

FILED
12-02-2024
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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Appeal No. 2024AP001877 - CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

L. J. T., JR.,

Defendant-Appellant.

PLAINTIFF-RESPONDENT'S BRIEF

ON APPEAL FROM THE CIRCUIT COURT OF DANE COUNTY,
BRANCH 5, THE HONORABLE NICHOLAS MCNAMARA, PRESIDING

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STATEMENT ON PUBLICATION AND ORAL ARGUMENT

Respondent agrees that oral argument or publication is not needed in this case.

Statement of the Issues

Respondent concurs with the Statement of the Issues set forth by Appellant.

Summary of Argument

Respondent concedes that Appellant should have been represented by counsel at the 7/18/24 competency hearing. The Circuit Court made an appropriate practical choice to protect Attorney Packnett's physical safety. But, legally, Appellant is entitled to a new competency hearing.

Respondent rejects the alternative - proposed by Appellant - to dismiss the case. Involuntary medication is at best alluded to in the competency report. It was never argued by any party or decided on by the Circuit Court. Therefore, the issue of involuntary medication is not ripe.

ARGUMENT

LJT did have a colloquy with the Circuit Court as to representing himself at the 7/18/24 competency hearing. However, his responses did not indicate that LJT fully understood the proceedings, or what rights he was giving up. [R:26-3].

Therefore, the State cannot affirmatively show a knowing, intelligent and voluntary waiver of counsel. *State v. Klessig*, 211 Wis. 2d 194, 204, 564 N.W.2d 716, 720-721, 1997 Wisc. LEXIS 80, *11.

However, it was not clear error to find that LJT could be restored within the statutory period. The competency report noted that LJT may be restored to competency through inpatient treatment. [R:13]. Medication is mentioned in the report, but there is no analysis under § 971.14(3)(dm), Stats. Further, involuntary medication was not addressed by the Circuit Court on 7/18/24. Therefore, the issue of involuntary medication of LJT is not ripe at this time.

CONCLUSION

Respondent concedes that LJT should have had an attorney for the 7/18/24 competency hearing. The remedy for that is a new competency hearing. Involuntary medication has not been litigated, and should not guide the next steps in this case.

A competency report is due on LJT's circuit court case on 12/20/24. Respondent asks the court of appeals to remand this matter to the circuit court, with instructions to conduct a new competency hearing as soon as practicable after the receipt of that report.

Dated this 2nd day of December, 2024.

Electronically signed by Kyle Olsen
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CERTIFICATION

I certify that this brief conforms to the rules contained in sec. 809.19(8)(b) and (c) for a brief. The length of this brief is 3 pages.

Dated: December 2, 2024.

Signed,

Electronically signed by Kyle Olsen

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