STATE V. SEARS

STATE OF NEW MEXICO,
Petitioner-Appellee,
v.
WILLIAM SEARS,
Respondent-Appellant,
and
IN THE MATTER OF WILLIAM SEARS.

NO. 34,522

COURT OF APPEALS OF NEW MEXICO

December 3, 2015

APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY, Angie K. Schneider, District Judge

COUNSEL

Hector H. Balderas, Attorney General, Santa Fe, NM, for Appellee

Jorge A. Alvarado, Chief Public Defender, Nina Lalevic, Assistant Appellate Defender, Santa Fe, NM, for Appellant

JUDGES

M. MONICA ZAMORA, Judge. WE CONCUR: MICHAEL E. VIGIL, Chief Judge, RODERICK T. KENNEDY, Judge

AUTHOR: M. MONICA ZAMORA

MEMORANDUM OPINION

ZAMORA, Judge.

{1} Respondent appeals from the district court's thirty-day involuntary commitment order to the New Mexico Behavioral Health Institute (NMBHI) following a hearing on the State's petition for involuntary commitment. This Court issued a calendar notice proposing summary dismissal for mootness, or in the alternative, summary affirmance. Respondent has filed a memorandum in opposition to this Court's notice of proposed disposition, which we have duly considered. Unpersuaded, we dismiss.

{2} Respondent contends, pursuant to *State v. Franklin*, 1967-NMSC-151, 78 N.M. 127, 428 P.2d 982, and *State v. Boyer*, 1985-NMCA-029, 103 N.M. 655, 712 P.2d 1, that the district court erred in denying Respondent's motion to dismiss for the State's failure to comply with the time limits under NMSA 1978, Section 43-1-11(A) (2009), and in denying Respondent's motion to dismiss for the State's failure to demonstrate that Respondent's counsel was properly served with a copy of the petition within the statutory time limit. [MIO 3-4; DS 1, 3] In our calendar notice, we noted that there is nothing in the record proper indicating that the commitment order was stayed during the pendency of this appeal, meaning that Respondent should have been released from the NMBHI no later than April 1, 2015; we therefore suggested that this appeal is moot, as it appears that Respondent can obtain no actual relief from the commitment order on appeal. [CN 2-3] *See Gunaji v. Macias*, 2001-NMSC-028, ¶ 9, 130 N.M. 734, 31 P.3d 1008 (stating that an appeal is moot when no actual controversy exists and an appellate ruling will not grant any relief); *see also State v. Ordunez*, 2012-NMSC-024, ¶ 22, 283 P.3d 282 ("It is not within the province of an appellate court to decide abstract, hypothetical or moot questions in cases wherein no actual relief can be afforded." (alteration, internal quotation marks, and citation omitted)).

{3} In our calendar notice, we recognized that this Court has discretion to make an exception to the mootness doctrine where an appellant's claims "are capable of repetition, raise questions of public importance, and would otherwise evade appellate review." [CN 3] *In re Bunnell*, 1983-NMCA-095, ¶ 6, 100 N.M. 242, 668 P.2d 1119). Respondent encourages us to make such an exception in this case, arguing in his memorandum in opposition that "[t]he issue of the State's failure to provide notice is certainly capable of repetition yet may regularly evade review with the short timelines involved in cases proceeding under the civil commitment provisions." [MIO 3]

{4} We suggested, however, in our calendar notice that this case does not raise issues that have not already been previously addressed by our courts, noting that the specific question of whether dismissal is the proper remedy for a violation of the procedural requirements of Section 43-1-11(A) was decided by our Supreme Court in *New Mexico Department of Health v. Compton*, 2001-NMSC-032, 131 N.M. 204, 34 P.3d 593, with the Court concluding that "dismissal of a petition is not a proper remedy for a violation of the procedural requirements of the [Mental Health and Developmental Disabilities] Code." *Id.* ¶ 33. The Court based its decision, at least in part, on the "availability of the alternative remedy of habeas corpus." *Id.* ¶ 32. Thus, given the settled law on this particular issue, we proposed to conclude that this case does not raise a question of public importance or otherwise evade review to merit review by this Court as an exception to mootness. [CN 3] Respondent—through his one sentence

argument—has not convinced us that we erred on this point. *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 ("Our courts have repeatedly held that, in summary calendar cases, the burden is on the party opposing the proposed disposition to clearly point out errors in fact or law."). Therefore, we decline to exercise our discretion to make an exception to the mootness doctrine in this case.

{5} For these reasons, and those in the calendar notice, we dismiss this appeal as moot.

{6} IT IS SO ORDERED.

M. MONICA ZAMORA, Judge

WE CONCUR:

MICHAEL E. VIGIL, Chief Judge

RODERICK T. KENNEDY, Judge