FILED
July 30, 2025
C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

State of West Virginia,
Respondent, Plaintiff Below

v.) No. 23-748 (Randolph County CC-42-2005-F-48)

William O.,
Petitioner, Defendant Below

MEMORANDUM DECISION

Petitioner William O. appeals the Circuit Court of Randolph County's order entered on November 3, 2023, committing him to the William R. Sharpe, Jr. Hospital ("Sharpe Hospital").[1] The petitioner argues that the circuit court erred in failing to assign a mental hygiene case number, in finding that the petitioner was a danger to himself or others, and in finding that there were no less restrictive alternatives than commitment in a psychiatric hospital. Upon our review, finding no substantial question of law and no prejudicial error, we determine that oral argument is unnecessary and that a memorandum decision affirming the circuit court's order is appropriate. *See* W. Va. R. App. P. 21(c).

The petitioner was indicted on three counts of first-degree sexual abuse; two counts of sexual abuse by a parent, guardian, custodian, or person in a position of trust; one count of use of obscene matter with intent to seduce a minor; and one count of third-degree sexual assault. On November 15, 2004, the circuit court found that the petitioner was not competent to stand trial but was likely to regain competency, and, as such, ordered the petitioner to be committed to Sharpe Hospital for an evaluation and improvement period. By agreed order entered on May 5, 2006, the court found that the petitioner was not competent to stand trial and found "a substantial likelihood that the [petitioner] will not attain competency." The court concluded that it would maintain custody over the petitioner until either (1) the petitioner regained competency and the criminal charges reached resolution, or (2) the charges are dismissed, whichever occurred first. At a status hearing held on October 25, 2007, the court found that the petitioner remained incompetent to stand trial and that he was unlikely to regain competency. Accordingly, the court placed the petitioner under the jurisdiction of the court for ninety-five years.

[1] The petitioner is represented by counsel Morris C. Davis. The State of West Virginia is represented by Attorney General John B. McCuskey and Assistant Attorney General Holly M. Mestemacher. Because a new Attorney General took office while this appeal was pending, his name has been substituted as counsel. We use initials where necessary to protect the identities of those involved in this case. *See* W. Va. R. App. P. 40(e).

Following an amendment to West Virginia Code § 27-6A-3 regarding the issue of final dispositions for defendants found not competent to stand trial, the State initiated final commitment proceedings pursuant to West Virginia Code § 27-5-4, which the petitioner's counsel agreed to, and the circuit court held a hearing on the matter on June 24, 2022. The State presented the testimony of Wilda Posey, a licensed psychologist at Sharpe Hospital. After Dr. Posey's testimony, the hearing was continued to allow the petitioner time to obtain an independent evaluation. The final commitment hearing eventually reconvened in August 2023. Steven Cody, a clinical forensic psychologist at Sharpe Hospital, testified on behalf of the petitioner. Dr. Cody had performed an evaluation of the petitioner and diagnosed him with schizophrenia and autism. While Dr. Cody opined that the petitioner's condition was well-managed with medication, he stated that continued monitoring was necessary to ensure that the petitioner maintained his medication regimen given his lack of insight into his diagnoses. Dr. Cody did not believe that the petitioner should be released from a hospital setting and opined that the petitioner would not remain compliant with his medication regimen if he was unsupervised. However, Dr. Cody did not believe that the petitioner was a danger to himself or others and opined that if appropriate supervision could be ensured, the petitioner "could be maintained in a less-restrictive environment than a hospital." The court took judicial notice of Dr. Posey's prior testimony. Nevertheless, the State called Dr. Posey to testify again to refresh the court's recollection. Dr. Posey stated that the petitioner had been diagnosed with schizophrenia and autism and, in her opinion, was a danger to himself and others given his likelihood of noncompliance with his medication regimen and his lack of insight into his mental illness.

By order entered on August 21, 2023, the circuit court noted its prior finding that the petitioner was not competent to stand trial and was not substantially likely to attain competency. The court further found that the petitioner "remains a foreseeable danger to self or others outside the hospital setting and that there is no less restrictive placement that is appropriate and available[.]" Specifically, the court found that there was not a less-restrictive alternative to commitment due to the petitioner's unwillingness to take his medication and cooperate with his treatment plan, thereby creating a situation involving significant risk to the petitioner and public safety. As such, the court ordered that the petitioner "be finally civilly committed to Sharpe Hospital." The petitioner now appeals from this order.

> "Where the issue on an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a de novo standard of review." Syl. Pt. 1, *Chrystal R.M. v. Charlie A.L.*, 194 W.Va. 138, 459 S.E.2d 415 (1995). . . . "Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." W.Va. R. Civ. P. 52(a) (1998).

In re C.M., No. 15-0997, 2017 WL 1347709, at *2 (W. Va. Apr. 10, 2017) (memorandum decision).

In the petitioner's first assignment of error, he argues that the circuit court erred by not assigning the petitioner a mental hygiene case number following the State's petition for civil commitment. According to the petitioner, this Court promulgated a form for civil commitments in

accordance with West Virginia Code § 27-5-1(f),[2] which includes a blank space for the assignment of a mental hygiene number. The petitioner argues that the circuit court left this space blank and contends "this is error."

Here, the record reveals that the decision to not assign a mental hygiene number stemmed from a discussion between the court, the State, and the petitioner's counsel as to whether a prior version of West Virginia Code § 27-5-4 governed the proceedings. After the discussion, the court decided that a mental hygiene number would not be assigned, and that the parties would proceed under the criminal case number initially assigned. The petitioner did not object to how the court resolved this issue, nor does he now, on appeal, cite to any authority establishing that he is somehow entitled to relief based on the lack of a mental hygiene number. *See* W. Va. R. App. P. 10(c)(7) (requiring that "[t]he brief . . . contain an argument clearly exhibiting the points of fact and law presented, the standard of review applicable, and citing the authorities relied on, under headings that correspond with the assignments of error"). Indeed, aside from generally asserting that "this is error," the petitioner fails to show that he was in any way prejudiced by the lack of a mental hygiene number. Accordingly, we find the circuit court's failure to assign the petitioner a mental hygiene number was not prejudicial to the substantial rights of the petitioner, and was therefore, at most, harmless error. *See Reed v. Wimmer*, 195 W. Va. 199, 209, 465 S.E.2d 199, 209 (1995) (concluding that error is harmless when "it is trivial, formal, or merely academic, and not prejudicial to the substantial rights of the party assigning it . . .").

The petitioner next contends that the circuit court erred in finding that he was a danger to himself and others. According to the petitioner, while Dr. Posey opined that the petitioner presented a danger, Dr. Cody opined that the petitioner had not had any behavioral issues or displayed any sexualized behaviors, which, when coupled with his good prognosis for continuation of treatment, meant he did not present a danger to himself or others. The petitioner argues that because there was "controverted testimony as to this issue and each expert differed as to the effect the [petitioner's] mental health would have [on] his prognosis and possib[ility] to reoffend[]," the court could not find by clear and convincing evidence that the petitioner presented a danger to himself and others.

West Virginia Code § 27-5-4(k)(1)(B) provides as follows:

> (1) Upon completion of the final commitment hearing and the evidence presented in the hearing, the circuit court or mental hygiene commissioner shall make findings as to the following based upon clear and convincing evidence:
>
> . . . .

[2] In accordance with West Virginia Code § 27-5-1(f): "The Supreme Court of Appeals shall provide uniform petition, procedure, and order forms which shall be used in all involuntary hospitalization proceedings brought in this state."

> (B) Whether, as a result of illness or substance use disorder, the individual is likely to cause serious harm to self or others if allowed to remain at liberty and requires continued commitment and treatment[.]

We have noted that the likelihood of harm need not be imminent, but there must be a showing of "substantial risk of harmful conduct within the reasonably foreseeable future." *State v. Boyd*, 167 W. Va. 385, 406 n.8, 280 S.E.2d 669, 683 n.8 (1981) (citing *Hatcher v. Watchel*, 165 W. Va. 489, 269 S.E.2d 849 (1980)).

We find no error in the court's conclusion that the petitioner posed a danger to himself and others. While the petitioner claims that the testimony of Dr. Cody and Dr. Posey was contradictory and thus prevented the court from making findings by clear and convincing evidence, the court found that the testimony of both psychologists indicated that commitment to Sharpe Hospital was the least restrictive disposition available for the petitioner. Specifically, although Dr. Cody testified that the petitioner's symptoms were currently well maintained through medication and a structured environment, he also testified that he did not believe the petitioner should be released from Sharpe Hospital due to his lack of insight into his mental illness and the likelihood that he would not maintain his medication regimen under less supervision. Dr. Cody further expressed that if the petitioner did not comply with his treatment plan, neither "his safety [n]or the safety of the community[] is adequately ensured." Dr. Posey likewise articulated strong concerns about the petitioner discontinuing his medication if he were released to a less restrictive placement, and she opined that the petitioner presented a danger to himself and others. Accordingly, given the foregoing, we conclude that the testimony of Drs. Posey and Cody was sufficient for the court to find by clear and convincing evidence that the petitioner remained a "danger to self and others," especially considering the petitioner's noted reluctance to continue his medications should he be released from Sharpe Hospital.

Lastly, the petitioner argues that the court erred in finding that there was no less restrictive alternative to the petitioner's commitment at Sharpe Hospital. According to the petitioner, the purpose of the proceedings was to rehabilitate, rather than to punish, the petitioner, *see State v. Weister*, 247 W. Va. 355, 366, 880 S.E.2d 77, 88 (2022), and the court erred in failing to consider less restrictive placements based on the petitioner's perceived refusal to take his medication or his lack of desire to participate in a treatment plan. The petitioner contests these findings, arguing that his refusal to take medication for his mental illness occurred over thirty years ago and that his misgivings about participating in a group home treatment plan do not relieve the court of its duty to "provide humane care and treatment . . . and to facilitate rehabilitation [in] the least restrictive environment." *Id.*

West Virginia Code § 27-5-4(k)(D) provides, in part, that upon the completion of a civil commitment hearing, a circuit court must make a finding regarding "[w]hether there is a less restrictive alternative than commitment appropriate for the individual that is appropriate and available." Here, the circuit court heard testimony from Dr. Posey that commitment to Sharpe Hospital was the least restrictive alternative available to the petitioner. While Dr. Cody theorized that there could be a less restrictive alternative, he had no actual knowledge of such a placement, and he also testified that he did not believe that the petitioner should be released from the hospital setting and noted that the petitioner needed continued supervision due to his self-proclaimed lack

of desire to comply with his treatment plan and his lack of insight into his mental illness. Given the foregoing, we find no error in the circuit court's determination that no less restrictive alternatives to final commitment at Sharpe Hospital were available to the petitioner.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: July 30, 2025

CONCURRED IN BY:

Chief Justice William R. Wooton
Justice Tim Armstead
Justice C. Haley Bunn
Justice Charles S. Trump IV