

NOTICE
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2019 IL App (5th) 160535-U

NO. 5-16-0535

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Madison County.
)	
v.)	No. 09-CF-2754
)	
DARRON STAFFORD,)	Honorable
)	Richard L. Tognarelli,
Defendant-Appellant.)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Chapman and Cates concurred in the judgment.

ORDER

¶ 1 *Held:* The defendant's appeal challenging the trial court's denial of his petition for conditional release or discharge pursuant to section 5-2-4(e) of the Unified Code of Corrections (730 ILCS 5/5-2-4(e) (West 2014)) is dismissed as moot as the defendant is no longer subject to involuntary commitment because his May 18, 2017, release date has passed.

¶ 2 The defendant, Darron Stafford, appeals from the order of the circuit court of Madison County denying his petition for conditional release or discharge filed pursuant to section 5-2-4(e) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-2-4(e) (West 2014)) after he was found not guilty by reason of insanity of residential burglary and unlawful possession of a weapon by a felon and remanded to the Illinois

Department of Human Services (Department) for treatment of his mental illness. The defendant argues that the circuit court failed to meet certain statutory requirements under section 5-2-4 of the Unified Code before denying his petition. Thus, he requests that this court reverse the circuit court's denial of his petition and remand with directions to hold a hearing that complies with section 5-2-4 of the Unified Code. However, because the defendant is no longer subject to involuntary commitment pursuant to the court's finding that he was not guilty by reason of insanity and the court's order that he was in need of mental health services on an inpatient basis, we find that this case is now moot. Therefore, we dismiss the defendant's appeal.

¶ 3 On November 18, 2009, the defendant was charged with residential burglary, a Class 1 felony, and unlawful possession of a weapon by a felon, a Class 2 felony. On December 16, 2009, the defendant was found unfit to stand trial and was remanded to the Department's custody. Subsequent efforts to restore the defendant to fitness were unsuccessful.

¶ 4 On August 6, 2013, the circuit court, after concluding that the defendant remained unfit to stand trial, found that there was sufficient proof to find him guilty beyond a reasonable doubt but that, at the time of the commission of the offense, he did not appreciate the criminality of the offense due to his mental illness. Thus, the court found him not guilty by reason of insanity, and he was again remanded to the Department. His release date was set for May 18, 2017.

¶ 5 On October 9, 2013, the circuit court found that the defendant remained in need of inpatient treatment and remanded him back to the custody of the Department for

treatment. On March 24, 2014, the court denied the defendant's petition for transfer, finding that he remained in need of continued inpatient psychiatric treatment. On February 17, 2015, the defendant filed a petition for conditional release or discharge pursuant to section 5-2-4(e) of the Unified Code (730 ILCS 5/5-2-4(e) (West 2014)), arguing that he was no longer in need of mental health services on an inpatient basis. On March 30, 2015, the circuit court denied his petition for conditional release or discharge, finding that, based on the Department's treatment plan report, he was still in need of inpatient treatment in a secure facility.

¶ 6 On January 4, 2016, the defendant filed a second petition for conditional release or discharge pursuant to section 5-2-4(e) of the Unified Code (*id.*), again arguing that he was no longer in need of mental health services on an inpatient basis. The defendant requested (1) an impartial examination of his mental health by a psychiatrist or other expert not employed by the Department pursuant to section 5-2-4(f) of the Unified Code (*id.* § 5-2-4(f)); (2) the appointment of counsel to represent him as required by section 5-2-4(c) of the Unified Code (*id.* § 5-2-4(c)); (3) a hearing within 120 days as required by section 5-2-4(e) of the Unified Code (*id.* § 5-2-4(e)); and (4) that at the hearing, he be provided with the rights set forth in the Mental Health and Developmental Disabilities Code (Mental Health Code) (405 ILCS 5/3-800 *et seq.* (West 2014)), which included a defendant's right to be present at the hearing as provided by section 3-806(a) of the Mental Health Code (405 ILCS 5/3-806(a) (West 2014)).

¶ 7 While the defendant's second petition for conditional release or discharge was pending, the Department filed updates to his treatment plan report. On February 9, 2016,

the Department filed an updated treatment plan report, which indicated that the defendant was transferred to Chester Mental Health Center (a maximum security facility) on April 11, 2014, after presenting as an "elopement risk" and making threats to the staff at the Alton Mental Health Center. Specifically, the report indicated that the defendant had contraband, such as a cell phone, information storage devices, and a bag of tools, in his possession. There was also evidence that he had attempted to dismantle his window and had hidden screws behind the tapered window shield. After the contraband was discovered, he threatened that he would no longer "be a burglar, but a murderer." He remained at Chester Mental Health Center until June 11, 2015, when he was transferred to McFarland Mental Health Center. He then requested to be transferred to Chicago Read Mental Health Center.

¶ 8 The report also noted that the defendant struggled interpersonally upon his admission to Chicago Read Mental Health Center; that he had presented as "intermittently irritable and verbally abusive," that he struggled with female authority; and that he threw a garbage can on one occasion. However, the report indicated that, since the end of December 2015, he had presented as "calm, pleasant and collaborative"; that he was getting along better with staff and his peers; that he had good self-care skills; and that he had been attending all assigned groups and individual sessions. However, the report opined that the defendant was in need of mental health services on an inpatient basis because he had a longstanding trauma history of sexual, physical, and emotional abuse; he had a history of serious mental illness, including the attempted poisoning of his

father at the age of 12; and he had a history of substance abuse and dependence that led to problems with the legal system.

¶ 9 On March 30, 2016, the Department filed another update to the defendant's treatment plan report, which indicated that on February 29, 2016, the defendant was found unresponsive in his room and later admitted that his condition was the result of a suicide attempt. The Department's updated treatment plan report filed June 8, 2016, indicated that on April 11, 2016, the defendant was placed on full Velcro restraints after physically threatening staff and throwing food at other people during mealtime. The report noted that he had some interpersonal conflicts with peers but had no major episodes since his April restraint. The Department's updated treatment plan report filed August 1, 2016, noted that the defendant punched a peer in the mouth in May 2016, had a verbal altercation with a peer in June 2016 after the peer threatened him and challenged him to a fight, had an interpersonal conflict with another peer who was talking negatively about him to others, and had sent inappropriate notes to a female peer, which made her uncomfortable.

¶ 10 The Department's treatment plan report filed October 4, 2016, noted that the defendant had a conflict with a peer in August 2016 and threw his medications at the peer; that on September 3, 2016, he experienced an "extended outburst in response to a peer's loud vocalizations" in that he mocked the peer by swearing and screaming at the top of his lungs; that he verbalized his anger at two peers during a Bingo game; and that on September 11, 2016, he became agitated after a peer accused him of being disrespectful and confronted the person by pushing him on the chest and verbally

threatening to hurt him. The Department submitted another treatment plan report dated October 6, 2016, which indicated that the defendant was transferred from Chicago Read Mental Health Center to Chester Mental Health Center as an emergency admission on September 30, 2016, because of his previous suicide attempt, that he had directed inappropriate sexual behavior toward vulnerable patients, he directed aggressive behavior towards female staff, and he exhibited aggressive behavior toward his peers (especially vulnerable patients). The report opined that the defendant was in need of inpatient treatment to protect himself and others from harm in that he suffered from a mental illness that impacted his ability to care for himself and had caused him to act out aggressively against others, that he lacked insight into his illness, and that he had been noncompliant with treatment.

¶ 11 On November 10, 2016, the circuit court entered an order, denying the defendant's petition for conditional release or discharge. The order stated as follows:

"Case called for hearing and review. The Court has before it the Petition for Conditional Release or Discharge filed by the Defendant. Parties present at this time are the Defendant in person and represented by APD Neil Hawkins. The State is present by ASA James Buckley.

The Court also has before it the reports of the [Department] of Human Services. The parties stipulate to the reports.

The Court finds at this time the Defendant is still in need of inpatient treatment in a secure setting. So the Petition for Release is denied."

There is no transcript of this hearing in the record on appeal. The defendant appeals the denial of his petition.

¶ 12 Initially, we have ordered taken with the case the State's motion to strike and disregard material outside of the record on appeal. The State asserts that on February 27, 2017, the defendant sought this court's leave to supplement the record with two documents, *i.e.*, a December 28, 2016, email to the defendant's trial counsel from the Madison County court reporting supervisor and a January 30, 2017, affidavit from the defendant, that were not part of the record on appeal. On March 3, 2017, this court denied the motion to supplement. However, even though the motion was denied, the defendant still attached the documents to his opening brief. Thus, the State requests that we strike and disregard the two documents and any mention of the documents in the defendant's opening brief.

¶ 13 In response, the defendant argues that the documents evidence the fact that his petition for conditional discharge or release was denied without him being present in court, without the presentation of any witnesses, and without the presence of a court reporter, which are protections provided to an insanity acquittee under section 5-2-4(g) of the Unified Code (730 ILCS 5/5-2-4(g) (West 2014)) and sections 3-806 and 3-817 of the Mental Health Code (405 ILCS 5/3-806, 3-817 (West 2014)). He asserts that he made a good faith effort to obtain an agreed statement of facts regarding these issues, but the State refused to assist in his endeavor. Thus, the defendant argues that the State has refused to provide this court with an accurate record of what occurred in the trial court, which is effectively denying him any review of the trial court's decision. As this issue has already been resolved by this court's March 2017 order, we grant the State's motion to strike and disregard the Madison County court reporting supervisor letter and the

defendant's affidavit, which were attached to his opening brief's appendix, and any mention thereof in his briefs.

¶ 14 We now turn to the arguments raised in the defendant's appeal. The defendant argues that the circuit court was required to satisfy certain statutory requirements under section 5-2-4 of the Unified Code before ruling on his petition for conditional release or discharge. Because the court did not satisfy these requirements, he requests that this court reverse the circuit court's denial of his petition and remand for a second hearing in compliance with section 5-2-4 of the Unified Code. In response, the State argues that this court should dismiss the case as moot because the defendant is no longer subject to involuntary commitment pursuant to the circuit court's finding that he was not guilty by reason of insanity. The State asserts that any decision we could reach will not provide the defendant any relief as he has already obtained the relief sought in this appeal, *i.e.*, release.

¶ 15 Section 5-2-4(b) of the Unified Code states that:

"[i]f the Court finds the defendant in need of mental health services on an inpatient basis, the admission, detention, care, treatment or habilitation, treatment plans, review proceedings, including review of treatment and treatment plans, and discharge of the defendant after such order shall be under the Mental Health and Developmental Disabilities Code, except that 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 2014).

However, section 5-2-4(b) sets the following outer limit on the period of commitment:

"Such 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." *Id.*

¶ 16 Thus, "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." *People v. Pastewski*, 164 Ill. 2d 189, 202 (1995). This maximum length of time is known as the defendant's *Thiem* date. See *People v. Thiem*, 82 Ill. App. 3d 956 (1980). In this case, the defendant was found not guilty by reason of insanity on charges of residential burglary and unlawful possession of a weapon by a felon on August 6, 2013. His *Thiem* date was set at May 18, 2017.

¶ 17 A defendant who is involuntarily committed after a not guilty by reason of insanity finding can be released before the *Thiem* date in one of two ways. *People v. Johnson*, 2012 IL App (5th) 070573, ¶ 9. In the first way, the director of the inpatient facility can notify the court that the director has determined that the defendant no longer needs to be treated in an inpatient setting. *Id.*; 730 ILCS 5/5-2-4(d) (West 2014). In the second way, the defendant can file his own petition to be discharged or moved to a less secure facility. *Johnson*, 2012 IL App (5th) 070573, ¶ 9; 730 ILCS 5/5-2-4(e) (West 2014). This case involves the defendant's attempt to be released from the Department's custody prior to his *Thiem* date using the second method, *i.e.*, the filing of a petition for conditional release or discharge.

¶ 18 More than 17 months before his *Thiem* date, the defendant filed his second petition for conditional release or discharge. Had his petition been successful, he would have

been conditionally released or discharged prior to his May 18, 2017, *Thiem* date. However, his petition was not successful, and he sought leave to appeal that decision to this court. His appellant brief was filed March 15, 2017, and the case was placed on the oral argument calendar for September 25, 2018. Thus, at this time, the defendant's *Thiem* date has passed. Once the defendant's *Thiem* date expired, he was no longer subject to involuntary commitment pursuant to the trial court's 2013 findings that he was not guilty by reason of insanity of residential burglary and unlawful possession of a weapon by a felon and in need of mental health treatment on an inpatient basis. See 730 ILCS 5/5-2-4(b) (West 2014). Therefore, his appeal of the denial of his petition for conditional release or discharge is now moot.

¶ 19 In general, appellate courts do not decide moot questions, render advisory opinions, or consider issues that stay unaffected no matter how decided. *People v. Halasz*, 244 Ill. App. 3d 284, 285-86 (1993); *In re Alfred H.H.*, 233 Ill. 2d 345, 351 (2009). However, there are three exceptions to the mootness doctrine: the public-interest exception, the capable of repetition yet avoiding review exception, and the collateral consequences exception. *In re Rita P.*, 2014 IL 115798, ¶ 24. The defendant in the present case argues that the public-interest exception applies to his case.

¶ 20 The public-interest exception allows a court to consider an otherwise moot case when (1) the question presented is of a public nature, (2) there is a need for an authoritative determination for the future guidance of public officers, and (3) there is a likelihood of future recurrence of the question. *Radzewski v. Cawley*, 159 Ill. 2d 372, 376 (1994).

¶ 21 The defendant argues that the public-interest exception applies here because the liberty interest of insanity acquittees in seeking a prompt and procedurally adequate hearing is clearly of public concern; that circuit judges are not uniform in their administration of the statutory protections required for hearings provided to insanity acquittees and would benefit from authoritative guidance to administer just proceedings in such hearings; and that the issue is likely to recur because section 5-2-4(e) of the Unified Code allows insanity acquittees to file a new release petition periodically.

¶ 22 In support, the defendant cites *Radzewski*, 159 Ill. 2d 372, a supreme court case. There, the three petitioners, who were insanity acquittees confined to mental health care facilities, filed a consolidated *mandamus* action after they did not receive requested hearings within 30 days of filing their petitions for conditional release as required by section 5-2-4(e) of the Unified Code (730 ILCS 5/5-2-4(e) (West 1992)). *Radzewski*, 159 Ill. 2d at 375. After filing the *mandamus* action, the petitioners either received the requested hearings or the requested hearings were scheduled and, thus, they had all received the relief requested in their consolidated *mandamus* action. *Id.* at 375-76. Although the supreme court determined that the *mandamus* action was moot, it found that the action fell within the public-interest exception to the mootness doctrine. *Id.* at 376. In applying the requirements of the public-interest exception, the court concluded that the liberty interest of insanity acquittees in seeking a prompt hearing is clearly of public concern, that circuit judges were not uniform in their approach to scheduling release hearings and needed guidance, and that the issue was likely to recur because the statute allows insanity acquittees to file new release petitions periodically. *Id.* at 376-77.

¶ 23 Here, the defendant raises the following procedural errors at the hearing on his petition for conditional release or discharge: (1) that there was no verbatim transcript of the hearing; (2) that no psychiatrist, clinical social worker, clinical psychologist, or qualified examiner who was appointed to examine his mental health testified at the hearing; (3) that he was not present at the hearing on his petition; (4) that the court failed to notify him of his right to a free transcript and counsel on appeal; (5) that there was no indication that any evidence relevant to his petition was presented in open court; and (6) that there was no indication that the circuit court based its findings on clear and convincing evidence. Although we recognize that the cases involving insanity acquittees do have the potential to deprive defendants of significant liberties, the issues raised in this particular case involve specific inquiries that are dependent on the facts and circumstances of the defendant's case, which are not matters of public concern. See *Alfred H.H.*, 233 Ill. 2d at 356 (sufficiency of the evidence claims are inherently case-specific reviews that do not present broad public interest issues).

¶ 24 In addition, the defendant has failed to demonstrate that the law regarding the conditional release or discharge review proceedings following the filing of a petition for conditional discharge or release is in disarray or is guided by conflicting precedent. See *Id.* at 358 (the public-interest exception envisions a situation in which the law is in disarray or where there is conflicting precedent). Unlike *Radzewski*, this is not a situation where we have a statutory requirement for a hearing within a certain number of days that was disregarded by different circuit judges in different cases. Thus, because the issues presented in the defendant's case are not of a public nature, and the defendant has

failed to demonstrate that there is a need for an authoritative determination regarding these issues, the public-interest exception does not apply. Accordingly, we dismiss this appeal as moot.

¶ 25 Appeal dismissed.