2017 IL App (1st) 163287-U

No. 1-16-3287

Order filed September 6, 2017

Third Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 11925
	)	
MARLON THOMAS,	)	Honorable
	)	Earl B. Hoffenberg,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Cobbs and Justice Fitzgerald Smith concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly calculated a not-guilty-by-reason-of-insanity defendant's maximum involuntary commitment period when that defendant, due to his criminal background, would have been subject to a Class X sentence if he had been found guilty of robbery after a trial.

¶ 2 Following a 2012 bench trial, defendant Marlon Thomas was found not guilty of robbery by reason of insanity and committed to the Elgin Mental Health Center with a calculated

maximum period of commitment ending June 18, 2025. Defendant now appeals *pro se* contending that his "sentence" is excessive in light of certain mitigating evidence. We affirm.

¶ 3 Defendant's arrest and prosecution arose out of a June 18, 2010 incident during which a cellular phone was taken from the hand of the victim, Sheila Thomas. Following a bench trial, defendant was found not guilty of robbery by reason of insanity. Based upon defendant's criminal background, which included prior convictions for burglary, murder, and attempted murder, defendant would have been sentenced as a Class X offender if he had been found guilty of robbery. Therefore, defendant was committed to the Elgin Mental Health Center with a *Thiem* date of June 18, 2025. See *Williams v. Staples*, 208 Ill. 2d 480, 483-84 (2004) (the maximum involuntary commitment period is known as the *Thiem* date, in reference to *People v. Thiem*, 82 Ill. App. 3d 956 (1980)).

¶ 4 In 2014, defendant filed an unsuccessful *pro se* petition for discharge. See *People v. Thomas*, 2015 IL App (1st) 143244-U. In March 2016, defendant filed another *pro se* petition for discharge. The circuit court appointed an assistant Public Defender to represent defendant. At a May 2016 court date, defendant withdrew the petition upon the advice of counsel.

¶ 5 In September 2016, defendant filed the instant *pro se* petition for discharge, seeking treatment in a non-secure setting and alleging that he could function "out in society" while "taking medication." Defendant further argued that he was improperly sentenced as a "3-time offender." The court again appointed an assistant Public Defender to represent defendant.

¶ 6 At a September 2016 court date, defendant told the court he was "trying to dispose of what's been contradicted," and asked the court to resentence him. The court responded that defendant was "never sentenced," and was "not doing time," rather, defendant was committed

for treatment. The court then explained that the 2025 date was important because "that's the date they'd have to let you out, that's the maximum amount of time that if you were found guilty that you could have been sentenced." After defendant argued that he received a harsher sentence because he was mentally ill, the court stated that it would look into the *Thiem* date to verify that it was proper. Defendant's counsel told the court that she had "ongoing discussions" with defendant in which she explained why defendant was subject to a Class X *Thiem* date. Counsel had reviewed defendant's criminal history with him. The State responded that defendant's criminal background included convictions for burglary, attempted murder and murder, that is, he would have been sentenced as a Class X offender if he had been found guilty of robbery.

¶ 7 At the next court date, defendant's counsel told the court that defendant sought discharge, or, in the alternative, conditional release. The State then reiterated that in the instant case, defendant was found not guilty by reason of insanity of the Class 2 felony of robbery and was eligible, due to his criminal background, for a Class X sentence. The State concluded that the *Thiem* date of June 18, 2025 was correct because defendant, based upon his criminal background, would have been subject to a Class X sentence of between 6 and 30 years in prison if he had been found guilty. The trial court again explained to defendant why defendant was subject to a Class X *Thiem* date. Ultimately, the court denied defendant's petition after a hearing. Defendant now appeals *pro se.*

¶ 8 Our review of defendant's appeal, however, is hindered by his failure to comply with our supreme court's rules governing appellate court briefs in numerous respects. The brief does not contain a proper summary statement, introductory paragraph, or statement of the issues presented for review as required by Supreme Court Rule 341(h) (eff. Jan. 1, 2016). Defendant's *pro se*

status does not relieve him of the burden of complying with our supreme court's rules mandating the format for appeals to this court, and this court is not required to search the record to determine what legal issues are involved in an appeal. *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001).

¶ 9 Although this court is not bound to enforce strict compliance with supreme court rules in those cases where even though a brief is inadequate the basis for the appeal is clear, when an appellant's brief fails to comply with supreme court rules, this court has the inherent authority to dismiss the appeal. *Epstein v. Galuska*, 362 Ill. App. 3d 36, 42 (2005). Considering the form and content of defendant's brief, it would be well within our discretion to dismiss the instant appeal. However, because the issue is simple and we have the benefit of a cogent appellee's brief (see *Twardowski*, 321 Ill. App. 3d at 511), we choose to entertain the appeal (see *Harvey v. Carponelli*, 117 Ill. App. 3d 448, 451 (1983)).

¶ 10 Initially, we note that defendant does not challenge the denial of the petition for discharge on the merits, and has therefore forfeited this claim on appeal. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (points not argued are waived).

¶ 11 Although defendant's brief is largely indecipherable, we are able to glean from the brief that defendant challenges the "sentence" he received in the instant case as excessive considering certain mitigating evidence, including the facts of the underlying case and defendant's age. Defendant's argument on appeal fails for two reasons. First, defendant was not sentenced to prison; rather, he was found not guilty by reason of insanity and committed to the Elgin Mental Health Center. Second, the length of defendant's involuntary commitment was determined by statute not by the trial court.

¶ 12 Simply put, under our system of law, a not guilty by reason of insanity verdict is, in all form and substance, an acquittal. An "acquittal" is defined as the " 'release, absolution or discharge from an obligation, liability, or engagement.' " *People v. Thon*, 319 Ill. App. 3d 855, 863 (2001) (quoting Black's Law Dictionary 25 (6th ed. 1990)). Pursuant to the Code of Criminal Procedure of 1963 when a "defendant is found not guilty by reason of insanity, the court shall enter a judgment of acquittal." 725 ILCS 5/104-25 (c) (West 2010). Consequently, even though a defendant with a not guilty by reason of insanity verdict may be detained for involuntary commitment, he is not serving a "sentence" for a crime and could conceivably spend virtually no time in custody if he is immediately found not to be in need of mental health services. In other words, although a defendant may be detained for an evaluation or even for a stay in a mental health facility, it is just a matter of time before he is released and discharged forever from custody, as any other acquitted defendant would be. See *People v. Shelton*, 281 Ill. App. 3d 1027, 1036 (1996) (an insanity acquittee can be held only as long as he is mentally ill). The confinement that a defendant may experience does not change the fact that he was found "not guilty" and has been acquitted from all liability; any confinement in this regard is not "punishment;" rather, it is treatment and protection. See *Jones v. United States*, 463 U.S. 354, 368-69 (1983) (the "purpose of commitment following an insanity acquittal" is to treat the defendant's mental illness and protect him and society, because "he was not convicted, he may not be punished"); *Shelton*, 281 Ill. App. 3d at 1035-36 ("[b]ecause [insanity acquittees] have not been convicted of a crime, they may not be punished").

¶ 13 To the extent that defendant appears to challenge the length of his "sentence," *i.e.*, his *Thiem* date, on the basis of certain mitigation evidence, that argument must also fail.

¶ 14 When a defendant has been acquitted of a crime by reason of insanity, his subsequent treatment is governed by section 5-2-4 of the Unified Code of Corrections (the Code) (730 ILCS 5/5-2-4 (West 2010)). This statutory provision authorizes the involuntary commitment of the defendant " 'to treat the individual's mental illness, and at the same time protect him and society from his potential dangerousness.' " *People v. Pastewski*, 164 Ill. 2d 189, 197 (1995) (quoting *People v. Williams*, 140 Ill. App. 3d 216, 228 (1986)). Section 5-2-4 of the Code promulgates standards for involuntarily committing insanity acquittees, for computing the length of commitment, and for granting a conditional release or discharge. 730 ILCS 5/5-2-4 (West 2010).

¶ 15 Section 5-2-4(b) states that "[i]f the Court finds the defendant in need of mental health services on an inpatient basis * * * the initial order for admission of a defendant acquitted of a felony by reason of insanity shall be for an indefinite period of time." 730 ILCS 5/5-2-4(b) (West 2010). However, the

> "period of commitment shall not exceed the maximum length of time that the defendant would have been required to serve, less credit for good behavior as provided in Section 5-4-1 of the Unified Code of Corrections, before becoming eligible for release had he been convicted of and received the maximum sentence for the most serious crime for which he has been acquitted by reason of insanity." 730 ILCS 5/5-2-4(b) (West 2010).

¶ 16 In other words, "section 5-2-4(b) requires the trial judge to determine the maximum length of time that the defendant could have been confined upon a criminal conviction, and to use that period as the maximum length of the defendant's commitment." *Pastewski*, 164 Ill. 2d at 202. "This maximum length of time is known as the defendant's *Thiem* date." *Williams*, 208 Ill. 2d at 483-84 (citing *People v. Thiem*, 82 Ill. App. 3d 956 (1980)). Our supreme court has

characterized the calculation of the maximum commitment period under section 5-2-4(b) as "the performance of what is essentially a ministerial task." *Pastewski*, 164 Ill. 2d at 201 (noting that the trial court lacks "discretion to select, as a maximum period of commitment, a time other than the longest span provided by statute").

¶ 17 Thus, the calculation of defendant's *Thiem* date under section 5-2-4(b) of the Code in this case is based upon the maximum length of time that he would have been required to serve had "he been convicted of and received the maximum sentence for the most serious crime for which he has been acquitted by reason of insanity." 730 ILCS 5/5-2-4(b) (West 2010).

¶ 18 Here, defendant was found not guilty of robbery by reason of insanity. Robbery is a Class 2 felony with a sentencing range of between three and seven years in prison. See 720 ILCS 5/18-1(b) (2010); 730 ILCS 5/5-4.5-35 (West 2010). A person convicted of robbery is eligible for day-for-day credit. See 730 ILCS 5/3-6-3(a)(2.1) (West 2010). Defendant, due to his criminal background, was subject to sentencing as a Class X offender. See 730 ILCS 5/5-4.5-95(b) ("When a defendant, over the age of 21 years, is convicted of a Class 1 or Class 2 felony, after having twice been convicted in any state or federal court of an offense *** classified in Illinois as a Class 2 or greater Class felony and those charges are separately brought and tried and arise out of different series of acts, that defendant shall be sentenced as a Class X offender"). A Class X sentence is between 6 and 30 years in prison. 730 ILCS 5/5-4.5-25(a) (West 2010).

¶ 19 In the case at bar, the maximum sentence to which defendant could have been sentenced upon a finding of guilty of robbery was a Class X sentence of 30 years in prison. The trial court properly calculated defendant's *Thiem* date of June 18, 2025 by determining that the maximum sentence to which defendant would have been sentenced upon a finding of guilty was 30 years

and subtracting 15 years of day-for-day credit along with 695 days of presentence custody credit. See 730 ILCS 5/5-2-4(b) (West 2010).

¶ 20 Contrary to defendant's argument on appeal, the facts of the underlying case and his age have no effect upon the *Thiem* date in this case; rather, the calculation "is essentially a ministerial task." *Pastewski*, 164 Ill. 2d at 201 (noting that the trial court lacks "discretion to select, as a maximum period of commitment, a time other than the longest span provided by statute"). Thus, his argument must fail.

¶ 21 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 22 Affirmed.