

FILED

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
CIVIL DIVISION

2020 DEC -7 PM 1:07

JOSEPH GENITS, :  
                    Petitioner :  
                                  :   
                    Vs. :       No. 20-0227  
                                  :   
COMMONWEALTH OF PENNSYLVANIA, :  
                    Respondent :

CARBON COUNTY  
PROTHONOTARY

Robert Yurchak, Esquire                      Counsel for Petitioner  
Andrew Lovette, Esquire                      Counsel for Respondent

MEMORANDUM OPINION

Matika, J. - December 7, 2020

A determination that an individual needs to be involuntarily committed pursuant to the Pennsylvania Mental Health Procedures Act (hereinafter "MHPA"), 50 P.S. §7302 has widespread implications and impacts the due process rights of that committed person. At times, such a determination may have not been proper or in certain situations may alleviate some of its prohibitions. Here, the Petitioner has raised several such issues. For the reasons stated herein, this Court **DENIES** the Petitioner's request to expunge the records of his 302 Involuntary Commitment, however, we **GRANT** his request pursuant to 18 Pa.C.S.A. §6105(c)(4).

FACTUAL AND PROCEDURAL BACKGROUND

Prior to April 26, 2014, the Petitioner, Joseph Genits (hereinafter "Genits") became divorced from his wife, who moved to the State of Georgia. Also prior to the date of April 26, 2014,

[FM-37-20]

Genits decided to fly to Georgia to see his ex-wife. While in Georgia attempting to reconcile with her, Genits' daughter Andrea Davis (hereinafter "Davis"), believed that her father may be homicidal and suicidal based upon Genits' recent actions and comments. As a result, on April 25, 2014, Davis completed an "Application for Involuntary Emergency Examination and Treatment" form pursuant to the MHPA alleging that her father "does not want to live" and "ha[d] mentioned hurting others and himself by taking others he loves with him."<sup>1</sup> Upon review and in consideration of this application, Michelle Clements, the County Administrator (or its representative), issued a warrant<sup>2</sup> for Genits to have him "taken to and examined at G. Hospital<sup>3</sup> and if required, [have him] admitted to a facility designated for treatment for a period of time not to exceed 120 hours."

On April 26, 2014, Genits returned to Allentown via Philadelphia after his trip to Georgia. Upon arriving at the airport in Allentown, Genits claimed he was met by six (6) security

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<sup>1</sup> Pages 2-5 of Respondent PSP Exhibit #1.

<sup>2</sup> Pursuant to 50 P.S. §7302(a)(1), "Upon written application by a physician or other responsible party setting forth facts constituting reasonable grounds to believe a person is severely mentally disabled and in need of immediate treatment, the county administrator may issue a warrant requiring a person authorized by him, or any peace officer, to take such person to the facility specified in the warrant."

<sup>3</sup> "G. Hospital" refers to the Gnaden Huetten Memorial Hospital in Lehighton and is the facility designated in the warrant and located in the county in which Genits resides.

people who took him into custody and transported him to Muhlenberg Hospital where he arrived at 6:38 P.M.

After his arrival, Genits was examined at 8:30 P.M.<sup>4</sup> as required by §7302(b)<sup>5</sup> of the MHPA. As a result, the examining physician opined that Genits was " . . . severely mentally disabled and in need of treatment [and] should be admitted to a facility designated by the County Administrator for a period of treatment not to exceed 120 hours."

Thereafter, a representative of the hospital<sup>6</sup>, by executing and utilizing a "PATIENT RIGHTS-REPORTING FORM", explained and gave a copy of the warrant to Genits, advised Genits of his right to counsel, inquired of Genits if he understood the warrant and the right to counsel, and provided Genits with copies of documents entitled "Explanation of Rights Under an Involuntary Commitment" and patient's Bill of Rights form. This representative also

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<sup>4</sup> See Page 9 of Respondent Exhibit #PSP-1.

<sup>5</sup> §7302 of the MHPA reads as follows: "A person taken to a facility shall be examined by a physician **within two hours of arrival** in order to determine if the person is severely mentally disabled within the meaning of section 301(b) and in need of immediate treatment. If it is determined that the person is severely mentally disabled and in need of emergency treatment, treatment shall be begun immediately. If the physician does not so find, or if at any time it appears there is no longer a need for immediate treatment, the person shall be discharged and returned to such place as he may reasonably direct. The physician shall make a record of the examination and his findings. In no event shall a person be accepted for involuntary emergency treatment if a previous application was granted for such treatment and the new application is not based on behavior occurring after the earlier application." (Emphasis ours).

<sup>6</sup> Page 10 of respondent PSP Exhibit #1 is signed by a person who appears to be a hospital representative by the name of "Christine H.", although the signature is not legible enough to decipher her last name.

indicated that Genits was evaluated within two hours of his arrival at Muhlenberg.

Gentis remained at Muhlenberg Hospital until the following day when he was transferred to Gnaden Huetten Memorial Hospital in Lehigh. Once admitted to Gnaden Huetten, Genits was seen by both Maureen McFarland, a nurse practitioner and Dr. Raja Abbas, a psychiatrist. After examination, Genits remained committed to the hospital pursuant to Dr. Abbas' opinion and recommendation where he stayed until his discharge on May 1, 2014, the end of the 120-hour hospitalization period.

After his release, Genits sought out the services of Dr. Ilan Levinson, M.D. a board-certified psychiatrist. Dr. Levinson evaluated Genits on October 17, 2014. Levinson conducted a forensic mental health examination on Genits and opined that "there was no evidence of any psychiatric diagnosis at this time."<sup>7</sup>

It was not until January 30, 2020 that Genits filed the instant "PETITION FOR APPEAL OF REVOCATION OF RIGHT TO CARRY FIREARM PURSUANT TO SECTION 6106 (sic) OF THE PA CRIMES CODE AND FOR EXPUNGEMENT OF ALL RECORDS PERTAINING TO HIS INVOLUNTARY COMMITMENT UNDER THE PENNSYLVANIA MENTAL HEALTH AND PROCEDURES ACT." In that Petition, Genits raised three (3) issues: 1) that he was not, in April, 2014, a "clear and present" danger to himself

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<sup>7</sup> Petitioner Exhibit #3.

or others to warrant an involuntary commitment pursuant to the MHPA; 2) that he was denied due process in the manner in which the commitment occurred; and 3) even if this Court were to find that his commitment was proper, his current mental health condition should no longer preclude him from possessing a firearm pursuant to 18 Pa.C.S.A. §6105(f)(1).<sup>8</sup>

A hearing was held on this petition on July 21, 2020. At that hearing, Genits testified that he never made any threats to hurt himself or others and that his daughter's comments were as a result of a big misunderstanding. He also testified that while at Muhlenberg, and despite requesting it, he never received any documentation regarding his commitment. He also indicated that he did not see the Psychiatrist at Muhlenberg until in excess of the required two (2) hours.<sup>9</sup> Genits believed that he did not have any mental health issues during the time frame in question.

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<sup>8</sup> Pursuant to 18 Pa.C.S.A. §6105(c)(4), any "person who has been adjudicated as an incompetent or who has been involuntarily committed to a mental institution for inpatient care and treatment under section 302, 303 or 304 or the provisions of the act of July 9, 1976 (P.L. 817, No. 143), known as the Mental Health Procedures Act", shall be prohibited from possessing, using, controlling, selling, transferring or manufacturing or obtaining a license to possess, use, control, sell, transfer or manufacture a firearm in this Commonwealth. Genits seeks to recover the rights precluded by this involuntary commitment and this subsection. Pursuant to 18 Pa. C.S.A. §6105(f)(1), "Upon application to the court of common pleas under this subsection by an applicant subject to the prohibitions under subsection (c)(4), the court may grant such relief as it deems appropriate if the court determines that the applicant may possess a firearm without risk to the applicant or any other person." This petition seeks to do just that.

<sup>9</sup> Gentis alleged that he was not seen until 11:04 P.M. and referenced a notation on the "Emergency Department Event Log" document (Petitioner's Exhibit #1). Genits also testified he never saw the 302 Form (warrant and other documents) even though he asked for it.

Genits also produced four (4) other witnesses, longtime friend, Dr. Robert Mauro, Chief Jack Soberick, the Lansford Chief of Police, Chris Ondrus, another longtime friend and Joe Young, an individual Genits has known for about 50 years. Each of these witnesses testified that they do not believe that Genits is or ever was a threat to himself or others. Each of these witnesses testified in some respect that for as long as they have known Genits they have never seen the type of conduct that resulted in his hospitalization.

After the hearing, both parties were given an opportunity to lodge post-hearing briefs in support of their respective positions. This matter is now ripe for disposition.

#### LEGAL DISCUSSION

Pursuant to 50 P.S. §7301(a) "whenever a person is severely mentally disabled and in need of immediate treatment, he may be made subject to involuntary emergency examination and treatment. A person is severely mentally disabled when, as a result of mental illness, his capacity to exercise self-control, judgment and discretion in the conduct of his affairs and social relations or to care for his own personal needs is so lessened that he poses a clear and present danger of harm to others or to himself, as defined in subsection (b) . . ."

In order for an individual to be involuntarily committed, a clear and present danger to others shall be shown by establishing that within the past 30 days the person has inflicted or attempted to inflict serious bodily harm on another and that there is a reasonable probability that such conduct will be repeated. 50



P.S. §7301(b). Alternatively, or in addition to, an individual may be involuntarily committed if a clear and present danger to himself can be established within the previous 30 days if:

(i)the person has acted in such manner as to evidence that he would be unable, without care, supervision and the continued assistance of others, to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety, and that there is a reasonable probability that death, serious bodily injury or serious physical debilitation would ensue within 30 days unless adequate treatment were afforded under this act; or

(ii)the person has attempted suicide and that there is the reasonable probability of suicide unless adequate treatment is afforded under this act. For the purposes of this subsection, a clear and present danger may be demonstrated by the proof that the person had made threats to commit suicide and has committed acts which are in furtherance of the threat to commit suicide; or

(iii)the person has substantially mutilated himself or attempted to mutilate himself substantially and that there is the reasonable probability of mutilation unless adequate treatment is afforded under this act. For the purposes of this subsection, a clear and present danger shall be established by proof that the person has made threats to commit mutilation and has committed acts which are in furtherance of the threat to commit mutilation. 50 P.S. §7301(c)

In order for someone to seek the involuntary commitment of another who may be a clear and present danger as noted above, that person shall prepare, execute and submit an application, accompanied by statements or other evidence that the other person should be examined and why treatment should be provided. 50 P.S. §7110(a). These documents shall be submitted to the county

administrator in the county in which that person resides. 50 P.S. §7110(b).

Under 50 P.S. §7302(b), "upon written application by a physician or other responsible party setting forth facts constituting reasonable grounds to believe a person is severely mentally disabled and in need of immediate treatment, the county administrator may issue a warrant requiring a person authorized by him, or any peace officer, to take such person to the facility specified in the warrant." Once that warrant is issued and served, that individual shall then be taken to a treatment facility where an emergency examination may be undertaken. 7302(a).

Additionally, pursuant to 50 P.S. §7302(b),

A person taken to a facility shall be examined by a physician within two hours of arrival in order to determine if the person is severely mentally disabled within the meaning of section 301(b)<sup>10</sup> and in need of immediate treatment. If it is determined that the person is severely mentally disabled and in need of emergency treatment, treatment shall be begun immediately. If the physician does not so find, or if at any time it appears there is no longer a need for immediate treatment, the person shall be discharged and returned to such place as he may reasonably direct. The physician shall make a record of the examination and his findings. In no event shall a person be accepted for involuntary emergency treatment if a previous application was granted for such treatment and the new application is not based on behavior occurring after the earlier application."

Lastly, "Upon arrival at the facility, the person shall be informed of the reasons for emergency examination and of his right to communicate immediately with others. He shall be given reasonable use of the telephone. He shall

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<sup>10</sup> 50 P.S. §7301(b)



be requested to furnish the names of parties whom he may want notified of his custody and kept informed of his status. The county administrator or the director of the facility shall:

- (1) Give notice to such parties of the whereabouts and status of the person, how and when he may be contacted and visited, and how they may obtain information concerning him while he is in inpatient treatment; and
- (2) Take reasonable steps to assure that while the person is detained, the health and safety needs of any of his dependents are met, and that his personal property and the premises he occupies are secure. §7302(c).

With this statutory framework in mind, this Court turns to the three claims for relief sought by Genits.

**I. Expungement of §3702 Commitment Pursuant to 18 Pa. C.S. §6111.1(g)(2)<sup>11</sup>**

Pursuant to 18 Pa. C.S.A. §6111.1(f), once an individual is involuntarily committed to a mental health institution pursuant to the MHPA or who has been involuntarily treated as described in §6405(c)(4), the court must notify the Pennsylvania State Police. Section 6105(c)(4) prohibits any individual adjudicated incompetent, or who has been involuntarily committed to a medical institution pursuant to §7302, from possessing, using, manufacturing, controlling, selling or transferring a firearm or obtaining a license to do so, if an examining physician has issued

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<sup>11</sup> This Court agrees with the Commonwealth that the particular substantive challenge to Genits' involuntary commitment as raised in the instant petition is one to be presented under 18 Pa. C.S. §6111.2(g)(2), despite not being captioned in that fashion. For purposes of this opinion, this Court will discuss this claim as if brought pursuant to that section of the Pennsylvania Crimes Code as noted. Genits' 6105(f) claim will be addressed further in this opinion.

a confirmation that inpatient care was necessary or that the person was committable. Such was the case with Genits.

Additionally, under subsection (g) of this same statute,

"[A] person who is voluntarily committed pursuant to section 302 of the [MHPA] may petition the court to review the sufficiency of the evidence upon which the commitment was based. If the court determines that the evidence upon which the involuntary commitment was based was insufficient, the court shall order that the record of the commitment submitted to the Pennsylvania State Police expunged."

The seminal case in this area is the Pennsylvania Supreme Court case of *In Re: Vencil*, 152 A.3d 235 (2017). In that case, the Court held that a trial court's review of the evidence to ascertain the sufficiency of that evidence supporting the involuntary commitment is limited to a review of the physician's finding and not a trial *de novo* and that the appropriate standard of review applicable to the physician's record findings is a clear and convincing evidentiary standard. *Vencil* at 246.

In the case *sub judice*, pursuant to *Vencil*, this Court must review the findings of Dr. Kenneth Katz and the information he had relied upon in arriving at his findings. According to Dr. Katz, the results of his examination found: "perseverating/incessant/obsessive thoughts about his ex-wife visiting her in Georgia when she told him not to - appears to be stalking wife [ . . . ] tangential and poor insight into current situation." Based upon those findings, Dr. Katz recommended that

Genits undergo "inpatient psychiatric treatment" and that in his opinion, "[Genits] is severely mentally disabled and in need of treatment [,] he should be admitted to a facility designated by the county administrator for a period of treatment not to exceed 120 hours." In addition to Katz' examination of Genits, he would have had available to him the Application for Involuntary Commitment which included information provided by Genits' daughter, Andrea Davis. That information suggested that her father does own guns and has mentioned using them on others and himself and that over the previous two weeks had mentioned everyday "hurting others and himself by taking others he loves with him."

Our review of Dr. Katz' finding that Genits presented a clear and present danger to himself or others, and giving deference to him as the fact finder, and based upon his observation of Genits during the examination of him and also based upon Dr. Katz' training, knowledge and experience as to whether that commitment was medically necessary, this Court sees no reason to upset that decision.

## **II. Expungement of §7302 Involuntary Commitment Based Upon Alleged Due Process Violations**

Genits next claims that certain due process rights were violated during the process which resulted in his involuntary commitment. Specifically, Genits claims: 1) he was not examined within two (2) hours of his arrival [50 P.A. §7302(b)]; 2) he was

not provided a copy of any of his 302 commitment documents nor was this documentation timely read to him [50 P.S. §7302(c)]; 3) that he was not advised of his right to counsel; and 4) he was not told he was in need of treatment nor why treatment was necessary. In the case of *In Re: A.J.N.*, 144 A.3d 130 (Pa. Super. Ct. 2016), the Court held that where a committee's procedural due process rights have been violated, the remedy is an expungement and destruction of all records pertaining to his commitment. This is what Genits seeks here. An examination of these claims, however, do not amount to any violations of Genits' procedural due process rights.

**A. Examination Within Two (2) Hours**

Genits claims that he was not examined at the hospital within two hours of his arrival as required by 50 P.S. §7302(b). He points to the fact that on the last page of Petitioner's Exhibit #1 there is a reference to "arrival 18:38" and a further reference to "seen by provider 23:04", a time difference in excess of two hours. This, however, is contradicted by the actual physical examination document (page 9 of 11 on Respondent's Exhibit #PSP-1) signed by Dr. Katz in which he indicates that he examined Genits at "20:30" (6:30 P.M.)

**B. Not Provided With Copies of 302 Commitment Documents**

Genits also claims that he did not receive any of the 302 Commitment Documents that he was statutorily entitled to receive

including the application completed by his daughter, the warrant signed by the administrator, the patient bill of rights, and other documents. Genits claimed he requested these documents while at Muhlenberg Hospital but never received them.

As part of its presentation, the Commonwealth of Pennsylvania, presented Respondent Exhibit #PSP-1 which, on page 10 of that document, identifies those exact documents and the fact that a representative of the hospital provided those documents to Genits.

**C. Right to Counsel**

Likewise, Genits claims he was not advised of his right to counsel, yet page 10 of Respondent Exhibit #PSP-1 clearly indicates that he was not only advised of that right, but understood it.

**D. Need and Rationale for Treatment**

Lastly, Genits claims he was never told that the end result of the reason he was at Muhlenberg Hospital was that he was in need of psychiatric treatment nor the reasons why. In light of Respondent Exhibit #PSP-1 and the specific comments and notations identified thereon as well as the last page of Petitioner's Exhibit #2, it is incredulous to believe Genits was not told nor understood why he was at Muhlenberg Hospital, nor that he was unaware of the opinion of Dr. Katz that he was in need of inpatient psychiatric treatment not to exceed 120 hours.

It is also worth noting that at the July 21, 2020 hearing, Genits acknowledged that while at Muhlenberg Hospital, he recalled speaking with a woman by the name of "Christine", the same name which appears to be noted on Respondent Exhibit #PSP-1, page 10, the document referenced by the Commonwealth to refute each of Genits claimed procedural due process rights violations.

Based upon our examination of these claimed violations of his due process rights under the MHPA, we find each and every such claim meritless.

### **III. No Longer a Risk to Self or Others**

Lastly, Genits argues that even if the involuntary commitment is not expunged on either substantive or procedural due process grounds, he could still be entitled to carry a weapon pursuant to 18 Pa. C.S.A. §6105.

As previously noted, pursuant to 18 Pa. C.S.A. §6105(c)(4), Genits is prohibited from possessing, using, controlling, selling, transferring or manufacturing a firearm or from obtaining a license to do so because of his §7302 involuntary commitment. Notwithstanding, §6105(f)(1) reads:

"Upon application to the court of common pleas under this subsection by an applicant subject to the prohibitions under subsection (c)(4), the court may grant such relief as it deems appropriate if the court determines that the applicant may possess a firearm without risk to the applicant or any other person."



In furtherance of this filing, Genits presented four reputable members of Genits' community who all testified about his character and their beliefs that Genits is not a source of harm to himself or others. This testimony, Genits argues, supports his request to have his firearm rights reinstated.

A request pursuant to 18 Pa. C.S.A. §6105(f) is not and cannot result in an expungement of an involuntary commitment's documentation (See *In Re: Keyes*, 83 A.3d 1016 (Pa. Super. Ct. 2013) and *Commonwealth v. Smerconish*, 112 A.3d 1260 (Pa. Super. Ct. 2015)). A request under §6105(f) is however, a request to reinstate Genits' firearm rights.

Based upon the testimony of Dr. Mauro, Chief Soberick, Mr. Young and Mr. Ondrus, this Court finds that pursuant to §6105(f)(1) and in the exercise of our discretion, Genits is no longer a threat of harm to himself or others and is entitled to an order exempting him from further §6105(c)(4) mental health related firearms prohibitions.<sup>12</sup>

#### **CONCLUSION**

Based on the foregoing, this Court enters the following:

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<sup>12</sup> It should be noted that the Court's decision herein does not explicitly reinstate or exempt from prohibition Genits' federal firearms rights. It will be up to the Petitioner to ascertain what impact, if any, this Court's decision has on those rights/prohibitions.

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JOSEPH GENITS,	:	
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Vs.	:	No. 20-0227
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COMMONWEALTH OF PENNSYLVANIA,	:	
Respondent	:	

CARBON COUNTY  
PROTHONOTARY

Robert Yurchak, Esquire	Counsel for Petitioner
Andrew Lovette, Esquire	Counsel for Respondent

ORDER OF COURT

AND NOW, this 7<sup>th</sup> day of December, 2020, upon consideration of the "PETITION FOR APPEAL OF REVOCATION OF RIGHT TO CARRY FIREARM PURSUANT TO SECTION 6106 (sic) OF THE PA CRIMES CODE AND FOR EXPUNGEMENT OF ALL RECORDS PERTAINING TO HIS INVOLUNTARY COMMITMENT UNDER THE PENNSYLVANIA MENTAL HEALTH AND PROCEDURES ACT" filed by Joseph C. Genits, the brief lodged in support thereof, the Commonwealth's post-hearing memorandum lodged in opposition thereto and after hearing thereon, it is hereby **ORDERED and DECREED** as follows:

1. The request of Petitioner, Joseph C. Genits filed pursuant to 18 Pa.C.S.A. §6111.1(g) for an expungement of all records pertaining to his involuntary mental health commitment is **DENIED**; and

2. The request of Petitioner, Joseph C. Genits, pursuant to 18 Pa. C.S.A. §6105(f)(1) for an exemption from Pennsylvania's Mental Health-related firearms prohibition set forth in 18 Pa. C.S.A. §6105(c)(4) is **GRANTED**.

BY THE COURT:

  
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Joseph J. Matika, J.