

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

APRIL 1996 SESSION

<p><b>FILED</b></p> <p>July 25, 1996</p> <p><b>Cecil Crowson, Jr.</b> Appellate Court Clerk</p>
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RICKY WOOLARD, )  
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 Appellant )  
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 V. )  
 )  
 STATE OF TENNESSEE, )  
 )  
 Appellee )

NO. 03C01-9510-CC-00296  
 JEFFERSON COUNTY  
 HON. BEN W. HOOPER, II  
 JUDGE  
 (Judicial Commitment)

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OPINION FILED: \_\_\_\_\_

AFFIRMED

William M. Barker, Judge

OPINION

This is an appeal by the appellant, Ricky Woolard, from the judgment of the Circuit Court of Jefferson County ordering the appellant's involuntary judicial commitment to the Middle Tennessee Mental Health Institute.

We affirm the trial court.

The appellant was originally indicted by the Jefferson County Grand Jury in multiple indictments for two counts of burglary, two counts of theft under \$500, reckless endangerment, aggravated criminal trespass, aggravated assault, and criminal attempt to commit first degree murder. Although no judgment of acquittal appears in the record of appeal, both the appellant and the State agree that the appellant was adjudged not guilty by reason of insanity on January 6, 1995. In an order which does appear in the record of appeal, likewise entered on January 6, 1995, the trial court ordered the appellant hospitalized for evaluation and diagnosis pursuant to Tennessee Code Annotated, section 33-7-303. That statute provides that after being found not guilty of a crime by reason of insanity, the "criminal court shall order the person detained for diagnosis and evaluation for a minimum of sixty (60) days and a maximum of ninety (90) days in a hospital or treatment resource." Tenn. Code Ann. § 33-7-303 (1994 Supp.).

The statute further provides that following diagnosis and evaluation, "if certification is provided that the person is committable under § 33-6-104, the district attorney general shall file a complaint in the criminal court for judicial commitment under § 33-6-104 and for an order requiring the person to participate in outpatient treatment at a treatment resource under this subsection." Tenn. Code Ann. § 33-7-303(b)(1) (1994 Supp.).

By letter dated March 23, 1995, which was received by the trial court on March 31, 1995, Larry Southard, Director of Forensic Services at the Middle Tennessee Mental Health Institute, certified that the treatment team at that institute determined that the appellant did meet the standards for judicial hospitalization under the provisions of Tennessee Code Annotated, sections 33-7-303 and 33-6-104.

Accompanying the letter from Mr. Southard to the court were two affidavits from staff psychiatrists employed by the Middle Tennessee Mental Health Institute, each opining that the appellant was subject to involuntary care and treatment pursuant to the statute.

Thereafter, on May 16, 1995, a hearing was conducted before the trial court to determine the issue of the appellant's need for involuntary hospitalization. Although no written complaint for appellant's judicial commitment was filed with the trial court by the district attorney general, the assistant attorney general announced in open court, in the presence of the appellant and his counsel, that "because of the time deadlines, and the nature of these things, Mr. Woolard is still in custody, apparently, and Mr. Miller and I have agreed that this be brought before the court on an oral petition, and bring this to the court's attention as quickly as we could, the court having its first opportunity to be here, I think, in this county." Neither the appellant nor his attorney objected to proceeding upon an oral petition. Similarly, the assistant district attorney announced to the court that he and counsel for the appellant had agreed that the State, for its evidence in support of judicial commitment, would rely upon the affidavits from the two staff psychiatrists and that the appellant would testify in his own behalf. Again, neither the appellant nor his counsel objected to that procedure. Thereafter, the affidavits from the two staff psychiatrists were admitted into evidence on behalf of the State. The appellant was prepared to and did testify on his own behalf moments later.

Although we agree with the appellant that the statutory procedure for judicial hospitalization was not strictly complied with in this case, it is abundantly clear that the appellant agreed to proceeding upon an oral petition rather than a written complaint, and that he further agreed to the State's use of the two affidavits from the staff psychiatrists rather than requiring the live testimony of a professional. No objection was made in the trial court to the procedure employed, and we conclude that the

appellant has waived any claim to those two procedural departures from the statute. See State v. Dunn, 224 Tenn. 255, 453 S.W.2d 777 (1970). Additionally, the appellant has not alleged nor shown any prejudice as a result of the lack of a written complaint or the receipt of the affidavits from the certifying physicians as the State's evidence of the appellant's need for involuntary hospitalization. This issue is without merit.

Next, the appellant contends that the evidence was insufficient to support the trial court's decision to order his involuntary hospitalization. We disagree.

Before a court may order the involuntary judicial commitment of a person to a mental health facility, the trial court is required to find by clear, unequivocal and convincing evidence that the person whose hospitalization is sought is mentally ill, and as a result of the mental illness, poses a substantial likelihood of serious harm to himself or others. Tenn. Code Ann. §§ 33-3-617(2) and 33-6-104 (1994 Supp.). The State offered evidence from two staff psychiatrists who had examined and evaluated the appellant at the Middle Tennessee Mental Health Institute. Dr. A. K. M. Fakhruddin, in an affidavit executed March 15, 1995, stated that he found that the appellant was mentally ill because: "Patient has been acting bizzare [sic], paranoid, and was shooting around endangering others including police officers." Dr. Fakhruddin also stated that the appellant posed a substantial likelihood of harm because of his mental illness as shown by the following: "Patient has been decompensating and stated he is hearing voices after his mother's death. Also, his alcohol abuse has aggravated his psychiatric symptoms." Additionally, Dr. Fakhruddin stated that the appellant needed treatment because in his opinion, the appellant: "[C]ontinues to feel he is on a mission from God. He can't accomplish his mission as he is not in good shape." Finally, Dr. Fakhruddin opined that "if involuntary treatment is not continued the [appellant's] condition resulting from mental illness is likely to deteriorate rapidly...."

On March 17, 1995, the other examining psychiatrist, Dr. Rokeya Farooque, also certified that the defendant should be committed for involuntary treatment for his mental illness. He stated that he found the defendant was shown to be mentally ill because: "Patient has a history of suicide attempts in the past by shooting himself in the chest. [He has a] history of auditory hallucinations. At present patient is receiving psycotropic [sic] medications for stabilization. But patient continued to be confused, delusional with religious content and paranoid." Finally, Dr. Farooque stated that the appellant "needs complete stabilization in an inpatient setting to avoid danger to himself and others."

Testifying in his own behalf, the twenty-seven-year-old appellant acknowledged that he had experienced some mental problems, and that when he was initially hospitalized in the late summer or early fall of 1994 at the Middle Tennessee Mental Health Institute, he was placed on medication. He testified that the medication seemed to help his situation, and he was thereafter released back to the Jefferson County Jail. Following the court's order for evaluation and diagnosis on January 6, 1995, Mr. Woolard testified that he had been a patient once again at the Middle Tennessee Mental Health Institute and continued to be medicated and receive counseling. He indicated that he was feeling better at the time of the hearing and that his family seems to think he is doing better also. He denied having any current feelings of suicide and did not feel that he presented a danger to himself or any other person. He said that he would refrain from the use of alcohol, and admitted that alcohol abuse had caused his mental problems to be exacerbated. He testified that his daughter had been living with his girlfriend during his incarceration, and that he was anxious to be released from custody so that he could look after his daughter and hopefully return to his former employment at Rugles Woodworking, a company that produces church furniture.

In addition to his own testimony in opposition to judicial hospitalization, the appellant introduced a letter from the staff of Middle Tennessee Mental Health

Institute, written in September 1994, concluding that at that time the appellant “[did] not meet the standards of judicial commitment to a mental institute pursuant to the provisions of TCA 33-7-301(b) and 33-6-104.”

In announcing his decision to order the appellant’s judicial hospitalization, the trial court made findings of fact that the appellant had threatened or actually attempted suicide, that he had threatened or attempted homicide, and that he had placed others in reasonable fear of violent behavior and serious physical harm. The court further found that the appellant was mentally ill and that because of his mental illness, “there is substantial likelihood that the type of harm that was previously found by the court to exist would occur, could occur unless he is placed under involuntary treatment. He does need treatment, he is mentally ill, even though the court finds that I think he is making some progress.”

“The standard of review for this Court is de novo upon the record of the trial court with a presumption of correctness of the finding, unless the preponderance of the evidence is otherwise. T.R.A.P. 13(d).” State v. Tripp, 754 S.W.2d 92, 94 (Tenn. Crim. App. 1988). Similarly, in State v. Groves, 735 S.W.2d 843, 844 (Tenn. Crim. App. 1987), this Court stated that “[t]he trial court’s resolution of disputed evidence and conflicts in testimony requiring a determination of the credibility of witnesses is binding on this Court unless there is other real evidence to the contrary.”

Based on our review of the record on appeal we conclude that the trial court did not err in finding that the appellant’s judicial hospitalization was required.

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WILLIAM M. BARKER, JUDGE

Concur by:

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GARY R. WADE, JUDGE

DAVID H. WELLES, JUDGE

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