2018 IL App (1st) 163027-U
No. 1-16-3027

SECOND DIVISION
March 29, 2018

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 99 CR 19216
	)	
JOE HENRY MILLER,	)	
	)	The Honorable
Defendant-Appellant.	)	Jeffrey L. Warnick,
	)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Hyman and Mason concurred in the judgment.

ORDER

¶ 1 *Held:* Appeal dismissed as moot where defendant Miller received the civil commitment hearing that he requested and none of the exceptions to the mootness doctrine apply.

¶ 2 Defendant Joe Henry Miller appeals from the denial of his motion to reconsider the circuit court's determination that he is "not not guilty" of aggravated criminal sexual assault, or to grant a new discharge hearing, release him, or conduct a civil commitment hearing. Miller raises statutory and constitutional challenges to the provisions for handling criminal defendants found unfit to stand trial.

¶ 3 BACKGROUND

¶ 4 A detailed statement of facts is set forth in the prior Rule 23 order (Ill. S. Ct. R. 23 (eff. July 1, 2011)) remanding the cause to the circuit court for further proceedings in accordance with section 104-23(b) of the Code of Criminal Procedure of 1963 (725 ILCS 5/104-23(b) (West 2010)). *People v. Miller*, 2012 IL App (1st) 101389-U.

¶ 5 The record on appeal shows that Miller has a significant psychiatric history beginning in 1984, when he was admitted to Chicago-Read Mental Health Center pursuant to a civil petition for involuntary commitment and certificate. Miller had been arrested for criminal damage to property and battery on April 14, 1984.

¶ 6 In August 1999, Miller was charged by indictment with three counts of aggravated criminal sexual assault and two counts of aggravated battery involving the victim G.C., who was 30 years old at the time. While Miller was in Cook County jail for those charges (99 CR 19216), he was charged in another case (99 CR 22047) with aggravated battery of a peace officer, which allegedly occurred on September 5, 1999. On November 29, 1999, the circuit court entered a written order finding Miller unfit to stand trial and remanding him to the Department of Mental Health and Developmental Disabilities, now known as the Department of Human Services.

¶ 7 Subsequently, at various times, Miller was found unfit with no likelihood of becoming fit, or unfit with the likelihood of becoming fit within a year. Miller was also found fit to stand trial from late-2003 to mid-2004. However, following a fitness hearing in October 2005, the circuit court found Miller unfit to stand trial though he could be rendered fit within a year and remanded him to the Department of Human Services.

¶ 8 According to an agreed order entered on November 13, 2007, the matter came before the circuit court on Miller's motion for a discharge hearing pursuant to the finding in his other case

(99 CR 22047) that he was unfit to stand trial and would not be rendered fit within a year. The order stated that Miller was in the custody of the Department of Human Services pursuant to that "civil commitment." The order further stated that the State answered ready for the discharge hearing, but Miller filed a motion to dismiss the charges in this case (99 CR 19216) and withdrew his motion for a discharge hearing in the other case. The circuit court granted the motion to dismiss with leave to reinstate.

¶ 9 In November 2009, the State reinstated the charges in this case based on Miller's release by the Department of Human Services, and Miller subsequently moved to dismiss the indictment. On April 8, 2010, following a *fitness* hearing, the circuit court found Miller unfit though he could be rendered fit within a year, entered an order to that effect and remanded him to the Department of Human Services.

¶ 10 On appeal from the "denial of [his] motion for a discharge hearing on April 8, 2010," this court initially declined to consider Miller's contention that the circuit court's order was void because he was entitled to a *discharge* hearing, observing that the circuit court had conducted a *fitness* hearing and confined its ruling to that without entertaining Miller's argument at the *fitness* hearing that he should have a *discharge* hearing. *Miller*, 2012 IL App (1st) 101389-U, ¶¶ 19-20. We further noted that the written order entered on April 8, 2010, included no ruling about a discharge hearing and concluded we had no jurisdiction over the merits of such claim where it was not considered and ruled upon by the circuit court. *Id.* ¶¶ 21-22. Next, we disagreed with Miller's argument that the fitness hearing itself was void and unauthorized by section 104-23(b) (725 ILCS 5/104-23(b) (West 2010)). *Id.* ¶ 24. We reasoned that periodic fitness hearings are allowed because our supreme court in *People v. Lang*, 113 Ill. 2d 407, 444 (1986), held that the guarantee of fundamental fairness inherent in the due process clause "requires periodic review of

defendant's fitness status, so as to determine his fitness to stand trial, thereby ensuring that his speedy trial rights are not violated." *Id.* ¶ 24. We added that section 104-23(b) neither requires, nor prohibits subsequent fitness hearings. *Id.* However, we reversed the circuit court's finding that Miller would become fit to stand trial within a year because, among other things, the psychiatrist who testified at the fitness hearing could not determine within a reasonable degree of medical or psychiatric certainty that Miller was likely to attain fitness within a year. *Id.* ¶ 29. We remanded the cause to the circuit court for further proceedings in accordance with section 104-23(b), which we paraphrased as providing:

> "that if there is no substantial probability that defendant will become fit to stand trial within one year, the State *shall* request the court to (1) set the matter for a discharge hearing; (2) release defendant from custody and dismiss the charges against him with prejudice; or (3) remand defendant to the court having jurisdiction over the criminal matter for disposition pursuant to subparagraph (1) or (2) of this section. (Emphasis added.) 725 ILCS 5/104-23(b) (West 2010)." *Id.* ¶ 30.

¶ 11 Upon remand, the State requested a discharge hearing in accordance with section 104-23(b), but Miller challenged the statutory authority for reinstatement of the charges in this case through various motions that were denied. In October 2013, the circuit court ordered a discharge hearing pursuant to the State's request, and on July 9, 2015, following a series of continuances, including a change of defense counsel, Miller answered ready to set the matter for a discharge hearing.

¶ 12 On June 30, 2016, following a two-day discharge hearing, the circuit court concluded, in pertinent part:

> "[A]fter consideration of all of the evidence that I heard in this trial and this hearing today and yesterday, after due consideration with, hopefully, some commonsense of the reasonable inferences to be drawn from this, I must, respectfully, find that Mr. Joe Henry Miller is not not guilty at this time.
>
> Accordingly, based upon a finding of a not not guilty, as this Court understands the law, he should be then remanded to the Department of Human Services for a further and extended period, and under the Class X offense that has been found here, would be for an extension of a two-year period, as it's found. I'm prepared to enter an order on that effect."

Thereafter, the circuit court entered a written order finding that the hearing did not result in an acquittal of the charges against Miller and remanding him to the custody of the Department of Human Services for further treatment for an extended period of up to two years.

¶ 13 On July 29, 2016, Miller filed a motion to reconsider the finding that he was "not not guilty" and grant him an acquittal, new discharge hearing, release, or a "civil commitment" hearing under section 104-23(b)(3). In support of his request for "Reconsideration / Acquittal / New Hearing," Miller stated that he was denied due process and equal protection of the law, the State failed to prove each material allegation of the offense beyond a reasonable doubt, and he did not receive a fair and impartial discharge hearing as guaranteed by the Illinois and United States Constitutions. In support of his request for release unless a proper civil commitment hearing is conducted, Miller stated that the imposition of the extended treatment period "[u]pon completion of the discharge hearing and the [circuit court's] finding of Not Not Guilty," amounted to a violation of due process and the prohibition against cruel and unusual punishment. Miller relied on *Jackson v. Indiana*, 406 U.S. 715 (1972), where the United States Supreme

Court held that Indiana's indefinite commitment of Jackson solely based on his incapacity to proceed to trial was a violation of his due process rights. Miller stated that he was held beyond a reasonable time without likelihood he will ever be made fit and there was no progress toward the goal of fitness that justified his continued commitment without a traditional civil commitment hearing under section 104-23(b)(3).

¶ 14 During the November 2, 2016 hearing on Miller's comprehensive motion to reconsider, the State informed the circuit court that a *commitment* hearing pursuant to section 104-25(g)(2) of the Code of Criminal Procedure of 1963 (725 ILCS 5/104-25(g)(2) (West 2014)) should be held "to determine if the defendant should be committed to the Department of Human Services or constitutes a serious threat to public safety." The circuit court agreed with the State and ordered that a *commitment* hearing be conducted. In doing so, the circuit court denied Miller's request for his release, noting that "the State does intend to file necessary papers and petitions to proceed with the *civil commitment* as provided by law." However, the circuit court granted Miller's motion, in part, based on the State's agreement that the extended two-year treatment period ordered by the circuit court was inappropriate under the circumstances.

¶ 15 Miller timely filed his notice of appeal on November 8, 2016.

¶ 16 While this appeal was pending, we allowed Miller to supplement the record on a appeal with the report of proceedings on March 10, 2017, where the circuit court held a commitment hearing pursuant to section 104-25(g)(2) and remanded Miller to the Department of Human Services for treatment, providing Miller "shall be treated in the same manner as a civilly committed patient for all purposes except for this original Court retains jurisdiction over him." We take judicial notice that Miller has appealed that determination in appeal number 1-17-0943, though his claims are unknown because no briefs have been filed.

¶ 17 ANALYSIS

¶ 18 In this court, Miller presents the following issues for review: (1) whether his 18-year confinement under "Illinois' unfit statutory scheme" is illegal because it greatly exceeds the time periods set forth in 725 ILCS 5/104-23 and 725 ILCS 5/104-25; (2) whether the circuit court's order confining him pending a hearing under 725 ILCS 5/104-25(g)(2) violates his due process rights under the fourteenth amendment because such hearing does not constitute "the customary civil commitment proceeding that would be required to commit any other citizen;" and (3) whether the trial court's order confining him pending a hearing under section 104-25(g)(2) violated his right to equal protection. He asks this court to reverse the judgment of the circuit court and remand the cause with instructions that he be released or civilly committed pursuant to the Mental Health and Developmental Disabilities Code (405 ILCS 5/1-100 *et seq.* (West 2012)).

¶ 19 As a threshold matter, we must consider whether the issues raised in this appeal are moot because the State asserts that the relief sought by Miller, namely that he be civilly committed, has already been granted. *In re Christopher K.*, 217 Ill. 2d 348, 358 (2005). In his reply brief, Miller argues that the State's assertion is patently wrong because he is entitled to commitment pursuant to the Mental Health and Developmental Disabilities Code. Mootness is purely a question of law, which is subject to *de novo* review. *In re Alfred H.H.*, 233 Ill. 2d 345, 350 (2009).

¶ 20 "The test for mootness is whether the issues involved in the trial court no longer exist because intervening events have rendered it impossible for the reviewing court to grant effectual relief to the complaining party." *In re Andrea F.*, 208 Ill. 2d 148, 156 (2003). Because the existence of an actual controversy is essential to the exercise of appellate jurisdiction, reviewing courts will generally not decide questions that are abstract, hypothetical, or moot. *In re James*

W., 2014 IL 114483, ¶ 18. As a reviewing court, we "can take judicial notice of events which, while not appearing in the record, disclose that an actual controversy no longer exists," rendering the issues before us moot. *In re Andrea F.*, 208 Ill. 2d at 156. The general rule against rendering advisory opinions extends to situations where an issue is rendered moot by facts that occur while the matter is pending review on appeal. *Benz v. Department of Children and Family Services*, 2015 IL App (1st) 130414, ¶ 31.

¶ 21 Here, we agree with the State that Miller's claims on appeal are moot because after he filed his notice of appeal in this case, a commitment hearing was held on March 10, 2017, pursuant to section 104-25(g)(2), and the circuit court remanded Miller to the Department of Human Services for treatment, providing Miller "shall be treated in the same manner as a civilly committed patient for all purposes except for this original Court retains jurisdiction over him." Under these circumstances, it would be impossible for this court to grant Miller effectual relief. *Benz*, 2015 IL App (1st) 130414, ¶ 32. Although we recognize that Miller requests that he be civilly committed pursuant to the Mental Health and Developmental Disabilities Code, we also note his concession that "to the extent that this Court has previously held that commitment under section 104-25(g)(2) constitutes a civil commitment and does not violate *Jackson v. Indiana*, [Miller] asks this Court to reconsider those rulings." *Jackson* also does not support an equal protection challenge against section 104-25(g)(2). *People v. Olsson*, 2014 IL App (2d) 131217, ¶ 17.

¶ 22 Nevertheless, our supreme court has recognized the following exceptions to the mootness doctrine: (1) the public interest exception; (2) the capable-of-repetition-yet-avoiding-review exception; and (3) the collateral consequences exception. *In re Laura H.*, 404 Ill. App. 3d 286, 289 (2010). We conclude that none of these exceptions apply.

¶ 23 The public interest exception permits review of an otherwise moot appeal when: (1) the issue is of public nature; (2) an authoritative determination is required for the future guidance of public officers; and (3) there is a likelihood of future occurrences. *In re Andrew B.*, 237 Ill. 2d 340, 347 (2010). The exception must be construed narrowly and established by a clear showing of each aforementioned criterion. *Id.*

¶ 24 Here, although Miller raised constitutional issues of a public nature regarding the procedural requirements for civil commitment of individuals found "not not guilty" (see *In re Lance H.*, 2014 IL 114899, ¶ 14), we note the caselaw determining that the Mental Health and Developmental Disabilities Code is not applicable to the hearing pursuant to section 104-25(g)(2). See *People v. Houston*, 407 Ill. App. 3d 1052, 1056 (2011) ("under the plain language of section 104-25(g)(2), the provisions of the Mental Health Code take effect only *after* the court has found that the defendant is subject to involuntary admission or constitutes a serious threat to the public safety"). Under these circumstances, Miller cannot satisfy the second criterion of the public interest exception and we need not address the other two criteria.

¶ 25 As for the capable-of-repetition-yet-avoiding-review exception, it has two elements. *In re Alfred H.H.*, 233 Ill. 2d 345, 358 (2009). First, the challenged action must be of too short a time to be fully litigated before its cessation and second, there must be a reasonable expectation that " 'the same complaining party would be subjected to the same action again.' " *Id.* (quoting *In re Barbara H.*, 183 Ill. 2d 482, 491 (1998)). Here, Miller makes no assertion that he would be subject to another commitment hearing, and we will not speculate on his circumstances. *Id.* at 359 (this element measures whether there is a reasonable expectation that respondent will *personally* be subject to the same action again); see *In re David M.*, 2013 IL App (4th) 121004, ¶ 20 (respondent's argument is inadequate because he failed to state any reason why an exception

to the mootness doctrine applies "to the facts and circumstances of *this particular case*"). Because both elements are required, the capable-of-repetition-yet-avoiding-review exception does not apply.

¶ 26 The collateral consequences exception to the mootness doctrine applies in circumstances "where the respondent could be plagued in the future by the adjudication at issue." *In re James H.*, 405 Ill. App. 3d 897, 902 (2010). However, where as here, Miller had previous involuntary commitments, collateral consequences would have already attached and are not solely attributable to the commitment hearing ordered by the circuit court. *Id.* at 903; *In re Alfred H.H.*, 233 Ill. 2d at 363. Under these circumstances, the collateral consequences exception does not apply. *Id.* Because we have concluded that none of the exceptions to the mootness doctrine apply to the instant case, Miller's appeal is moot.

¶ 27 CONCLUSION

¶ 28 Accordingly, we dismiss Miller's appeal as moot without prejudice to his ability to raise arguments regarding differences between commitment under section 104-25(g)(2) and under the Mental Health and Developmental Disabilities Code in any later appeal from the commitment order.

¶ 29 Dismissed.