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DISTRICT IV

August 10, 2018

To:

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

2017AP743-CR

State of Wisconsin v. James B. Warfield (L.C. # 2012CF1313)

Before Lundsten, P.J., Sherman and Kloppenburg, JJ.

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).

James Warfield appeals circuit court orders revoking his conditional release, ordering the administration of psychotropic medication, and denying his motion for postdisposition relief. Based upon our review of the briefs and record, we conclude at conference that this case is

appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).¹ We summarily affirm.

Warfield was adjudicated not guilty by reason of mental disease or defect in a criminal case. He was committed to the custody of the Department of Health Services (DHS) for a period of six years, beginning on July 18, 2013, and was placed on conditional release. An order for the administration of involuntary medication, as a condition of Warfield's conditional release, also was entered on July 18, 2013. On July 7, 2016, the circuit court entered orders revoking Warfield's conditional release, placing him in institutional care, and authorizing DHS to administer psychotropic medication. Warfield filed a postdisposition motion to vacate the medication order and the order revoking his conditional release. The circuit court denied the postdisposition motion after a hearing.

Warfield now appeals. He argues that the circuit court violated his due process rights when it entered the July 7, 2016 order without following the procedures in WIS. STAT. §§ 971.17(3)(b) and 971.16(3) for ordering involuntary administration of medication in an NGI commitment. Subsection 971.17(3)(b) provides that, if the State proves by clear and convincing evidence that a person is not competent to refuse medication or treatment, under the standard specified in § 971.16(3), the court "shall issue, as part of the commitment order, an order that the person is not competent to refuse medication or treatment." Section 971.16(3) specifies the standard for determining lack of competence, which requires a report from a physician or psychologist regarding his or her examination of the defendant.

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

The State argues that the appeal is moot because the July 7, 2016 order placing Warfield in institutional care was superseded by a new order for placement entered on June 27, 2017. The new placement order granted Warfield conditional release, with the administration of involuntary medication ordered as a term of conditional release. Warfield concedes that the case is moot, but requests that we nonetheless decide the merits of the appeal based on our discretionary authority to decide an otherwise moot issue under certain circumstances. We recognize that we may decide an otherwise moot issue if it is of great public importance, occurs so frequently that a definitive decision is necessary to guide circuit courts, is likely to arise again and a decision from this court would alleviate uncertainty, or will likely be repeated but evades review. *See Winnebago Cty. v. Christopher S.*, 2016 WI 1, ¶32, 366 Wis. 2d 1, 878 N.W.2d 109. However, for the following reasons, we elect not to exercise our discretionary authority to decide the moot issue in this case.

Even if we assume, without deciding the issue, that Warfield is correct in his assertion that the July 7, 2016 order authorizing DHS to administer involuntary medication was entered without due process, the fact remains that Warfield was already subject to a prior order for involuntary administration of medication, entered on July 18, 2013. Warfield did not object to the 2013 involuntary medication order. Rather, he confirmed in open court that he understood that his compliance with the medication order was a condition of his conditional release. There is no evidence in the record that Warfield sought administrative or judicial review of the 2013 involuntary medication order or any modification of that order. Therefore, even if the July 7, 2016 order that Warfield is challenging were to be invalidated, the July 18, 2013 involuntary medication order would still be in effect.

In addition, Warfield's argument that the circuit court violated his due process rights by failing to follow the procedures set forth in WIS. STAT. §§ 971.17(3)(b) and 971.16(3) relies upon an assumption that § 971.17(3)(b) applies not only to an original NGI commitment proceeding, but to all proceedings thereafter. As the State points out in its supplemental response brief, Warfield does not cite any authority to support this assumption. Warfield cites *State v. Wood*, 2010 WI 17, 323 Wis. 2d 321, 780 N.W.2d 63, for the proposition that due process requires periodic review of an involuntary medication order entered with an NGI commitment order. However, *Wood* does not specify that such orders must be subject to periodic *judicial* review. Rather, in *Wood*, the supreme court upheld an administrative directive that provided for administrative review of involuntary medication orders six months after issuance of the order and every twelve months thereafter. *Id.*, ¶66. Nothing in the record before us indicates whether any administrative reviews took place in this case, and Warfield does not raise the issue of administrative review.

In light of all of the above, we are not persuaded that this case presents an issue of great public importance or meets any of the other criteria that would persuade us to proceed despite the appeal being moot.

Upon the foregoing,

IT IS ORDERED that the orders are summarily affirmed under WIS. STAT. RULE 809.21(1).

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

Sheila T. Reiff
Clerk of Court of Appeals