

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
No. SJ-2025-0066

Fall River District
Court
Nos. 2232CR000474;
2232CR003500

COMMONWEALTH

v.

RAMIRO ARRUDA

MEMORANDUM OF DECISION AND JUDGMENT

This matter is before the court, Dewar, J., on a petition pursuant to G. L. c. 211, § 3, seeking relief from orders of the Fall River District Court, issued on February 26, 2025, and on March 3 through March 5, 2025, committing the defendant to an inpatient facility for further examination pursuant to G. L. c. 123, § 15 (b), revoking the defendant's bail, and ordering the defendant held in custody pending the availability of a bed at an inpatient facility. I conclude that the hearing judge abused his discretion by ordering an inpatient evaluation for the defendant pursuant to G. L. c. 123, § 15 (b), without making "an express finding that hospitalization was, by clear and convincing evidence, the least restrictive means to complete

this further evaluation and observation," Commonwealth v. A.Z., 493 Mass. 427, 434 (2024), and also erred in revoking the defendant's bail and holding the defendant in custody pending the availability of accommodations at an inpatient facility. I therefore order the defendant's immediate release from custody insofar as he is held pursuant to these orders, as well as the reinstatement of his conditions of bail as they existed prior to his commitment.

Background. In February 2022, the defendant was arraigned in the first of these two cases, docket number 2232CR000474, on a single charge of larceny of a motor vehicle in violation of G. L. c. 266, § 28 (a). In October 2022, the defendant was arraigned in the second of these two cases, docket number 2232CR003500, on charges of stalking in violation of G. L. c. 265, § 43 (a), assault and battery with a dangerous weapon in violation of G. L. c. 265, 15A (b), and breaking and entering in the daytime with intent to commit a felony, placing a person in fear, in violation of G. L. c. 266, § 17. While the defendant was initially released on his personal recognizance in the former case, a cash bail of \$2,000 was set in the latter case. The docket and an affidavit from the defendant's counsel indicate that the \$2,000 was posted, and the defendant was released on bail in November 2022.

Potential issues regarding the defendant's criminal responsibility were raised by a defense motion filed in November 2023. In February 2024, an order issued for an examination pursuant to G. L. c. 123, § 15 (a), of the defendant's criminal responsibility. In March 2024, an order issued for further examination on an outpatient basis of the defendant pursuant to § 15 (a) with regard to his competency and criminal responsibility. In July 2024, reports were filed with the court regarding the defendant's examinations as to competency and criminal responsibility.

In December 2024, another order issued for an examination of the defendant pursuant to § 15 (a) with respect to competency. The evaluation took place on Wednesday, February 26, 2025.

At a hearing on the same day, after the evaluation, the examining psychologist provided testimony initially simply stating her recommendation that the defendant be subject to further evaluation on an inpatient basis, but noting that no hospital bed was available.¹ Asked by the court about other

¹ The defendant submitted an affidavit of counsel with the petition, summarizing what took place at the hearing. The defendant's supplemental filing in support of the petition describes the hearing in further detail, quoting from the For The Record (FTR) recording of the hearing, with citations to the recording. In the absence of a transcript, I listened to the FTR hearing and discerned no respect in which the defendant's representations digressed from the record.

options if accommodations were not available, the psychologist stated that "what 'typically' occurs . . . is that [defendants are] held in custody until a bed [is] available." The court then stated that the defendant would be taken into custody. When defense counsel asked to be heard, the court invited defense counsel (and later the Commonwealth) to ask questions of the clinician, but stated that the defendant would still be taken into custody in the interim. Upon further questioning by defense counsel, the testifying psychologist elaborated on her findings in the evaluation pursuant to G. L. c. 123, § 15 (a). She also testified that, as of the date of the hearing, the defendant in her view was not a "danger to himself or others." Following the clinician's testimony, the judge stated, "I'm still going to take him into custody." The case was scheduled for a status date the following Monday, March 3, with the court noting that a quick status date was warranted so that the defendant would not be held in custody indefinitely.²

The two dockets each state that on February 26, 2025, the defendant was "held w/out bail w/out prejudice c to 3/3/25" and that the clinician "evaluated D for 15a" and "indicate[d] further inpatient evaluation [was] needed." On March 4, 2025,

² The court also inquired into how the communication would occur to enable the defendant to be transferred to the hospital once a bed became available.

the hearing judge's order entered on the docket that the defendant be hospitalized pursuant to G. L. c. 123, § 15 (b), for an inpatient evaluation of his competency.³

On the afternoon of Friday, February 28, 2025, the defendant filed his present petition pursuant to G. L. c. 211, § 3, seeking relief from the court's orders of February 26, 2025. On Monday, March 3, the Commonwealth filed a response stating that it appeared the hearing judge had not complied with his obligation to "make clear . . . the evidence he . . . credited in support of the legal conclusion that it [was] necessary to hospitalize the defendant pursuant to § 15 (b)" (quotation and citation omitted). A.Z., 493 Mass. at 434. The Commonwealth otherwise took no position on the petition.

On March 4, I ordered the hearing judge to provide written findings regarding his orders revoking the defendant's bail, holding him in custody pending the availability of a hospital bed, and ordering an inpatient evaluation pursuant to G. L. c. 123, § 15 (b). The judge expeditiously provided written findings on March 6. In his written findings, the hearing judge

³ Notwithstanding that the dockets are not explicitly clear on this point, it is clear from the record before me that the court's orders of February 26, 2025, were connected to a finding that inpatient evaluation was necessary pursuant to § 15 (b), and the hearing judge's findings of fact, discussed infra, note that his finding regarding § 15 (b) predated the filing of the petition in this case.

expressly stated that he determined "[b]y clear and convincing evidence . . . that inpatient hospitalization [was] the least restrictive means to complete evaluation and observation of the [d]efendant pursuant to [§ 15 (b)]." The judge also attached and incorporated by reference a § 15 (a) report by the clinician dated March 4, 2025, which was not available to the hearing judge at the time of the hearing.

As to the order holding the defendant without bail, the hearing judge explained that:

"At the time of the court's referral, no in[p]atient DMH bed was available, so the [d]efendant was held pending an available bed and transport to a facility. The [d]efendant was held in custody because, based on the [d]efendant's history, the court found that the [d]efendant would not voluntarily appear for hospitalization upon a bed becoming available."

The hearing judge's order further noted that, on March 4, 2025, a hospital bed became available, and the defendant is presently hospitalized for evaluation pursuant to § 15 (b).

Discussion. I find that it was appropriate for the defendant to seek relief by way of G. L. c. 211, § 3, because the defendant cannot obtain relief by appellate review in the normal course and because the right "to be free from physical restraint" is a "paradigmatic fundamental right." A.Z., 493 Mass. at 431-432, quoting Garcia v. Commonwealth, 487 Mass. 97, 102-103 (2021). I therefore exercise my discretion to address the merits of the petition.

1. Hospitalization order. As an order pursuant to § 15 (b) is discretionary, I review the hearing judge's order for abuse of discretion. See G. L. c. 123, § 15 (b); Commonwealth v. Carson C. 489 Mass. 54, 58 (2022). To satisfy constitutional due process "a judge may only involuntarily hospitalize a defendant" pursuant to § 15 (b) "if the judge finds . . . by clear and convincing evidence, that there are no appropriate, less restrictive alternatives that adequately would allow for a determination of a defendant's competency" (alterations and quotation omitted). A.Z., 493 Mass. at 432. Put another way, the essential question is whether involuntary hospitalization is the least restrictive means to the end of determining the defendant's competency. See id. The defendant does not bear the burden of proof on this issue. See id.

In reaching this determination, the Supreme Judicial Court has held that due process requires a hearing judge to make an "express finding" on the record, A.Z., 493 Mass. at 434, either in writing or orally, as to this determination and the evidence supporting it:

"[T]he judge must make clear, in writing or orally on the record, the evidence he or she credited in support of the legal conclusion that it is necessary to hospitalize the defendant pursuant to § 15 (b). . . . This includes evidence the judge credited supporting the conclusion that hospitalization is the least restrictive means of determining competency" (quotation omitted).

Id.

As the defendant argues, and as a review of the record and a recording of the hearing confirms, at the time he ordered the defendant to be hospitalized involuntarily, the hearing judge did not make an express finding on the record, whether orally or in writing, that involuntary hospitalization was the least restrictive means to determine competency, nor did he make clear what evidence he credited in support of that conclusion. For this reason, I conclude that the hearing judge abused his discretion. See A.Z., 493 Mass. at 434.

The hearing judge subsequently provided written findings at the request of this court, but those findings attached, incorporated by reference, quoted from, and relied in large part on a § 15 (a) report from the clinician dated after the hearing. The report was not before the hearing judge at the time of the hearing and contains considerable information beyond the clinician's testimony at the hearing, and the defendant necessarily did not have an opportunity to be heard on the contents of the report prior to the defendant's commitment. While the hearing judge's written findings were appreciated and helpful to this court in analyzing the issues in this case, particularly where the Commonwealth did not take a position on the defendant's petition, I nevertheless conclude that they do not suffice to meet the due process requirement of A.Z. that the hearing judge must make clear on the record, orally or in

writing, an express finding that hospitalization is the least restrictive means to determine competency, and further, what specific evidence the judge credits in support of the order, when detaining a defendant for an inpatient evaluation pursuant to G. L. c. 123, § 15 (b). See A.Z., 493 Mass. at 434. The necessity of a contemporaneous determination, based on the information then before the court, is well illustrated by the events in this case, where, despite the diligence and expeditiousness with which defense counsel prepared the instant petition, the Commonwealth filed a brief response, and the hearing judge drafted written findings upon the request of this court, the hearing judge's written findings did not reach this court until more than a week into the defendant's 20-day inpatient evaluation and, in making the findings required as a matter of due process, relied on information post-dating the order. The court therefore concludes that the hearing judge's order detaining this defendant pursuant to G. L. c. 123, § 15 (b) must be vacated.

2. Bail order. The defendant also asks this court to vacate the judge's order revoking his bail and ordering him held in custody without bail pending the availability of a bed at a facility where the inpatient § 15 (b) evaluation could take place. While such a bed has since become available and the defendant is no longer held in a house of correction, this issue

is not moot because, if this court were solely to vacate the § 15 (b) order, the defendant would remain held without bail unless his prior conditions of bail were reinstated. In any event, "cases involving the confinement of mentally ill persons present classic examples of issues that are capable of repetition, yet evading review, which thus warrant appellate review even after the confinement ends" (citation omitted). A.Z., 493 Mass. at 430. Indeed, the issues here appear to be more than just "capable" of repetition. The examining psychologist testified that judges "typically" hold a defendant without bail pending the availability of a hospital bed. See also Commonwealth vs. Murray, Supreme Judicial Ct., No. SJ-2024-0375 (Suffolk County Oct. 21, 2024) (noting similar bail order). For these reasons, I exercise my discretion to address the merits of this issue.

I conclude that it was error for the hearing judge to revoke the defendant's bail and hold the defendant without bail. First, there is no apparent basis under G. L. c. 276, § 58, for revoking this defendant's bail. The judge's written findings state that he ordered the defendant held because, "based on the [d]efendant's history, the court found that the [d]efendant would not voluntarily appear for hospitalization upon a bed becoming available." Regardless of the extent of factual support in the record for this finding (disputed by the

defendant), this court discerns no basis in § 58 for revocation of a defendant's bail on the basis of a finding by the court that the defendant is unlikely to appear at a future date, in the absence of a finding that the defendant has either committed a new offense or actually violated a condition of his bail. See Commonwealth v. Pagan, 445 Mass. 315, 320 (2005) ("In G. L. c. 276, § 58, third par., the Legislature has made a specific, but limited, grant of authority to District Court judges . . . to revoke a bail order that has been entered under § 58 or § 57" [emphasis added]).

Second, G. L. c. 123, § 15 (b), does not by its terms contemplate detention in a house of correction pending the availability of a hospital bed. Rather, § 15 (b) contemplates only hospitalization at a "facility," defined in G. L. c. 123, § 1, as "a public or private facility for the care and treatment of mentally ill persons, except for the Bridgewater State Hospital."

Third and finally, the court notes that the record is clear that the judge did not hold the defendant on dangerousness grounds pursuant to G. L. c. 276, § 58A, nor civilly commit him because of a likelihood of serious harm by reason of mental illness pursuant to G. L. c. 123, § 12. Indeed, the clinician testified at the hearing that it was her opinion that the

defendant was not, as of the date of the hearing, "a danger to himself or others."

Conclusion. Upon consideration, it is **ORDERED** that the petition for extraordinary relief under G. L. c. 211, § 3, shall be, and hereby is, **ALLOWED IN PART**. I hereby vacate the order of the hearing judge that the defendant be hospitalized for further evaluation pursuant to § 15 (b) and vacate the order of the hearing judge revoking the defendant's bail. I order that the defendant be released immediately from any custody and involuntary hospitalization to the extent it is based on the vacated orders. I further order that all the defendant's conditions of bail, as they existed prior to these orders, are hereby reinstated. The matter is remanded for further proceedings consistent with this order.⁴

By the Court,

/Elizabeth N. Dewar/

Elizabeth N. Dewar
Associate Justice

Dated: March 7, 2025

⁴ While the defendant's papers and the hearing judge's findings were and will remain impounded in this court because they contain medical information, this court has issued its judgment in such form that the judgment itself is not impounded. The court notes that no medical information is contained herein, and, in any event, that the public availability of this judgment is necessary to serve its purpose, which is to provide clarity on the legal issue raised in the petition. See G. L. c. 211, § 3; S.J.C. Rule 1:24, §§ 2, 9 (2016).