



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-19-00653-CV

Jordan **CRANE**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 175th Judicial District Court, Bexar County, Texas
Trial Court No. 2002CR7712
Honorable Andrew Carruthers, Judge Presiding

Opinion by: Rebeca C. Martinez, Justice

Sitting: Rebeca C. Martinez, Justice
Irene Rios, Justice
Beth Watkins, Justice

Delivered and Filed: May 27, 2020

REVERSED AND RENDERED

Jordan Crane appeals the trial court's order modifying an order of outpatient treatment.¹ Crane challenges the legal and factual sufficiency of the evidence to support the trial court's order.² We reverse the trial court's order and order Crane's immediate release from involuntary confinement.

¹ We note "this appeal involves a civil matter." *Campbell v. State*, 85 S.W.3d 176, 180 (Tex. 2002).

² Crane also asserts he never waived his right to a jury trial; however, a supplemental clerk's record was filed after Crane filed his brief which contains a signed jury waiver. Accordingly, this issue is overruled.

BACKGROUND

In 2003, Crane, who was charged with aggravated assault with a deadly weapon, was found not guilty by reason of insanity and committed to the maximum security unit of Vernon State Hospital. In 2018, the trial court entered an order committing Crane to the Center for Health Care Services as an outpatient for a period not to exceed twelve months. After a hearing on September 12, 2019, the trial court modified the outpatient treatment order and ordered Crane committed to the Texas Department of State Health Services for inpatient treatment for a period not to exceed twelve months. Crane appeals.

APPLICABLE LAW

The offense with which Crane was found not guilty by reason of insanity occurred before September 1, 2005. Accordingly, former article 46.03 of the Texas Code of Criminal Procedure sets forth the procedure governing the trial court's hearing in the instant case.³ See *In re J.H.N.*, No. 11-18-00043-CV, 2019 WL 962595, at *1 n.1 (Tex. App.—Eastland Feb. 28, 2019, no pet.) (mem. op.); *In re L.A.T.*, No. 05-15-00043-CV, 2015 WL 4572510, at *1 (Tex. App.—Dallas July 30, 2015, no pet.) (mem. op.). Under former article 46.03, the trial court's hearing was required to “comply with those Mental Health Code provisions pertinent to *conducting* hearings.” *Campbell v. State*, 85 S.W.3d 176, 183 (Tex. 2002) (emphasis in original). Subsections (a), (e), and (g) of section 574.035 of the Texas Health and Safety Code have been held to be provisions applicable to conducting such hearings. See *In re J.H.N.*, 2019 WL 962595, at *3; *Martin v. State*, No. 14-14-00730-CV, 2015 WL 5634397, at *2 (Tex. App.—Houston [14th Dist.] Sept. 24, 2015, no pet.)

³ “The requirements for renewal of inpatient and outpatient treatment changed for all offenses committed after September 1, 2005.” *In re L.A.T.*, 2015 WL 4572510, at *1 n.1. (citing Act of May 27, 2005, 79th Leg., R.S., ch. 831, § 5, 2005 Tex. Gen. Laws 2841, 2853–54 (current version at TEX. CODE CRIM. PROC. art. 46C.261 (West Supp. 2014)) (court shall renew order if party who requested renewal establishes by clear and convincing evidence that mandatory supervision and treatment are appropriate)).

(mem. op.); *Harrison v. State*, 259 S.W.3d 314, 315 (Tex. App.—Beaumont 2008, no pet.). Additionally, the trial court was required to apply the versions of those subsections in effect at the time of Crane’s offense. *Harrison v. State*, 239 S.W.3d 368, 373 (Tex. App.—Beaumont 2007, no pet.).

At the time of Crane’s offense, subsections (a), (e), and (g) of section 574.035 provided:

(a) The judge may order a proposed patient to receive court-ordered extended inpatient mental health services only if the jury, or the judge if the right to a jury is waived, finds, from clear and convincing evidence, that:

- (1) the proposed patient is mentally ill;
- (2) as a result of that mental illness the proposed patient:
 - (A) is likely to cause serious harm to himself;
 - (B) is likely to cause serious harm to others; or
 - (C) is:

(i) suffering severe and abnormal mental, emotional, or physical distress;

(ii) experiencing substantial mental or physical deterioration of the proposed patient’s ability to function independently, which is exhibited by the proposed patient’s inability, except for reasons of indigence, to provide for the proposed patient’s basic needs, including food, clothing, health, or safety; and

(iii) unable to make a rational and informed decision as to whether or not to submit to treatment;

(3) the proposed patient’s condition is expected to continue for more than 90 days; and

(4) the proposed patient has received court-ordered inpatient mental health services under this subtitle or under Section 5, Article 46.02, Code of Criminal Procedure, for at least 60 consecutive days during the preceding 12 months.⁴

(e) To be clear and convincing under Subsection (a), the evidence must include expert testimony and evidence of a recent overt act or a continuing pattern of behavior that tends to confirm:

- (1) the likelihood of serious harm to the proposed patient or others; or
- (2) the proposed patient’s distress and the deterioration of the proposed patient’s ability to function.

(g) The court may not make its findings solely from the certificates of medical examination for mental illness but shall hear testimony. The court may not enter an order for extended mental health services unless appropriate findings are made

⁴ Subsection 574.035(a)(4) was not required to be shown in the underlying proceeding because Crane had already been subject to an order for extended mental health services. TEX. HEALTH & SAFETY CODE § 574.035(d) (this provision is the same as the version in effect at the time of Crane’s offense).

and are supported by testimony taken at the hearing. The testimony must include competent medical or psychiatric testimony.

Act of May 22, 1997, 75th Leg., R.S., ch. 744, § 6, 1997 Tex. Gen. Laws 2406, 2409.

STANDARD OF REVIEW

As previously noted, Crane challenges the legal and factual sufficiency of the evidence to support the trial court's order. Because section 574.035(a) requires the evidence to establish the applicable facts by clear and convincing evidence, the sufficiency of the evidence standards of review are also heightened. *See In re J.F.C.*, 96 S.W.3d 256, 265–66 (Tex. 2002); *House v. State*, 261 S.W.3d 244, 247 (Tex. App.—Houston [14th Dist.] 2008, no pet.). In conducting a legal sufficiency review when the burden of proof is clear and convincing evidence, the reviewing court must consider all the evidence in the light most favorable to the finding to determine whether a reasonable trier of fact could have formed a firm belief or conviction as to the truth of the allegations sought to be established. *In re J.F.C.*, 96 S.W.3d at 266; *House*, 261 S.W.3d at 247. In conducting a factual sufficiency review in this context, the evidence is factually insufficient “[i]f, in light of the entire record, the disputed evidence that a reasonable factfinder could not have credited in favor of the finding is so significant that a factfinder could not reasonably have formed a firm belief or conviction.” *In re J.F.C.*, 96 S.W.3d at 266.

EVIDENCE PRESENTED

The only witness, other than Crane, who testified at the hearing was Jeffrey Williams. Williams was a senior case manager with the Center for Health Care Services and was Crane's case manager under the trial court's 2018 order committing him for outpatient services. Because Crane was in jail from February 4, 2019, on a charge that was dropped just before the trial court's September 12, 2019 hearing, Williams had not met with Crane for seven months.

The clerk's record contains an order for certificate of medical examination for mental illness dated August 29, 2019. At the September 12, 2019 hearing, the trial court stated it was taking judicial notice of "the recommitment packet consisting of the February 18th, 2019 letter from Shawna Corley, Ph.D., and the Certificate of Medical Examination for Mental Illness dated 3 September 2019 prepared by Brian Skop, M.D." We note the appellate record does not contain either of those documents.

DISCUSSION

In his brief, Crane argues the evidence is insufficient to support the trial court's order because no "expert testimony" was presented as required by subsection (e) of section 574.035 and no "competent medical or psychiatric testimony" was presented as required by subsection (g) of section 574.035. Crane contends Williams was not qualified to provide the required testimony and had no personal knowledge about Crane's current mental health status. Crane also makes reference to Dr. Skop's certificate but asserts the certificate was not "testimony." The State responds Williams's testimony was "medically competent testimony" under subsection (g), but does not respond to Crane's subsection (e) argument.

Having reviewed the record as a whole, we hold the evidence was legally insufficient to satisfy the State's burden to show all the applicable requirements of section 574.035 by clear and convincing evidence. *See Martin*, 2015 WL 5634397, at *2 (noting applicable subsections include (a), (e), and (g)). Under subsection (e), the State was required to present "expert testimony" at the hearing to satisfy its clear and convincing burden under subsection (a). In addition, under subsection (g), the State was required to present "competent medical or psychiatric testimony" at the hearing. Accordingly, under the statutory provisions applicable at the time of Crane's offense, we hold the State was required to present the testimony of a licensed physician or psychiatrist at

the hearing to satisfy its burden.⁵ Because Williams was not a licensed physician or psychiatrist, the State failed to satisfy its burden. Crane's first issue is sustained.

CONCLUSION

The trial court's order is reversed and judgment is rendered ordering Crane's immediate release from involuntary confinement. *Cf. In re P.W.*, No. 02-16-00351-CV, 2016 WL 6677941, at *7 (Tex. App.—Fort Worth Nov. 10, 2016, no pet.) (mem. op.); TEX. HEALTH & SAFETY CODE ANN. § 574.033(b).

Rebeca C. Martinez, Justice

⁵ We note section 574.031 of the Texas Mental Health Code, which contains the general provisions applicable to extended commitment hearings, provides, “[t]he court may consider the testimony of a nonphysician mental health professional in addition to medical or psychiatric testimony.” TEX. HEALTH & SAFETY CODE § 574.031(f).