

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

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

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Robert Yurchak, Esquire Counsel for Appellant
Andrew Lovette, Esquire Counsel for Appellee

MEMORANDUM OPINION

Matika, J. - February 12, 2021

On January 6, 2021, a Notice of Appeal was filed by the Appellant, Joseph Genits (hereinafter "Genits" or "Appellant") from our decision to deny his request to expunge any evidence of a 302 involuntary commitment that occurred in 2014 pursuant to the Mental Health Procedures Act (hereinafter "MHPA"), 50 P.S. §7302. For the reasons set forth herein along with the Memorandum Opinion dated December 7, 2020 and attached hereto, this Court requests that the appeal be denied.

FACTUAL AND PROCEDURAL BACKGROUND¹

On April 25, 2014, a warrant, pursuant to 50 P.S. §7302 of

¹ This Court has not included in this section all relevant facts surrounding this matter; rather it references that portion of our December 7, 2020 Memorandum Opinion attached hereto under the heading of "Factual and Procedural Background" for a complete recitation of the factual and procedural background that provided support for this Court's decision.

the MHPA was issued by the County Administrator authorizing that Genits be apprehended and taken to the appropriate mental health facility for an emergency mental health examination. This occurred as the result of his daughter, Andrea Davis, completing an application that set forth facts indicating that Genits was "severely mentally disabled and in need of immediate treatment." As a result of the execution of that arrest, Genits was subjected to an examination within two hours of his arrival at Muhlenberg Hospital by a physician who declared Genits severely mentally disabled and in need of treatment. Thereafter, after being transferred to Gnaden Huetten Memorial Hospital in Lehighton, Genits was released five (5) days later on May 1, 2014.

On January 30, 2020, Genits filed the "Petition to Expunge." After hearing and affording both sides the opportunity to lodge briefs, this Court issued an opinion denying Genits' request to expunge the records of his involuntary commitment, however, this Court granted his request pursuant to 18 Pa.C.S.A. §6105(f)(1) to exempt him from any further firearms prohibitions as set forth in 18 Pa.C.S.A. §6105(c)(4).

On January 6, 2021, Genits filed the instant appeal. On January 11, 2021, this Court issued an order pursuant to Pa.R.A.P. 1925(b) requiring Genits to file a concise statement of matters complained of on appeal within twenty-one days. On February 3,

2021, Genits filed this statement.² In this statement Genits set forth the following alleged errors:

- 1- Where the Mental Health Procedures Act, 50 P.S. Section 7301 et. seq., (MHPA) requires that an individual who is to be involuntarily committed must have inflicted or attempted to inflict serious bodily harm on another within the previous thirty days and that there is a reasonable probability that such conduct will be repeated or alternatively, if within the previous thirty days the person acted in such a manner as to evidence that there is a reasonable probability that death, serious bodily injury or serious physical debilitation would ensue in thirty days unless adequate treatment were afforded and the evidence presented at time of the hearing before this Honorable Court did not reflect any attempt to cause serious bodily injury nor any infliction of serious bodily injury either in the previous thirty days to the commitment or at all, was the doctor who signed that commitment of appellant justified in making the determination that the petitioner was a "clear and present" danger to himself or others when the evidence supporting the commitment consisted solely of the documentary evidence indicating what the doctor determined without any testimony from said doctor?
- 2- Given the unrebutted testimony of Petitioner/Appellant and contradictory documentary evidence presented to the Court which indicated, *inter alia*, that Appellant was never advised of his right to contact an attorney, he was not given a copy of the 302 commitment papers at the Muhlenberg Hospital, he was not advised of why he was being taken into custody at that time, was petitioner denied his due process rights under mental health commitment pursuant to the Mental Health Procedures Act (MHPA)?
- 3- Did the Court commit reversible error when it ruled that the follow-up assessment and evaluation completed by Dr. Raja Abbas, a psychiatrist, at Gnaden Huetten Hospital, was irrelevant and unusual and in

² This Court notes that the 21st day after the filing/docketing of the Order was February 1, 2021, however the Carbon County Court System was closed on both February 1, 2021 and February 2, 2021 due to inclement weather. Thus, the concise statement filed on February 3, 2021 was timely as being filed on the next available business day.

fact sustained an objection as to the relevancy of the certificate of Dr. Abbas and then makes the specific finding on Page 4 of its opinion that "After examination, Genits remained committed to the hospital pursuant to Dr. Abbas' opinion and recommendation . . .?"

- 4- Whether the lower court erred in its reliance upon the exhibit submitted by the State Police, namely PSP-1, when the exhibit contained many errors, including, *inter alia*, contradictory timelines, incorrect information about appellant driving to Georgia, the representation by an unknown hospital representative, namely "Christine H" who never testified as to what she did or did not do, the electronic signature on said document by Dr. Katz, etc.?
- 5- Whether the lower court correctly interpreted the factors to be required to justify a 302 Mental Health Commitment pursuant to Mental Health Procedures Act, 50 P.S. Section 7301 et. seq., (MHPA)?

Most of these claimed errors are addressed in detail in the attached opinion dated December 7, 2020. As this Court addresses each of these claims, reference will be made to the appropriate sections of that Opinion in lieu of a fuller analysis here.

LEGAL DISCUSSION

I. Evidence Supporting a "Clear and Present Danger" Standard

Genits' first perceived error is that the evidence presented at his involuntary commitment hearing was insufficient to establish that he was a clear and present danger to himself or to others warranting that commitment.

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 an 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) . . ." (emphasis ours).

In order to determine that a person poses a clear and present danger of harm to others or to himself, it must be established,

"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 In such case, a clear and present danger to others may be shown by establishing that the conduct charged in the criminal proceeding did occur, and that there is a reasonable probability that such conduct will be repeated. For the purpose of this section, a clear and present danger of harm to others may be demonstrated by proof that the person has made threats of harm and has committed acts in furtherance of the threat to commit harm. 50 P.S. §7301(b). (emphasis ours).

In this case, the Appellants' daughter, Andrea Davis swore out the "application for involuntary emergency examination and treatment on April 25, 2014 claiming that her father may be homicidal and suicidal based upon his recent comments and actions. Those comments included that her father "does not want to live" and "ha[d] mentioned hurting others and himself by taking others he loves with him." The actions that Ms. Davis set forth in her application included the fact that Genits had flown to Georgia to see his ex-wife. Obviously, these comments and these actions can be construed as "threats of harm" and "acts in furtherance of that threat to commit harm, thus supporting a claim of clear and present

danger pursuant to 50 P.S. §7301(b). This same information was available and presented to Dr. Kenneth Katz who conducted the emergency examination pursuant to the statute. At the conclusion of that examination and based upon the information available to him, Dr. Katz found that Genits had exhibited: "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. Katz further opined that Genits was severely mentally disabled and in need of treatment as required by §7302 of the MHPA.

As fact finder, the trial court gives deference to Dr. Katz' findings that Genits presented a clear and present danger to others, to wit: his ex-wife. Pursuant to *In Re: Vencil*, 152 A.3d 235, 246 (2017), the trial court reviews the evidence available to the examining physician in determining the sufficiency of the evidence that is presented to support the involuntary commitment. The Court is limited to a review of the physician's findings and that the appropriate standard of review is clear and convincing. The evidence presented to Dr. Katz meets that burden. Accordingly, this Court finds no error in its decision affirming his findings.

II. Denial of Due Process Rights

Genits next complains that the Court erred in finding that Genits' due process rights were not denied in the manner in which this commitment occurred. Specifically, Genits complains that his un rebutted testimony coupled with the contradictory documentation presented shows that his due process rights were violated in involuntarily committing him. In support thereof, Genits states that: 1) he was never advised of his right to an attorney; 2) he was not given a copy of his 302 commitment papers at Muhlenberg Hospital; 3) he was not advised as to why he was being taken into custody at the airport; and 4) he was not given any documents supporting him being taken into custody. This Court does not agree that Genits' testimony was so un rebutted nor that the documentary evidence was so contradictory that it did not warrant a finding by the Court that Genits' due process rights were not violated.

As it related to Genits' due process rights violations claim in his original petition to expunge, he alleged those rights were violated in that: 1) he was not examined within two (2) hours of his arrival at Muhlenberg; 2) he was not read nor provided with his 302 commitment documents; 3) he was not advised as to his right to counsel; and 4) he was not told he was in need of treatment nor why treatment was necessary. Genits reiterated those due process claims in his post-hearing brief. In his statement of matters

complained of, Genits now alleges that the Court erred in not finding his due process rights were violated *vis-a-vis*: 1) not being advised as to his right to counsel and 2) not being given copies of his 302 commitment papers at Muhlenberg Hospital. This Court dispensed with these two claims in our December 7, 2020 Opinion and would reference the appellate court to that section³ dealing with those claims for our analysis and rationale.

In his concise statements, Genits, for the first time, now claims the Court erred in two additional respects *vis-à-vis* not finding that Genits' due process rights were violated. Those two claims are: 1) that Genits was not advised as to why he was taken into custody at the airport; and 2) that he was not given any documents supporting why he was being taken into custody when he was taken into custody. These two claims are being raised for the first time on appeal. Thus, this Court finds that for purposes of this appeal, they are deemed waived. See Pa. R.A.P. 302(a) ("Issues not raised in the lower court are waived and cannot be raised for the first time on appeal). Notwithstanding, this Court finds that Genits' due process rights were not violated in these two latter respects. On direct examination, the following colloquy occurred between Genits and his counsel:

³ See "II. Expungement of §7302 Involuntary Commitment Based Upon Alleged Due Process Violations," subsections B and C of the December 7, 2020 Opinion.

Q. Okay. Did they tell you why they were - why you were being taken into custody?

A. No. I said to them, after they took my lap top briefcase and actually dropped it on the ground, I said to them; how about watching out with my case there? It's an expensive lap top in there. And they said; do you know why we are taking you? And I had said; well, I was given information that my daughter might have filed a 302. The officer said: **that's it.** (emphasis ours).

Even though Genits initially denied being told why he was taken into custody at the airport, by the end of his response, he acknowledged that he was aware of why he was being taken into custody when an officer confirmed for Genits that the reason they were taking him into custody was because Genits' daughter "might have filed a 302."

On the other issue first raised here on appeal, that being Genits did not receive any documentation at the airport supporting why he was being taken into custody, this court finds nothing in the MHPA requiring that a person taken into custody be immediately given copies of documentation supporting an involuntary commitment. To the contrary, §7302(c) requires that a person, upon arriving at the appropriate facility, be informed of the

reasons for the emergency examination, the very reason Genits was taken into custody.

III. Evidence of Dr. Abbas' Evaluation and Assessment

Genits next argues that the Court committed reversible error by making reference to an opinion and recommendation of Dr. Abbas done at Gnaden Huetten Hospital in Lehighton in its December 7, 2020 opinion despite sustaining an objection to Genits presenting that same testimony regarding Dr. Abbas.

This Court again notes that pursuant to *In Re: Vencil*, supra, we review the physician's record findings supporting the involuntary commitment. In this case, it was Dr. Katz' emergency examination performed at Muhlenberg and not Dr. Abbas whose assessment was performed at Gnaden Huetten Memorial Hospital which was the subject of the Courts' analysis. This Court agrees, to the extent Genits argues, that this Court should not consider Dr. Abbas' assessment after sustaining an objection to its relevancy. This Court notes it did not consider Dr. Abbas' assessment in our review of the basis for the involuntary commitment opined by Dr. Katz. It was merely referenced in our Opinion to set forth the time line of events that occurred here. Thus, inclusion of this reference in our Opinion is not reversible error.

IV. Reliance Upon PSP-1

Genits next argues that the Court erred in relying upon the Commonwealth Exhibit PSP-1 to support Genits' involuntary commitment claiming this exhibit contained many errors and contradictions. This Court's initial obligation is to ascertain whether the opinion of Dr. Katz was supported by the information he had available to him for purposes of the emergency examination. That, this Court has done. This Court also looked to this lone Commonwealth exhibit and determined then (in our December 7, 2020 Opinion) and maintain now that the evidence presented by the Commonwealth refutes any remaining claims raised by Genits. This was fully explained in that December 7, 2020 Opinion and this Court again references it here.

V. Interpretation of Factors Justifying the 302 Commitment

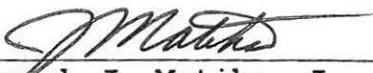
Genits' last claims that the Court erred in interpreting "the factors to be required to justify a 302 mental health commitment." Initially, this Court is unclear as to what factors Genits is referring to here. As noted, in following the holding in *In Re: Vencil*, Supra at 246, a trial court's review 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. There are no factors to consider. Additionally, relative to the due process claims, this Court knows of no factors there either, other than to ascertain whether the Commonwealth violated Genits' due process rights. This Court found that it had not.

CONCLUSION

For the foregoing reasons, this Court asks the Appellate Court to affirm our decision rendered in this matter.

BY THE COURT:



Joseph J. Matika, J.

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

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CARBON COUNTY
PROTHONOTARY

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

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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,

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."¹ Upon review and in consideration of this application, Michelle Clements, the County Administrator (or its representative), issued a warrant² for Genits to have him "taken to and examined at G. Hospital³ 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

¹ Pages 2-5 of Respondent PSP Exhibit #1.

² 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."

³ "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.⁴ as required by §7302(b)⁵ 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 hospital⁶, 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

⁴ See Page 9 of Respondent Exhibit #PSP-1.

⁵ §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).

⁶ 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.

Genits remained at Muhlenberg Hospital until the following day when he was transferred to Gnaden Huetten Memorial Hospital in Lehighton. 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."⁷

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

⁷ 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).⁸

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.⁹ Genits believed that he did not have any mental health issues during the time frame in question.

⁸ 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.

⁹ Genits 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)¹⁰ 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

¹⁰ 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)¹¹

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

¹¹ 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.¹²

CONCLUSION

Based on the foregoing, this Court enters the following:

¹² 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.

FILED

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CIVIL DIVISION

2020 DEC -7 PM 1:07

CARBON COUNTY
PROTHONOTARY

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

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

ORDER OF COURT

AND NOW, this 7th 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

[FM-37-20]

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:



Joseph J. Matika, J.