bipolar disorder, thus meeting the statutory criteria of mental illness. They also testified that M.J.M. responds positively to psychiatric medication, thus establishing that M.J.M. is a proper subject for treatment. Additionally, they testified that M.J.M.'s statement to police that he would use a particular knife if he were going to kill a police officer, together with their own observations of M.J.M.'s demeanor, caused them to believe that M.J.M. evidenced a substantial risk of harm to others, meeting the statutory requirement of dangerousness. *See* WIS. STAT. § 51.20(1)(a)2.b. (individual is "dangerous" if her or she "[e]vidences a substantial probability of physical harm to

other individuals as manifested ... by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent ... threat to do serious physical harm”). Accordingly, I agree with counsel’s assessment that a challenge to the evidence supporting the commitment order would lack arguable merit.

Finally, the no-merit report addresses whether there would be arguable merit to a challenge to the sufficiency of the evidence to support the order for involuntary medication and treatment. Under WIS. STAT. §§ 51.61(1)(g)3. and 4.b., a court may order involuntary medication and treatment for a person subject to commitment if the person is not competent to refuse medication or treatment, in that he or she is “substantially incapable of applying an understanding of the advantages, disadvantages, and alternatives to his or her mental illness ... in order to make an informed choice as to whether to accept or refuse medication or treatment.” Here, both testifying mental health professionals opined that M.J.M. was unable to understand the advantages and disadvantages of treatment as applied to him. Again, I agree with counsel that a challenge to the evidence supporting involuntary medication and treatment would lack arguable merit.

Upon my independent review of the record, I have found no other arguable basis for reversing the court’s orders. I conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Gregory Bates is relieved of any further representation of M.J.M. in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Acting Clerk of Court of Appeals