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SUMMARY
April 20, 2023

2023COA34

No. 21CA0033, *People v. Licata* — Criminal Law — Protection Order Against Defendant — Mandatory Protection Order; Trials Verdicts — Not Guilty by Reason of Insanity

As a matter of first impression, a division of the court of appeals considers whether a criminal mandatory protection order (MPO), issued under section 18-1-1001, C.R.S. 2022, may be extended following a verdict of not guilty by reason of insanity (NGRI). The division answers that question no and holds that because Colorado case law deems an NGRI verdict an acquittal that constitutes a final disposition of the action, the plain language of section 18-1-1001(1) and (8)(b) requires termination of the MPO upon an NGRI verdict. Accordingly, the order is reversed, and the case is remanded for the court to vacate the MPO.

Court of Appeals No. 21CA0033
City and County of Broomfield District Court No. 19CR30
Honorable Donald S. Quick, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Nicholas James Licata,

Defendant-Appellant.

ORDER REVERSED AND CASE
REMANDED WITH DIRECTIONS

Division II
Opinion by JUDGE FREYRE
Furman and Welling, JJ., concur

Announced April 20, 2023

Philip J. Weiser, Attorney General, Emmy A. Langley, Senior Assistant Attorney General, Denver, Colorado, for Plaintiff-Appellee

The Datz Law Firm, Christopher Estoll, Broomfield, Colorado, for Defendant-Appellant

¶ 1 Defendant, Nicholas James Licata, appeals the district court’s order extending the mandatory protection order (MPO) entered against him following a verdict of not guilty by reason of insanity (NGRI). As a matter of first impression, we must decide whether an MPO issued under section 18-1-1001(1), C.R.S. 2022, must terminate following an NGRI verdict. Because Colorado case law deems an NGRI verdict an acquittal constituting a final disposition of the action, we conclude that, under the plain language of section 18-1-1001(1) and (8)(b), the MPO terminates upon an NGRI verdict. Accordingly, we reverse the court’s order and remand the case for the court to vacate the MPO.

I. Background

¶ 2 In the early hours of January 18, 2019, Licata woke his long-term partner, A.B., saying, “You are going to die now” as he choked her in their shared bed. A.B. struggled to get away from him and fell to the floor. Licata followed A.B., smothered her with a pillow, and told her he was going to kill her. The couple’s child, N.B., was present and witnessed Licata’s assault. N.B. screamed, “Stop it, stop it, you are scaring me.” Licata then dug his fingers into A.B.’s

eye sockets, and when he noticed her injuries, he said, “Look at your face, now, I really have to kill you.”

¶ 3 Eventually, A.B. escaped with N.B., fled to a neighbor’s house, and called Licata’s parents for help. When Licata’s father arrived, Licata sliced and stabbed him to death with a samurai sword.

¶ 4 The State charged Licata with first degree murder (father), second degree assault (A.B.), and child abuse (N.B.). The court entered an MPO under section 18-1-1001, naming A.B. and N.B. as the protected parties.

¶ 5 The case proceeded to a bench trial at which the court found Licata NGRI. The court committed Licata to “the custody of the Department of Human Services until such time as he is found eligible for release.” It also entered an order extending the MPO for ninety-nine years.

¶ 6 Licata’s counsel believed the MPO extension was a mistake, so he filed a motion to clarify and confirm the dismissal of the MPO based on the fact that an NGRI verdict constitutes an acquittal. The prosecution opposed the motion. While it agreed that NGRI verdicts constitute acquittals under existing Colorado law, it nevertheless argued that the law failed to “appreciate and account

for the circumstance at hand.” The prosecution further argued that based on the particular circumstances of this case, Licata remained a danger to A.B., N.B., and others.

¶ 7 The court held a nonevidentiary hearing, with both parties reiterating their arguments. It then issued a thorough written order extending the MPO, in which it found that (1) MPOs do not automatically terminate with an NGRI verdict because section 18-1-1001 contains no NGRI language; (2) the statutory intent of section 18-1-1001 is to provide protection for victims and witnesses during the pendency of a criminal matter; (3) the domestic court’s refusal to enter a protection order (based on a finding of no imminent threat while committed) left Licata free to contact A.B. and N.B.; and (4) it had inherent authority to maintain the protection order, citing *People v. McGlotten*, 134 P.3d 487, 489 (Colo. App. 2005), to effectuate the statute’s purpose of protecting victims and witnesses.

II. The Effect of an NGRI Verdict on an MPO

¶ 8 Licata contends that the court misapplied the MPO statute and controlling case law in extending the MPO. We agree.

A. Standard of Review

¶ 9 The district court’s determinations that “no final disposition of the action” occurred under section 18-1-1001 and that the statute granted it inherent authority to extend the MPO present issues of statutory interpretation that we review de novo. *People v. Cali*, 2020 CO 20, ¶ 14. When interpreting a statute, our task is to determine and give effect to the legislature’s intent by first examining the plain and ordinary meaning of the statutory language. *People v. Lee*, 2020 CO 81, ¶ 11. This requires us to “read the words of a statute in context” and “analyze the whole statute in order to provide consistent, harmonious, and logical effect to all its parts.” *People v. Poage*, 272 P.3d 1113, 1116 (Colo. App. 2011). The primary goal in reviewing a statute is to ascertain and give effect to the legislature’s intent. *Lee*, ¶ 6. If a statute is clear and unambiguous, we do not need to resort to other aids of statutory construction. *Cali*, ¶ 18.

¶ 10 As relevant here, section 18-1-1001(1) provides as follows:

There is created a mandatory protection order against any person charged with a criminal violation of any of the provisions of this title 18, which order remains in effect from the time that the person is advised of

the person's rights at arraignment or the person's first appearance before the court and informed of such order until final disposition of the action.

Section 18-1-1001(8)(b) provides:

“Until final disposition of the action” means until the case is dismissed, until the defendant is acquitted, or until the defendant completes his or her sentence. Any defendant sentenced to probation is deemed to have completed his or her sentence upon discharge from probation. A defendant sentenced to incarceration is deemed to have completed his or her sentence upon release from incarceration and discharge from parole supervision.

B. Analysis

¶ 11 We begin with the statutory language and conclude that it is unambiguous. By its plain language, section 18-1-1001(1) extends the effect of an MPO until final disposition of the action. Section 18-1-1001(8)(b) then provides three circumstances constituting a final disposition of an action: (1) when the case is dismissed; (2) when the defendant is acquitted; and (3) when a defendant's sentence is completed. The parties dispute the meaning of acquittal. Licata argues that well-settled Colorado law establishes that an NGRI verdict constitutes an acquittal ending the criminal

case. *See People v. Laeke*, 2012 CO 13, ¶ 18 (NGRI operates as an acquittal); *People v. Riggs*, 87 P.3d 109, 110 (Colo. 2004) (NGRI is an acquittal); *People v. Chavez*, 629 P.2d 1040, 1050 (Colo. 1981) (same); *People v. Torrez*, 2012 COA 51, ¶ 41 (“[O]nce the Denver jury returned the NGRI verdict on defendant’s murder charges, defendant was acquitted, and the Denver criminal proceedings ended.”), *aff’d in part and rev’d in part on other grounds*, 2017 CO 91, *overruled on other grounds sub nom.*, *Russell v. People*, 2020 CO 37.

¶ 12 The People argue that an NGRI verdict is different because the court retains jurisdiction over the defendant for the purposes of treatment and that continued jurisdiction provides the court with inherent authority to extend the MPO. We reject the People’s argument for three reasons. First, the plain language of section 18-1-1001 makes no distinction between an acquittal resulting from an NGRI verdict and one resulting from a not guilty verdict, and we may not add language to the statute. *See Turbyne v. People*, 151 P.3d 563, 567 (Colo. 2007). Had the General Assembly intended to differentiate between these verdicts, it could have done so. *See*

Rutter v. People, 2015 CO 71, ¶ 23. Moreover, no Colorado case supports this argument.

¶ 13 Second, “[i]nsanity at the time of the commission of the offense is not a mitigating factor, but is a complete defense to a criminal charge.” *People v. Galves*, 955 P.2d 582, 583 (Colo. App. 1997); *see also Laeke*, ¶ 18 (“[A] judgment of NGRI does not constitute a conviction; rather, it operates as an acquittal of the charged offenses.”); *People v. Hill*, 934 P.2d 821, 829-30 (Colo. 1997) (NGRI stands on the same footing as affirmative defenses “such as self-defense or alibi” (quoting *People ex rel. Juhan v. Dist. Ct.*, 165 Colo. 253, 259, 439 P.2d 741, 745 (1968))). Thus, a verdict of NGRI is “an adjudication on the merits which absolves the defendant of criminal responsibility forever.” *Galves*, 955 P.2d at 583. Such a verdict constitutes “a final judgment which ends the particular action in which it is entered,” and “as is the case when a defendant is found guilty and sentenced, the trial court, with specified exceptions, loses jurisdiction over the [criminal] proceeding upon entry of its order of commitment.” *Id.*

¶ 14 We are not persuaded otherwise by the People’s assertion that *Laeke*’s use of the language “operates as an acquittal” changes the

meaning or effect of the word “acquittal.” *See Laeke*, ¶¶ 2, 18.

They cite no authority, and we are aware of none to support this argument. In our view, such language shows the opposite and reflects the General Assembly’s intent that despite the different treatment of a defendant after a not guilty and an NGRI verdict, the effect of the verdicts is the same and concludes the criminal case.

¶ 15 Third, an NGRI verdict requires the court to commit the defendant to the Department of Human Services under section 16-8-105.5, C.R.S. 2022. Such commitment is not a criminal sentence for a conviction. *Galves*, 955 P.2d at 583.

¶ 16 We acknowledge that the committing court retains some statutory authority over a defendant following a verdict of NGRI. It may adjudicate matters concerning the defendant’s conditional or unconditional release, recommitment, care, and treatment. *See id.* at 583-84; *People v. Gilliland*, 769 P.2d 477, 481-83 (Colo. 1989). But that authority flows from title 16, not title 18, and title 16 contains no language authorizing a court to extend an MPO from the criminal case as part of the commitment. *See* §§ 16-8-101 to -122, C.R.S. 2022; *see also Jacobs v. Carmel*, 869 P.2d 211, 214 (Colo. 1994) (noting that the committing court “has subject matter

jurisdiction under section 16-8-115[, C.R.S. 2022], to hear and determine questions regarding the unconditional or conditional release of a person committed after a finding of not guilty by reason of insanity or not guilty by reason of impaired mental condition”).

As the district court noted, MPOs issued under section 18-1-1001(1) are intended to protect victims and witnesses and therefore are unrelated to a defendant’s care and treatment during commitment. Even if limiting contact with the victims is viewed as necessary for Licata’s treatment, “decisions relating to the day-to-day treatment of committed defendants are best left to those responsible for such treatment,” rather than the committing court. *Gilliland*, 769 P.2d at 483. Thus, the committing court’s authority to hear and rule on treatment decisions stems from title 16, not section 18-1-1001(1).

¶ 17 We note that the victims may seek a civil protection order against Licata under section 13-14-105(1)(b), (c), and (i), C.R.S. 2022, if Licata attempts to contact them outside his treatment protocols. We acknowledge that this procedure is more burdensome on the victims than a simple extension of the MPO. And it is certainly within the General Assembly’s authority to

amend title 16 or title 18 to provide for the continuation of an MPO following an NGRI verdict, but we may not usurp that lawmaking prerogative by adding an exception to the MPO statute that is not there. *See Turbyne*, 151 P.3d at 567. Accordingly, we reverse the district court's order and remand the case for the court to vacate the MPO.

III. Disposition

¶ 18 The order is reversed, and the case is remanded for the court to vacate the MPO.

JUDGE FURMAN and JUDGE WELLING concur.