

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

IN RE: WILLIAM MASALEHDAN

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

APPEAL OF: WILLIAM MASALEHDAN

No. 772 WDA 2014

Appeal from the Order Entered April 17, 2014  
In the Court of Common Pleas of Allegheny County  
Orphans' Court at No(s): CC 637 OF 2014

BEFORE: BENDER, P.J.E., JENKINS, J., and MUSMANNO, J.

MEMORANDUM BY BENDER, P.J.E.:

**FILED August 3, 2015**

Appellant, William Masalehdan, appeals from the trial court's April 17, 2014 order sustaining the Mental Health Review Officer's (MHRO) March 21, 2014 order certifying Appellant's extended involuntary commitment. In issuing this order, the court effectively denied Appellant's petition to review the MHRO's certification. After careful review, we reverse the court's April 17, 2014 order.

In March of 2014, Appellant's mother filed an "Application for Involuntary Emergency Examination and Treatment" for Appellant, asserting that Appellant had not changed his clothing or bathed for three months, had confined himself to his bedroom with weapons (including a loaded handgun), and had assaulted his mother on March 14, 2014. Appellant's mother further claimed that Appellant was bipolar and was in a manic state. On March 17, 2014, Appellant was involuntarily admitted, pursuant to section 7302 of the Mental Health Procedures Act (MHPA), 50 P.S. §§ 7101-7503, to

Western Psychiatric Institute and Clinic (WPIC) for a period of treatment not to exceed 120 hours.

On March 19, 2014, WPIC filed a petition for Appellant's extended involuntary treatment pursuant to 50 Pa.C.S. § 7303. On March 21, 2014, a hearing was held before an MHRO, at which Appellant's counsel, but not Appellant, was present. During the course of that proceeding, Appellant's counsel stipulated to Appellant's continued involuntary commitment for 20 days and signed the MHRO's certification for such commitment.

On April 11, 2014, Appellant – who was then represented by privately retained counsel – filed with the orphans' court a petition for review of the March 21, 2014 certification pursuant to 50 Pa.C.S. § 7303(g). That section states:

**(g) Petition to Common Pleas Court.**--In all cases in which the hearing was conducted by a mental health review officer, a person made subject to treatment pursuant to this section shall have the right to petition the court of common pleas for review of the certification. A hearing shall be held within 72 hours after the petition is filed unless a continuance is requested by the person's counsel. The hearing shall include a review of the certification and such evidence as the court may receive or require. If the court determines that further involuntary treatment is necessary and that the procedures prescribed by this act have been followed, it shall deny the petition. Otherwise, the person shall be discharged.

50 Pa.C.S. § 7303(g).

On April 16, 2014, the orphans' court issued an order scheduling a hearing on Appellant's petition for review. However, the following day, April 17, 2014, the court issued another order vacating its April 16, 2014 order,

canceling the hearing on Appellant's petition, and stating that it was sustaining the certification of commitment made by the MHRO.

Appellant filed a timely notice of appeal raising the following two issues for our review:

1. Where the Lower Court failed to conduct a hearing required under 50 Pa.C.S. § 7303(g) on the Petition for Review of Section 303 Involuntary Mental Health Commitment, does such failure constitute reversible error, necessitating the underlying Section 303 Certification be vacated and the record expunged?
2. Where counsel for Appellant at a twenty (20) day Involuntary Mental Health Commitment Hearing under Section 303 of the [MHPA], stipulates to an Involuntary Commitment without Appellant's presence and where Appellant was willing to and did enter a Voluntary Commitment under Title 50 Pa.C.S. §[ ]7201 of the MPHA, was counsel ineffective thus depriving Appellant of his liberty interest and rights to due process?

Appellant's Brief at 4.<sup>1</sup>

In Appellant's first issue, he avers that the orphans' court violated section 7303(g) by failing to conduct a hearing on his petition for review. In contending that the court's failure constitutes reversible error, Appellant

---

<sup>1</sup> We note that even though Appellant's involuntary commitment has ended and he has presumably been released, "his appeal is not moot because the issues are 'capable of repetition and may evade review.'" ***In re Ryan***, 784 A.2d 803, 805 n.4 (Pa. Super. 2001). "We may review the issues, vacate the involuntary commitment order, and expunge the records." ***Id.*** (citing ***In re R.D.***, 739 A.2d 548 (Pa. Super. 1999); ***In re J.K.***, 595 A.2d 1287 (Pa. Super. 1991) (expired commitment order appealable because of important liberty issues involved)).

relies on ***In Re Estate of S.G.L.***, 885 A.2d 73 (Pa. Super. 2005). There, S.G.L. was involuntarily committed following a hearing before an MHRO. ***Id.*** at 74. She filed a petition for review and the judge “met with all counsel of record. No parties or witnesses were present.” ***Id.*** After listening to the audiotape of the hearing before the MHRO, the judge “ruled that the commitment was appropriate. There was no testimony taken and no opportunity for any on-the-record argument by counsel.” ***Id.***

S.G.L. appealed, asserting that the court erred by failing to conduct a *de novo* hearing to review the decision of the MHRO. ***Id.*** We agreed, holding that “[a]lthough a full *de novo* hearing need not be held [under section 7303(g)], to constitute a ‘hearing’ counsel must at least have the opportunity to make argument and offer supplemental evidence. There must be a record of what transpires.” ***Id.*** We further held in ***S.G.L.*** that while it is within the court’s discretion to listen to an audiotape of the hearing before the MHRO, that alone is not sufficient under section 7303(g) where counsel is effectively “preclud[ed] ... from presenting evidence or argument.” ***Id.*** We explained that “[w]hile the judge may not *receive* all evidence proffered, counsel should at least have the right to *proffer* the evidence, including testimony of the person being committed.” ***Id.*** (emphasis in original). Because S.G.L. had not been present when the judge assessed her petition for review, we concluded that “the requirement of the MHPA of at least a minimal hearing was not met.” ***Id.*** Consequently, we reversed the order denying S.G.L.’s petition for review, and “direct[ed] the

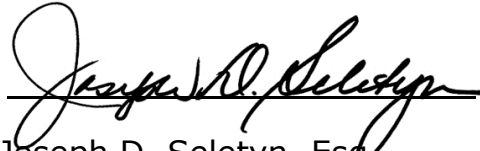
trial court to vacate the order of commitment and expunge the record of commitment.” ***Id.*** at 76.

We agree with Appellant that ***S.G.L.*** requires reversal in the present case. Here, the orphans’ court did even less than that of the court in ***S.G.L.***, as it did not conduct *any* proceeding after receiving Appellant’s petition for review. Instead, the court simply issued an order sustaining the certification made by the MHRO. In its Pa.R.A.P. 1925(a) opinion, the court concludes that it did not err by failing to conduct a hearing because it “thoroughly reviewed the certification and documents provided regarding [] Appellant’s commitment and made the determination that additional evidence to confirm the certification was not needed.” Orphans’ Court Opinion, 10/15/14, at 2. However, under ***S.G.L.***, the court’s independent review, without providing Appellant’s counsel the opportunity to at least “*proffer* [] evidence, including testimony of the person being committed[,]” clearly is not enough to satisfy the dictates of section 7303(g). ***S.G.L.***, 885 A.2d at 74 (emphasis in original).

Accordingly, the court’s April 17, 2014 order denying Appellant’s petition for review must be reversed. We further direct that the trial court vacate the March 21, 2014 order of the MHRO certifying Appellant’s extended involuntary commitment, and expunge the record of his section 7303 commitment. ***See S.G.L.***, 885 A.2d at 76; ***see also In re Ryan***, 784 A.2d at 808. Based on this disposition, we need not address Appellant’s second issue.

Order reversed. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", is written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 8/3/2015