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NO. CAAP-23-0000242

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,
v.
D.B., Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CASE NO. 1PC041000667)

SUMMARY DISPOSITION ORDER

(By: Leonard, Acting Chief Judge, Hiraoka and Wadsworth, JJ.)

D.B. appeals from the "Order Denying Defendant's Application for Conditional Release" entered by the Circuit Court of the First Circuit on February 10, 2023.¹ We affirm.

D.B. was charged by complaint with Escape in the Second Degree on April 12, 2004. He was acquitted on the ground of physical or mental disease, disorder or defect excluding responsibility, and committed to the custody of the director of the state Department of Health. He moved for conditional release or discharge on September 21, 2022. The circuit court denied his motion. This appeal followed.

D.B. had the burden to prove, by a preponderance of the evidence, that he was free from mental illness and dangerous propensities, or that he may safely be released on the conditions

¹

The Honorable Christine E. Kuriyama presided.

applied for. Hawaii Revised Statutes (**HRS**) § 704-415(2) (2014); see State v. Miller, 84 Hawai'i 269, 275, 933 P.2d 606, 612 (1997). The circuit court decides whether the evidence establishes the requisite conditions for release. Id. at 279, 933 P.2d at 616. We review the evidence in the light most favorable to the State to determine if there was substantial evidence to support the circuit court's decision. Id. at 278-79, 933 P.2d at 615-16.

The circuit court reviewed reports submitted by Nikita **Hay**, Psy.D., Duke E. **Wagner**, Ph.D, and Martin **Blinder**, M.D. Dr. Hay's report was dated October 17, 2022. Her diagnosis was "Bipolar I Disorder, Most Recent Episode Manic, with Psychotic Features." She opined that D.B. "currently presents as a Moderate risk of harm to others, himself, and property. [Conditional Release] is not recommended at this time. If he were to be discharged into the community without services, his risk would likely significantly increase."

Dr. Wagner's report was dated November 5, 2022. He diagnosed D.B. with bipolar disorder with psychotic features; substance use disorder; and rule out personality disorder with Cluster B traits. He opined that D.B.'s risk of danger to self and others "would increase likely to a high level if [D.B.] is released into the community at this time. . . . [D.B.] gives no indication that he can safely be released into a less restrictive environment than Hawaii State Hospital at this time."

Dr. Blinder's report was dated December 8, 2022. He diagnosed D.B. with schizoaffective disorder, hypomanic, improving; substance dependency disorder, in institutional remission; and antisocial personality disorder. He noted that D.B. "remains psychotic and hypomanic." He recommended that D.B. "be granted conditional release. So long as he remains on his medications he constitutes a minimal threat to the community. ***Off medications - it's anybody's guess.***" (Bold italics added.) Two months after Dr. Blinder wrote his report, D.B. assaulted a fellow Hawai'i State Hospital patient, and had to be placed in

mechanical restraints. State v. D.B., 153 Hawai'i 524, 2024 WL 368422, at *2 (App. 2024). We note that D.B. frequently interrupted the hearing on his motion, even after the circuit court asked him to stop.

There was substantial evidence supporting the circuit court's denial of D.B.'s motion. The February 10, 2023 "Order Denying Defendant's Application for Conditional Release" is affirmed.

DATED: Honolulu, Hawai'i, March 15, 2024.

On the briefs:

Lars Robert Isaacson,
for Defendant-Appellant.

Loren J. Thomas,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.

/s/ Katherine G. Leonard
Acting Chief Judge

/s/ Keith K. Hiraoka
Associate Judge

/s/ Clyde J. Wadsworth
Associate Judge