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July 8, 2022

Sheila T. Reiff, Clerk
Wisconsin Supreme Court
110 E. Main Street, Ste. 215
P.O. Box 1688
Madison, WI 53701-1688

FILED

JUL 14 2022

RE: **Jackson County v. C.A.D.**
Appeal No.: 2020AP000069
Jackson County Case No.: 18ME21

**CLERK OF SUPREME COURT
OF WISCONSIN**

Dear Ms. Reiff:

This correspondence is in response to the Court's June 23, 2022 order that the parties file letters/briefs discussing the impact of Sauk County v. S.A.M. on the issues raised in the petition for review of the above-referenced case.

Sauk County established two collateral consequences which may render an appeal of a mental commitment not moot, despite the expiration of the original commitment term: (1) the restriction of one's constitutional right to bear arms; and (2) the liability for the cost of one's care. Sauk County v. S.A.M., 2022 WI 46, ¶ 3.

This correspondence addresses three main issues: (I) mootness, (II) the evidentiary standard/burden, and (III) procedural due process. This correspondence is intended to be a supplement to (and does not repeat) the arguments made in Jackson County's Response to Petition for Review.

I. Whether C.A.D.'s appeal of his recommitment was moot because the commitment expired before C.A.D. filed his notice of appeal.

A. Constitutional Right to Bear Arms

The Court found that the appeal of S.A.M.'s recommitment was ~~not moot~~ because of the practical effects a recommitment may have on a court's review of a petition to cancel a firearms ban. Id. at ¶ 23. Based upon this new line of reasoning and under ordinary circumstances, the present case would be rendered not moot, but there have been additional developments with C.A.D. Unfortunately, C.A.D. passed away in Fall of 2021 and his body was found on Fort McCoy on

November 6, 2021. We request that the Court take judicial notice of this fact due to its verifiable certainty. See Wis. Stat. § 902.01(2)(b).¹

Given C.A.D. is now deceased, the issue of a firearm restriction continues to be moot. Sauk County does not impact the mootness analysis with respect to the right to possess and purchase a firearm under the unique circumstances of this case.

B. Cost of Care Liability

In Sauk County, the Court found that a person's mandatory liability for cost of care is a consequence that renders recommitment appeals not moot. The Court also cited State v. McDonald, 144 Wis. 2d 531, 537, 424 N.W.2d 411 (1988), which held that a deceased defendant's appeal was not moot because the conviction could lead to potential collateral consequences for his estate.

C.A.D. does in fact have an actual balance owed of \$1,456.00 for placement during two months of his recommitment period. As such, based upon the reasoning in Sauk County with respect to the liability for cost of care, this case is not moot. See Sauk County, 2022 WI 46, ¶ 24.

II. Whether the County met its burden to prove by clear and convincing evidence that C.A.D. was dangerous.

Sauk County confirmed the understanding that in a recommitment proceeding the evidence may take the form of either: (1) recent acts, omissions, or behaviors exhibiting dangerousness; or (2) evidence that if treatment were withdrawn the person would be substantially likely to engage in the type of dangerous acts, omissions, or behaviors that meet one of the five dangerousness standards. Id. at ¶ 30; see also Wis. Stat. § 51.20(1)(a)(2); Wis. Stat. § 51.20(1)(am).

Without repeating what is already in the Response to Petition for Review, the evidence in the present case, including the testimony of Dr. Dal Cerro, shows a substantial likelihood, based upon C.A.D.'s treatment history, that if treatment were withdrawn C.A.D. would be a danger to himself and others and therefore a proper subject for treatment. Resp. to Pet. For Review, 9; see also Sauk County, 2022 WI 46, ¶ 32.

The Court's reiteration of the principle in Sauk County, that dangerousness may be found via the recommitment alternative, demonstrates the County met its burden to establish dangerousness in accordance with Wis. Stat. § 51.20(1)(am) and Wis. Stat. § 51.20(1)(a)2.a. and b.

III. Whether C.A.D. was denied procedural due process because he did not receive particularized notice of the basis for his recommitment, including which of the standards of dangerousness was being alleged.

¹ Jackson County has a copy of C.A.D.'s death certificate, but for privacy concerns and pursuant to Wis. Stat. § 69.24, does not want to reproduce that document in this correspondence.

C.A.D. contends that he was denied procedural due process because he did not receive particularized notice of the basis for his recommitment. Similarly, in Sauk County, S.A.M. contended the County's imprecise pretrial filings violated his due process right to adequate notice. C.A.D.'s primary basis for this argument stems from Langlade Cty v. D.J.W., 2020 WI 41, 391 W 2d 231 and Portage County v. J.W.K., 2019 WI 54, 386 Wis. 2d 672, 927 N.W.2d 509.

However, Sauk County clarifies that "D.J.W. addressed a circuit court's legal responsibility to facilitate meaningful appellate review, not a county's pretrial notice responsibilities." Sauk County 2022 WI 46, ¶ 29. Given this, there was no procedural due process violation with respect to notice given. The trial court also ensured that the record was adequate to facilitate meaningful appellate review.

The Court also reiterated that the D.J.W. decision was prospective, meaning the ruling would not reach back to prior decisions. Sauk County, 2022 WI 46 ¶ 29. C.A.D.'s recommitment trial was held February 1, 2019 and D.J.W. was not decided until April 24, 2020, meaning the requirements imposed by D.J.W. to facilitate appellate review do not apply in the present case.

IV. Conclusion

While Sauk County may have rendered the present case not moot, the Court's analysis of the merits in Sauk County bolsters the argument made in Jackson County's response brief, that Jackson County met its burden of proof and C.A.D.'s procedural due process rights were not violated.

Sincerely,

WELD RILEY, S.C.

A handwritten signature in black ink, appearing to read 'S. Bach-Hanson', with a stylized flourish at the end.

Samuel Bach-Hanson

Jackson County Corporation Counsel