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STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT III

Case No. 2024AP000440

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

A.M.N.,

Defendant-Appellant.

Appeal of an Order for Commitment and Treatment,
Entered in the Marinette County Circuit Court, the
Honorable Jane M. Sequin, Presiding

BRIEF OF PLAINTIFF-RESPONDENT

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ISSUE PRESENTED

Did the circuit court err by denying A.M.N.'s repeated requests to appear in person at the competency hearing at which the circuit court found A.M.N. incompetent and entered an order for commitment and treatment?

The circuit court answered: no.

This Court should uphold the findings of the circuit court because the competency hearing was a fair and just hearing and because this issue is moot due to the circuit court's subsequent finding of competence with which A.M.N. agreed.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The Plaintiff-Respondent, the State of Wisconsin, requests neither oral argument nor publication.

SUPPLEMENTAL STATEMENT OF THE CASE AND FACTS

A.M.N. was charged with two misdemeanor charges. (2:1). The Court *sua sponte* ordered a competency evaluation. (6; 25:4-5). Dr. Reintjes met with A.M.N. at a facility where A.M.N. was placed due to separate proceedings in order to complete his report. (10:1,2). Dr. Reintjes filed his competency report on November 27, 2023, in which he opined that A.M.N. was incompetent but likely to regain competence within the statutory period. (10:1,6-7).

A competency hearing was held on December 19, 2023. (19:1). At the hearing, A.M.N. was represented by Attorney Bradley Schraven. (19:1,3). A.M.N. appeared at the hearing by zoom videoconferencing. (19:3). The Court asked A.M.N. whether he disagreed with Dr. Reintjes' opinion that he was presently

incompetent, and A.M.N. said that he did disagree that he was incompetent. (19:4-5). A.M.N. also objected to appearing by zoom videoconferencing and requested to appear in person (19:5-6). The Court denied A.M.N.'s request to appear in person. (19:6). In denying the request, the Court stated that A.M.N. would be able to see and hear the testimony from the doctor and that A.M.N. was represented by counsel who could cross-examine the doctor. (19:6).

Dr. Reintjes also appeared and testified by zoom videoconferencing. (19:6-7). The Court had previously authorized the doctor testifying via videoconferencing, (23:5). Neither party objected to the doctor testifying via videoconferencing at the competency hearing, (19:6), and Attorney Schraven cross-examined the doctor regarding his opinion. (19:23-26). Dr. Reintjes was the only witness called. (19:27). During the hearing, A.M.N. voiced objections to portions of the testimony and to videoconferencing. (19:14,16,18,20). After Dr. Reintjes' testimony, A.M.N. gave a statement to the Court about his opinion about the competency process. (19:30-31). Based on the report and Dr. Reintjes' testimony, the Court found that A.M.N. was not presently competent but could be restored to competency within the statutory period. (19:31-33; 17:1).

In a subsequent Competency Evaluation authored by Dr. Gale Griffith and filed March 13, 2024, Dr. Griffith opined that A.M.N. was competent. (36:11). At a hearing on March 26, 2024, A.M.N. agreed with Dr. Griffith's report that he was competent. (47:2; App. 4). The Court found that A.M.N. was competent. (47:3; App. 5). A.M.N. subsequently entered into a Deferred Judgment Agreement on the misdemeanor charges. (45; 48:3-6; App. 12-15, 20-21).

ARGUMENT

I. A.M.N. is not entitled to a new competency hearing because the competency hearing held December 19, 2023, was a fair and just hearing.

A. Standard of Review

“Whether a statute has been properly interpreted and applied also is a question of law we review de novo, but we do so ‘while benefitting from the analyses of the court of appeals and circuit court.’” *State v. Houghton*, 2015 WI 79, ¶ 18, 364 Wis.2d 234, 868 N.W.2d 143 (citing *118th St. Kenosha, LLC v. DOT*, 2014 WI 125, ¶ 19, 359 Wis.2d 30, 856 N.W.2d 486 (quoting *260 N. 12th St., LLC v. DOT*, 2011 WI 103, ¶ 39, 338 Wis.2d 34, 808 N.W.2d 372)).

“... [W]hether a defendant's constitutional rights were violated is a question of constitutional fact subject to a two-step standard of review.” *Houghton*, 364 Wis.2d 234, ¶ 18 (citing *State v. Phillips*, 218 Wis.2d 180, 189, 577 N.W.2d 794 (1998)). “First, we uphold the circuit court's findings of historical fact unless they are clearly erroneous.” *Id.*, ¶ 18 (citing *State v. Williams*, 2002 WI 94, ¶ 17, 255 Wis.2d 1, 646 N.W.2d 834)). “Then, we review the circuit court's determination of the constitutional question de novo.” *Id.*

B. Since the Competency Hearing held December 19, 2023, was a fair and just hearing, violation of Wis. Stat. § 971.04(1) does not require a new competency hearing.

The Plaintiff-Respondent does not dispute that a competency hearing where a witness offers testimony is an evidentiary hearing

under Wis. Stat. § 971.04(1)(d). The Plaintiff-Respondent also does not dispute that A.M.N. objected to appearing via videoconferencing for the competency hearing. (19:5). Therefore, this would constitute a violation of Wis. Stat. § 971.04(1)(d).

However, “[a] statutory violation of § 971.04(1) does not automatically translate into a constitutional violation.” *State v. Peters*, 2000 WI App 154, ¶ 10, 237 Wis.2d 741, 615 N.W.2d 655, *rev’d on other grounds*, 2001 WI 74, 244 Wis.2d 470, 628 N.W.2d 797. To meet his initial burden, the defendant must show that the remote hearing procedure denied him a fair and just hearing. *Peters*, 237 Wis.2d 741, ¶ 10. *See May v. State*, 97 Wis.2d 175, 186, 293 N.W.2d 478 (1980).

In *State v. Peters*, the defendant entered a plea to Operating After Revocation and was sentenced via closed circuit television. *Peters*, 237 Wis.2d 741, ¶ 1. The defendant never explicitly waived his right to be physically present in the courtroom. *Id.*, ¶ 7. The defendant subsequently attempted to collaterally attack this conviction, claiming that his constitutional right to due process was violated because he was not physically present in the courtroom. *Id.*, ¶¶ 3-4, 8. In *Peters*, the Court found that the plea and sentencing hearing held by closed circuit television violated statutory criminal procedure, specifically Wis. Stat. § 971.04(1). *Id.*, ¶ 7.

However, the Court in *Peters* stated that Wisconsin courts have recognized that a defendant’s presence is required as a constitutional condition of due process only to the extent that there would not be a fair and just hearing if the defendant were not physically present. *Id.* ¶ 8 (citing *May v. State*, 97 Wis.2d at 186) (citing *Snyder v. Massachusetts*, 291 U.S. 97, 107-108, 54 S.Ct. 330, 78 L.Ed. 674 (1934), *overruled on other grounds*, *Malloy v. Hogan*, 378 U.S. 1, 84

S.Ct. 1489, 12 L.Ed.2d 653 (1964)). Violation of Wis. Stat. § 971.04(1) does not automatically equate to a constitution violation because § 971.04(1) does not list constitutionally mandated procedures. *Id.*, ¶ 10. A defendant must show that not being physically present denied the defendant the right to a fair and just hearing. *Id.* As the United States Supreme Court stated in *Snyder v. Massachusetts*, “So far as the 14th Amendment is concerned, the presence of a defendant is a condition of due process to the extent that a fair and just hearing would be thwarted by his absence, and to that extent only.” *Snyder*, 291 U.S. at 107-108. The 14th Amendment does not give the defendant the right to presence where his presence would be “useless, or the benefit but a shadow.” *Id.* at 106-107.

In *State v. Alexander*, 2013 WI 70, ¶ 30, 349 Wis.2d 327, 833 N.W.2d 133, the Court held that a defendant was not denied a “fair and just hearing” by not being present during a mid-trial, in-chambers conference between the Court, counsel, and a juror. In making this determination, the Court used the following factors: whether the defendant could meaningfully participate; whether he would gain anything by attending; and whether the presence of the defendant would be counterproductive. *Id.*

In *State v. Peters*, the Court held that the closed circuit plea and sentencing did not violate the defendant’s due process rights. *State v. Peters*, 237 Wis.2d 741, ¶ 11. The Court noted that the defendant and the judge were able to observe one another; the defendant was not impeded in effectively communicating with the court and other participants; and that the court established that the defendant understood his rights and was proceeding freely and without coercion. *Id.* ¶¶ 11-12. Furthermore, the defendant was able

to communicate his sentencing arguments to the court. *Id.*, ¶ 13, n. 13.

In the present case, A.M.N. was present by videoconferencing for the competency hearing, (19:3), and he was able to see the participants and hear what they were saying. (19:6). A.M.N. was able to communicate both his objections and his opinions about his situation to the Court. (19:14,16,18,20,30-31). The examining doctor was the only witness called, and the doctor appeared by videoconference with the agreement of the parties. (19:6). During the doctor's testimony, A.M.N. interjected objections at various points in the testimony. (19:14,16,20). A.M.N.'s attorney was able to cross-examine the doctor about his opinion regarding competency. (19:23-26). Thus, A.M.N. was able to fully and meaningfully participate in the hearing. A.M.N. was also able to effectively communicate to the Court his opinions and voice objections to what he felt was improper. A.M.N. did not testify, and A.M.N.'s attorney did not call any witnesses. A.M.N.'s attorney cross-examined the doctor based off the doctor's testimony and the report he authored. There were no substantial factual issues where the defendant's presence could have assisted his counsel in conducting the hearing. *See State v. Vennemann*, 180 Wis.2d 81, 94, 508 N.W. 2d 404 (1993).

Based on the foregoing facts, A.M.N. was able to meaningfully participate in the competency hearing, and A.M.N.'s physical presence would not have made any difference in A.M.N.'s ability to see, hear, and participate in the hearing. Further, A.M.N. would not have received any meaningful benefit by being physically present at the hearing. Therefore, the competency hearing was a fair and just hearing, and the Court's finding should not be vacated.

II. A.M.N.'s request to vacate the circuit court's findings and order for commitment and treatment is moot because A.M.N. was ultimately found competent by the Court, and A.M.N. agreed that A.M.N. was competent.

A. When resolution of a claim will have no effect on the judgment, the issue is moot.

“An issue is moot when its resolution will have no practical effect on the underlying controversy.” *State ex rel. Olson v. Litscher*, 2000 WI App 61, ¶ 3, 233 Wis. 2d 685, 608 N.W.2d 425. “In other words, a moot question is one which circumstances have rendered purely academic.” *Id.* This Court generally will not address moot issues. *Id.* This Court considers moot issues only “if the issue has great public importance, a statute’s constitutionality is involved, or a decision is needed to guide the trial courts.” *Id.* (citation omitted). This Court will also address a moot issue if it is “‘likely of repetition and yet evades review’ because the situation involved is one that typically is resolved before completion of the appellate process.” *Id.* (citation omitted). Whether an issue on appeal is moot is a question of law this Court reviews de novo. *McFarland State Bank v. Sherry*, 2012 WI App 4, ¶ 9, 338 Wis. 2d 462, 809 N.W.2d 58.

A.M.N. is requesting this Court to reverse and vacate the circuit court’s findings and order that A.M.N. was incompetent but could be treated to competency. (A.M.N.’s Br. 5.) However, A.M.N. was subsequently found competent after a Competency Evaluation authored by Dr. Gale Griffith opining that A.M.N. was competent was filed March 13, 2024. (36:11). At the March 26, 2024, hearing, A.M.N. agreed with Dr. Griffith’s report that he was competent.

(47:2; App. 4), and the Court found that A.M.N. was competent, and the proceedings were resumed. (47:3; App. 5).

After proceedings were reinstated, A.M.N. entered into a Deferred Judgment Agreement on the misdemeanor charges to resolve the case. (45; 48:3-6; App. 12-15). If A.M.N. complies with all the terms of the Deferred Judgment Agreement, the charges will be dismissed with prejudice. (45:2; 48:3-6; App. 12-15).

Vacating the circuit court's findings on December 19, 2023, that A.M.N. was incompetent but likely to regain competence would be completely meaningless and would accomplish nothing for the case. A.M.N.'s position throughout the case was that he was competent. (19:4-5). After the original finding of incompetence on December 19, 2023, A.M.N. was treated to competence, and the circuit court found him competent, a finding with which A.M.N. agreed. A.M.N. went on to accept an agreement to resolve the case.

A.M.N. would gain nothing from a vacatur of the circuit's court's findings. It would do nothing to the ultimate resolution of the issues in this case. Even if the circuit court's findings are vacated, A.M.N. was later found competent. A.M.N. did not challenge this finding, nor is A.M.N. disputing any aspect of the agreement he ultimately reached with the State. (A.M.N. Br. 10-16). A.M.N. is requesting the Court to "vacate the findings and commitment order and remand to readdress competency." (A.M.N. Br. 16). This request is nebulous and serves no purpose. Does A.M.N. want another competency hearing based on the report of Dr. Reintjes, (who found him not competent but likely to regain within the statutory period), but where A.M.N. is physically present in court? This would result in a finding of incompetence again. Since A.M.N. was subsequently found competent, this would make absolutely no sense.

Also, a request for this Court to merely vacate the circuit court's finding of incompetence from the December 19, 2023, hearing, would have no effect on the outcome of the case. A.M.N. is not asking this Court to vacate the subsequent Order finding A.M.N. competent. If this Court did vacate the December 19, 2023, Order, this would not affect the subsequent finding of Competence, with which A.M.N. agreed. So, vacating the Order would be a purely academic exercise that accomplishes nothing, which renders this issue moot. *See State ex rel. Olson v. Litscher*, 2000 WI App 61, ¶ 3. Further, A.M.N. has not argued for any of the compelling reasons stated in *Olson*, above, that would cause this Court to review a moot issue. Therefore, this Court should deny A.M.N.'s request to vacate the circuit court's findings and to remand for further proceedings regarding competency because the issue is moot.

CONCLUSION

For all the foregoing reasons, this Court should affirm the circuit court's findings and commitment order.

Dated this 20th day of June, 2024.

Respectfully submitted,

Electronically signed by:

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CERTIFICATION AS TO FORM AND LENGTH

I hereby certify that this brief conforms to the rules contained in s. 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 2,240 words.

CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Appellate Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

CERTIFICATE AS TO SUPPLEMENTAL APPENDIX

I hereby certify that filed with this brief is an appendix that complies with s. 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23(3)(a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I hereby certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names

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Dated this 20th day of June, 2024.

Signed:

Electronically signed by:

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