

IN THE SUPREME COURT OF MISSISSIPPI

CLARK DAVID BRUMFIELD

APPELLANT

VS.

CASE NO. 2009-TS-00579

STATE OF MISSISSIPPI

APPELLEE

**APPEAL FROM THE CIRCUIT COURT
OF WALTHALL COUNTY, MISSISSIPPI**

BRIEF FOR APPELLANT

(Oral Argument Not Requested)

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons or entites have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Clark David Brumfield – appellant.
2. Kay Hardage – attorney for appellant.
3. Mississippi Department of Mental Health.
4. Gene W. Rowzee, Jr. - attorney for Mississippi Department of Mental Health.
5. Dewitt Bates, Jr. – District Attorney, Walthall County, Mississippi.
6. Honorable David H. Strong, Jr. – Circuit Court Judge.
7. Honorable Jim Hood – Attorney General.

Respectfully submitted,



KAY HARDAGE
Attorney for Appellant

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STATEMENT OF THE ISSUES

I. Whether the lower court erred in ordering that Mr. Brumfield should continue to be held for treatment at Mississippi State Hospital in the absence of a finding that he is a danger to himself or others.

II. Whether Mr. Brumfield, an insanity acquittee in the lower court, may be held indefinitely at Mississippi State Hospital for treatment, when his treating psychiatrist testified that he is not a danger to himself or others.

STATEMENT OF THE CASE - PROCEEDINGS BELOW

On February 5, 2004, Appellant, Clark David Brumfield, was found not guilty by reason of insanity by a jury of his peers on a charge of arson in the Circuit Court of Walthall County, Mississippi. The jury also found that Mr. Brumfield was not restored to his reason, was still a danger to the community and should be committed to the Mississippi State Hospital at Whitfield, Mississippi, until further order of the court.

Mr. Brumfield was transported to the Mississippi State Hospital and treated on the Forensic Unit. He made good progress and was transferred to another building after approximately two years. Mr. Brumfield continued to be stable, worked successfully on the grounds crew and was allowed to go to his mother's home on several passes. The treatment team at Mississippi State Hospital felt that he had made maximum improvement and on November 1, 2007, the Mississippi Department of Mental Health filed a Petition for Conditional Release of the Mr. Brumfield in the lower court.

On February 20, 2008, the District Attorney of Walthall County, Mississippi, filed an Objection to Petition for Conditional Release. Thereafter, Mr. Brumfield retained his current counsel who, after trying to reach an agreement with the District Attorney, eventually noticed the Petition for Conditional Release for hearing. On February 11, 2009, a hearing was held in Walthall County Circuit Court on the Petition for Conditional Release.

At the hearing, Dr. Sandra Holley, Mr. Brumfield's treating psychiatrist, testified that he was stable on medication, that he was not a danger to himself or others, and that he should be released to live with his mother on the condition that he regularly attend the local mental health center and take his medications. She recommended that his medications be administered intravenously to assure medication compliance. (T., p. 7, l. 16-20).

Dr. Holly further testified that she had been treating Mr. Brumfield since January, 2007. (T. p. 5, l. 11-12). He has a diagnosis of psychosis, not otherwise specified. (T., p. 6, l. 1-2). His only medication is Risperdal. (T., p. 6, l. 19). She testified that approximately one year after she began treating Mr. Brumfield, she felt he was ready for discharge and presented his case to the Discharge Advisory Committee, which concurred with her opinion. (T., p. 7, l. 7-9).

Dr. Holly testified that Mr. Brumfield had been allowed to go home to visit his mother on several passes since being under her care. (T., p. 8, l. 10-12). Some of the passes were as long as two weeks. (T., p. 8, l. 17). There were no problems reported to her regarding Mr. Brumfield's behavior on his passes. (T. p. 8, l. 19). Further, on at least one occasion, Mr. Brumfield was allowed to ride a bus to his mother's home on pass and this was accomplished without incident. (T., p. 8, l. 24-26).

Dr. Holly testified that Mr. Brumfield was not presently a danger to himself, to others or to the community. (T., p. 9, l. 5-10). Mr. Brumfield's mother testified that she was willing for him to live with her and that she would help him get to his mental health appointments and would watch out for changes in his mental health. (T., p. 16, l. 10, 22-24). She further testified that there had never been any trouble from Mr. Brumfield while he was visiting her home on passes from the State Hospital. (T., p. 17, l. 11).

There was absolutely no testimony or evidence at the hearing which would indicate that Mr. Brumfield continues to be a danger to himself or others.

The Circuit Judge took the matter under advisement and on March 10, 2009, issued an Order denying the Petition for Conditional Release and ordering that Mr. Brumfield be retained for additional treatment at Mississippi State Hospital. Significantly, the Order did not make a finding that Mr. Brumfield remained a danger to himself or to others.

SUMMARY OF THE ARGUMENT

The Order should be reversed and rendered for Defendant because it is facially deficient. The Order does not find that Mr. Brumfield is a danger to himself or others and does not include any findings of fact upon which such a conclusion could be based. Furthermore, there was absolutely no testimony or evidence at the hearing which would indicate that Mr. Brumfield continues to be a danger to himself or others. Mr. Brumfield should be released from Mississippi State Hospital on the condition that he regularly attend the local mental health center, take his prescribed medication and follow other medical recommendations, if any.

ARGUMENT

An insanity acquittee is entitled to release from a mental institution to which he has been committed upon recovering his sanity or when he is no longer dangerous. "The purpose of commitment following an insanity acquittal, like that of civil commitment, is to treat the individual's mental illness and protect him and society from his potential dangerousness. The committed aquittee is entitled to release when he has recovered his sanity or is no longer dangerous." *Jones v. United States*, 463 U.S. 354, 77 L.Ed.2d 694, 103 S.Ct. 3043(1983).

Clark David Brumfield was committed to the Mississippi State Hospital pursuant to Miss. Code Ann. § 99-13-7 after a jury found him not guilty of a charge of arson by reason of insanity in February, 2004. The Mississippi Department of Mental Health filed a Petition for Conditional Release of Appellant in November, 2007. The District Attorney of Walthall County, Mississippi filed an Objection to the Petition and a hearing was subsequently held on the Petition on February 11, 2009.

Only two witnesses testified at the hearing. Mr. Brumfield's treating psychiatrist, Dr. Sandra Holly, testified that he was stable, was compliant with his medication, and that he was ready to be released from the State Hospital, under the condition that he report regularly to his local mental health center, take his medication, and follow any other recommendations of the mental health center. Mr. Brumfield's mother testified that she was willing for him to live in her home and that she would help him get to his mental health appointments.

The statute under which Mr. Brumfield was committed to Mississippi State Hospital, Miss. Code Ann. § 99-13-7, seems to mandate indefinite confinement because there is no provision for periodic review of such a commitment. There is no Mississippi case law on point, however, the Mississippi Attorney General has rendered an opinion on this issue. Citing *Jones*,

supra, the opinion states that “the Supreme Court has stated that a person acquitted of an offense by reason of insanity is entitled to release from a mental institution upon recovering his sanity or when he is no longer dangerous.” The opinion continues, “It is our opinion . . . that the circuit court committing a person to a mental institution pursuant to Section 99-13-7 retains jurisdiction to authorize release of such person. This may be done by motion of the hospital or by the committed person. It is also our opinion that release of a patient may be subject to any conditions that are therapeutic in nature, such as continued medication or periodic psychiatric reviews.” 1993 WL 425321 (Miss. A.G.).

Mr. Brumfield has properly petitioned the Circuit Court of Walthall County, Mississippi for his conditional release. A hearing was held at which his treating psychiatrist testified that he is not a danger to himself or to the community. The only proper legal outcome is an order allowing Mr. Brumfield’s conditional release from the State Hospital.

CONCLUSION

The Order appealed from does not make a finding that Mr. Brumfield is dangerous to himself or to others. Nor was there any shred of testimony or evidence upon which the Circuit Judge might have made such a finding. The Order is facially deficient, is against the weight of the evidence and should be reversed and rendered in favor of Mr. Brumfield.

Respectfully submitted on this the 22 day of July, 2009.

CLARK DAVID BRUMFIELD

BY:


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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of this Brief of Appellant by placing a copy of same in the United States Mail, postage prepaid, addressed to the following:

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This the 22nd day of July, 2009.


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