NOTICE
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2015 IL App (4th) 130463-U

NO. 4-13-0463

FILED
September 8, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Livingston County
HENRY MALLORY,	)	No. 08CF155
Defendant-Appellant.	)	
	)	Honorable
	)	Jennifer H. Bauknecht,
	)	Judge Presiding.

PRESIDING JUSTICE POPE delivered the judgment of the court
Justices Steigmann and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's alleged failure to comply with section 3-816(a) of the Mental Health and Developmental Disabilities Code does not require reversal of the commitment where compliance with that section is not mandatory.

¶ 2 In July 2010, the trial court found defendant, Henry Mallory, not guilty by reason of insanity (NGRI) of aggravated battery (720 ILCS 5/12-4(b)(18) (West 2006)) and unlawful possession of a weapon by a person in the custody of the Department of Corrections (DOC).

¶ 3 Defendant appeals, arguing the commitment order should be reversed where the April 29, 2013, docket entry reflecting the trial court's oral commitment finding failed to comply with section 3-816(a) of the Mental Health and Developmental Disabilities Code (Mental Health Code) (405 ILCS 5/3-816(a) (West 2012)) because it did not contain a statement of the court's

findings of fact and conclusions of law, nor did it comply with the requirement the order be in writing. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In April 2008, the State charged defendant with aggravated battery in case No. 08-CF-64, alleging defendant threw a liquid substance (urine) on a correctional officer on January 23, 2008. In July 2008, the State charged defendant with unlawful possession of a weapon by a person in the custody of DOC (720 ILCS 5/24-1.1(b) (West 2006)) in case No. 08-CF-155, alleging defendant possessed a dagger-like weapon on or about May 3, 2008, while confined in the Pontiac Correctional Center.

¶ 6 Following a consolidated bench trial, the trial court found defendant NGRI. Defendant appealed the subsequent commitment order. On appeal, this court reversed and remanded the cause back to the trial court with directions to hold a hearing to determine by clear and convincing evidence whether defendant was in need of inpatient mental health services and, if so, to determine the appropriate period of time and whether it should be served consecutively or concurrently with defendant's other periods of confinement. *People v. Mallory*, 2012 IL App (4th) 110294-U (unpublished order under Supreme Court Rule 23).

¶ 7 On April 29, 2013, the trial court held the evidentiary hearing regarding defendant's need for treatment. The parties stipulated to three Department of Health and Human Services (DHS) treatment plan reports, which were admitted into evidence without objection. The reports were dated November 12, 2012, January 10, 2013, and March 7, 2013, respectively. The reports were accompanied by letters stating defendant remained in need of mental health

services on an inpatient basis. At the conclusion of the hearing, with defendant present, the court found the following:

> "Based on the evidence presented, I do find by clear and convincing evidence that the Defendant is currently in need of medical treatment for his mental health needs. *** Based upon the information not only in these reports but also as the State indicated the facts and circumstances underlying in both of these cases that the Court is familiar with as well as the Defendant's history, I do find that he is in need of inpatient treatment and that he would benefit from that."

¶ 8 The trial court's docket entry for April 29, 2013, states the following:

> "[Defendant] appears in custody of [DHS]. Cause comes on for evidentiary hearing on need for treatment. State offers [exhibits] #1, #2, & #3. Admitted without objection. Ct. Rules [defendant] is in need of in patient [*sic*] medical treatment for Mental Health needs. Sentences to run concurrently. *Thiem* date set to March 22nd, 2025. [(This date was later corrected in the court's written order to September 18, 2022.)] Order to be entered from State. Court enters Order to Notify Illinois State Police the [defendant is] not guilty in a criminal case by reason of insanity, mental disease or defect. See order."

¶ 9 On May 28, 2013, the trial court entered a written order. The order addressed only the maximum length of defendant's inpatient commitment, *i.e.*, the *Thiem* order. See *People v. Thiem*, 82 Ill. App. 3d 956, 403 N.E.2d 647 (1980). The *Thiem* order was not an order of commitment, although it certainly presupposes defendant's commitment.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 A. Jurisdiction

¶ 13 Our supreme court has held an NGRI finding is equivalent to an acquittal. *People v. Harrison*, 226 Ill. 2d 427, 439, 877 N.E.2d 432, 438 (2007). As such, it is not subject to appellate review. *Harrison*, 226 Ill. 2d at 441, 877 N.E.2d at 440. However, a defendant found NGRI may still challenge the trial court's finding he is in need of inpatient mental health services. *Harrison*, 226 Ill. 2d at 439, 877 N.E.2d at 438. Here, defendant is not appealing the NGRI finding. Instead, he is challenging the statutory sufficiency of his commitment. Thus, as the State concedes, we have jurisdiction to hear the instant appeal. Having found jurisdiction exists, we turn to the merits of the appeal.

¶ 14 B. Section 3-816(a) Compliance

¶ 15 On appeal, defendant argues his commitment should be reversed where the April 29, 2013, docket entry reflecting the trial court's oral finding was insufficient to comply with section 3-816(a) of the Mental Health Code (405 ILCS 5/3-816(a) (West 2012)) because it did not contain a statement of the court's findings of fact and conclusions of law, nor did it constitute a written order.

¶ 16 Section 3-816(a) of the Mental Health Code provides the following:

> "Every final order entered by the court under this Act shall be in writing and shall be accompanied by a statement on the record of the court's findings of fact and conclusions of law. A copy of such order shall be promptly given to the recipient or his or her attorney and to the facility director of the facility or alternative treatment to which the recipient is admitted or to the person in whose care and custody the recipient is placed." 405 ILCS 5/3-816(a) (West 2012).

¶ 17 Defendant contends the trial court erred in failing to (1) enter a written order and (2) make express findings of fact and conclusions of law as required by section 3-816(a). Defendant's argument relies on a mandatory reading of section 3-816(a) and the idea non-compliance with that section requires outright reversal of the underlying commitment order.

¶ 18 Our supreme court has held section 3-816(a) is directory and, as such, non-compliance is not grounds for reversal. *In re Rita P.*, 2014 IL 115798, ¶ 68, 10 N.E.3d 854. According to the court, section 3-816(a) is not mandatory in the absence of statutorily prescribed consequences for noncompliance or where the rights the statute was designed to protect would not generally be injured by a directory reading. *Rita P.*, 2014 IL 115798, ¶ 44, 10 N.E.3d 854. The court concluded "no reason [exists] to conclude a respondent's appeal rights or liberty interests will generally be injured through a directory reading of section 3-816(a)." *Rita P.*, 2014 IL 115798, ¶ 68, 10 N.E.3d 854. In *Rita P.*, the supreme court was addressing the trial court's failure to include findings of fact and conclusions of law in its written order of commitment.

¶ 19 As part of its decision, the supreme court specifically rejected the very same argument defendant makes in the instant appeal, *i.e.*, he had a right to notice of the trial court's

reasoning underlying the commitment order. *Rita P.*, 2014 IL 115798, ¶ 68, 10 N.E.3d 854. While defendant attempts to distinguish the instant case from *Rita P.*, the supreme court clearly stated "the issue before the appellate court was not case-specific," but "one of general applicability to mental health cases, involving the proper construction of section 3-816(a) as either a mandatory or directory provision." *Rita P.*, 2014 IL 115798, ¶ 36, 10 N.E.3d 854. Because compliance with section 3-816(a) is directory and not mandatory, and a statutorily prescribed consequence for noncompliance is absent here, any noncompliance by the trial court in failing to state findings of fact and conclusions of law does not invalidate defendant's commitment order.

¶ 20 We recognize section 3-816(a) contemplates a written order. 405 ILCS 5/3-816(a) (West 2012) ("Every final order entered by the court under this Act shall be in writing ***."). Here, the April 29, 2013, docket entry reflects the trial court's decision to commit defendant. However, that order was not final, as the court's docket entry reflected the need for a written order. See Ill. S. Ct. R. 272 (eff. Nov. 1, 1990). The written order that issued approximately 30 days later concerned the *Thiem* date and while it did not specifically discuss defendant's need for commitment, it did state "the maximum period of commitment for the [in]patient treatment of defendant is fifteen years ***[. T]hus his maximum date of commitment is September 18, 2022." Moreover, the appellate court has previously held a docket entry may serve as a written order of the trial court. See *Quintas v. Asset Management Group, Inc.*, 395 Ill. App. 3d 324, 330, 917 N.E.2d 100, 105 (2009) (citing *In re Commitment of Hernandez*, 392 Ill. App. 3d 527, 531, 912 N.E.2d 235, 238 (2009) (docket sheet entries have been accepted as an order of the court where there is no written order); *People ex rel. Director of Corrections v. Edwards*, 349 Ill.

App. 3d 383, 386, 812 N.E.2d 355, 358-59 (2004) (docket sheets are part of the common law record and are presumed to be correct). Under the circumstances here, the April 29, 2013, docket entry, which reflected the trial court's oral commitment finding, was sufficient to serve as the written order of defendant's commitment, in particular when followed by the written *Thiem* order which also reflected defendant's commitment.

¶ 21 Section 3-816(a) also contemplates notice of the commitment order will be provided to the defendant. See 405 ILCS 5/3-816(a) (West 2012) ("A copy of such order shall be promptly given to the recipient or his or her attorney and to the facility director of the facility or alternative treatment to which the recipient is admitted or to the person in whose care and custody the recipient is placed."). The docket entry in this case does not contain directions to the circuit clerk to serve defendant with a copy of the docket sheet. Defendant contends notice of the commitment order was improper.

¶ 22 In this case, defendant was present with his attorney in the courtroom at the time the trial court orally announced the commitment order. Thus, defendant received actual notice of the order. As a result, the failure of the docket entry to provide for notice does not result in reversible error. See *In re McMahon*, 221 Ill. App. 3d 383, 388, 581 N.E.2d 1208, 1211 (1991) (failure to provide respondent with copy of written involuntary commitment order did not prejudice respondent and did not constitute reversible error, where both respondent and his attorney had actual notice of the order).

¶ 23 In sum, while certainly not perfect, the trial court substantially complied with section 3-816(a). Any noncompliance with section 3-816(a) in this case does not invalidate defendant's commitment. *Rita P.*, 2014 IL 115798, ¶ 43-45, 68; 10 N.E.3d 854. Because we

have found no error occurred, we need not address defendant's ineffective-assistance-of-counsel claim.

¶ 24 Finally, the best practice in these types of proceedings is for the trial court to enter a written commitment order, separate from any docket entry, with a copy served on counsel, defendant, and DHS, with such service reflected in the record. The order of commitment can be combined with the *Thiem* order or issued separately. The court's findings of fact and conclusions of law, at a minimum, should be stated in the record. Of course, there is no prohibition against including those findings in the written order itself.

¶ 25 III. CONCLUSION

¶ 26 For the foregoing reasons, we affirm the trial court's judgment.

¶ 27 Affirmed.