

# RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0959-20  
A-1319-20  
A-1321-20  
A-1351-20  
A-1353-20  
A-1371-20

IN THE MATTER OF THE  
CIVIL COMMITMENT OF T.G.

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IN THE MATTER OF THE  
CIVIL COMMITMENT OF T.D.

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IN THE MATTER OF THE  
CIVIL COMMITMENT OF S.G.

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IN THE MATTER OF THE  
CIVIL COMMITMENT OF A.O.

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IN THE MATTER OF THE  
CIVIL COMMITMENT OF C.L.

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IN THE MATTER OF THE CIVIL  
COMMITMENT OF H.H. and L.B.

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Argued October 31, 2022 – Decided December 19, 2022

Before Judges Whipple, Smith and Marczyk.

On appeal from the Superior Court of New Jersey, Law Division, Essex, Mercer and Cumberland Counties, Docket Nos. ESCC1879-20, ESCC1880-20, and ESCC2071-20; MECC1059-20 and MECC1155-20; CUCC0318-20 and CUCC0320-20.

Shannon M. Dolan, Assistant Deputy Public Defender, argued the cause for appellants T.G., T.D., S.G., A.O., C.L., H.H., and L.B. (Joseph E. Krakora, Public Defender, attorney; Cynthia A. Seda-Schreiber, Deputy Public Defender, Shannon M. Dolan, and Christina Salabert, Assistant Deputy Public Defender, on the briefs).

Kevin Harris, Assistant County Counsel, argued the cause for respondent Essex County Adjuster in A-0959-20, A-1319-20 and A-1351-20 (Jerome St. John, Essex County Counsel, attorneys; Thomas M. Bachman, Assistant County Counsel, of counsel; Sylvia Hall, Assistant County Counsel, on the brief).

Michael A. Amantia, Assistant County Counsel, argued the cause for respondent Mercer County Adjuster in A-1321-20 and A-1353-20 (Paul R. Adezio, Mercer County Counsel, attorney; Suzette Price, Assistant County Counsel, on the brief).

Francis X. Baker, Deputy Attorney General, argued the cause for amicus curiae the New Jersey Department of Health (Matthew J. Platkin, Attorney General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel; Francis X. Baker, on the brief).

## PER CURIAM

These six consolidated appeals involve seven individual appellants who were scheduled for early release from prison as a result of the adoption of the Compassionate Release Program (CRP), N.J.S.A. 30:4-123.100 to -123.103, in November 2020, in response to the COVID-19 emergency. Under the CRP, release dates for certain inmates were accelerated. All appellants were subject to temporary orders of commitment (TOC) requiring placement at the Ann Klein Forensic Center (AKFC) upon their release. They claim their due process rights were violated because of a delay in transfer from prison to AKFC and in receiving a hearing after their confinement there. The appellants do not otherwise challenge the merits, thus we have limited our discussion of their mental health diagnoses. We affirm in part and reverse in part for the reasons that follow.

At the outset, we consider the status of the COVID-19 emergency during the dates in question and attempt to contextualize the state of the world during the timeline of these commitments. While, at present, the virus is still infecting people, the COVID-19 circumstances we face now are quite different from those we faced in 2020. In December 2019, the virus emerged in Wuhan, China, and the previously unknown and dangerous strain of the respiratory

virus began to spread around the world at a rapid rate. Within weeks, the World Health Organization (WHO) declared the virus to be a Public Health Emergency of International Concern. In February 2020, the United States Center for Disease Control and Prevention (CDC) confirmed the first American had died. By March 2020, WHO had declared a global pandemic, and the United States had declared a state of emergency. Although vaccines were being developed rapidly, it would be nearly one year before they were authorized and widely distributed. Unprecedented measures were put in place in our state that radically restricted travel, work, and school; all aspects of life were altered. According to the CDC, COVID-19 was the third leading cause of death in the United States in 2020, taking the lives of about 375,000 people that year. Farida B. Ahmad et al., Provisional Mortality Data—United States, 2020, Morbidity and Mortality Weekly Report, Centers for Disease Control and Prevention (Apr. 9, 2021), <https://www.cdc.gov/mmwr/volumes/70/wr/mm7014e1.htm>.

AKFC is a 200-bed psychiatric facility in Trenton designated by the Department of Health (DOH) to admit all categories of persons criminally charged or convicted and civilly committed. On March 17 and 27, 2020, due to the COVID-19 pandemic, the New Jersey Supreme Court issued orders

which in part adjourned all initial civil commitment hearings scheduled for March 17 through April 26, 2020. On April 24, 2020, the Supreme Court issued a new order stating such adjournments could still be requested based on the particular circumstances of a case.

During the ensuing weeks and months, it became apparent that people living in institutions and other group settings were particularly vulnerable to COVID-19. On October 22, 2020, the DOH issued COVID-19 recommendations for patients in post-acute care facilities. In the event of an outbreak in one of these facilities, the DOH recommended that "[n]ew admissions should stop until control measures are effectively instituted."

As a result, COVID-19 substantially impacted admission and patient movement not only in AKFC, but also throughout the entire psychiatric acute care system. AKFC's admissions unit was on quarantine status due to COVID-19 from October 23 to November 6, 2020; November 10 to November 24, 2020; and December 7 to December 21, 2020. Other units at the center were on quarantine status for various dates in the same time period.

During these times in quarantine, AKFC was unable to admit any new patients in order to protect the health and safety of the staff and patients. In addition, newly admitted patients were transferred out of the admissions unit at

a slower rate than normal due to the need to observe them for fourteen days for signs of COVID-19. On January 6, 2021, AKFC adopted COVID-19 admissions procedures that included testing and, if necessary, quarantine.

In response to COVID-19 concerns, the Legislature adopted the CRP, effective November 4, 2020. The CRP accelerated the release of incarcerated individuals during the COVID emergency by awarding public health emergency credits. The intent of the law was stated as follows:

The COVID-19 death rates of inmates in New Jersey is the highest in the country. Inmates in this State have been afflicted at a particularly alarming rate due to the inability to quarantine or practice social distancing. The provisions of this amended bill would expedite the release of certain inmates and juveniles who are approaching the end of their sentences to reduce the risk of harm to inmates, juveniles, and facility staff, while protecting the public safety.

[Assemb. Budget Comm. Statement to S. 2519 (Sept. 22, 2020).]

An inmate scheduled to be released from custody within 365 days who was serving a sentence or receiving jail credits for a sentence was eligible to receive public health emergency credits. N.J.S.A. 30:4-123.100(b)(1)-(2). The credits accrued at a rate of 122 days for each month, or a portion thereof, served during the declared emergency, with a maximum of 244 days. N.J.S.A.

30:4-123.100(c). Against this backdrop, we examine appellants' civil commitments.

T.D.

T.D. was incarcerated at Northern State Prison. As a result of the credits awarded under the CRP, the end of his prison sentence was accelerated to November 4, 2020. On October 26, 2020, the court issued a TOC for T.D. to be placed at AKFC. As noted above, AKFC's admissions unit was under quarantine from October 23 to November 6, 2020. Thus, T.D. was admitted to AKFC on November 9, 2020.

At the November 12, 2020 hearing, T.D. objected to Essex County's request for a one-week continuance and asked that he be dismissed from civil commitment. The County asked for the continuance to retain a witness to testify as to T.D.'s condition. The court granted the County's request and set a new hearing for November 19, 2020, because AKFC had not had the opportunity to examine T.D. and prepare a report.

At the November 19, 2020 hearing, a psychiatrist opined T.D. required continued confinement. The court agreed and signed a civil commitment order and scheduled another hearing for December 31, 2020.

At the December 31, 2020 hearing, T.D.'s treating psychiatrist testified that T.D. was transferred to a less restrictive unit within AKFC, although his diagnosis was unchanged. He still exhibited improper behavior and remained on psychotropic medication. The psychiatrist did not recommend that T.D. be released from AKFC because T.D. would be a danger to others. Instead, he recommended continued commitment with an eight-week review. The court issued an order continuing the civil commitment. As of September 2021, T.D. remained committed at AKFC.<sup>1</sup>

#### T.G.

T.G. was incarcerated in Northern State Prison. Under the CRP, his release was accelerated to November 4, 2020. On October 26, 2020, the court signed a TOC committing T.G. to AKFC with a hearing scheduled for November 12, 2020. T.G. was admitted to AKFC on November 10, 2020. Within twenty-four hours, T.G. developed a fever and was placed in the COVID-19 unit.

As with T.D., the court adjourned the November 12 hearing to November 19, 2020. Essex County requested the adjournment because T.G.

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<sup>1</sup> During oral argument the parties provided updates of the status of each appellant. T.D. and A.O. are under orders of conditional extension pending placement (CEPP) at Ancora. T.G., S.G., H.H., and L.B. have been discharged. C.L. was discharged and re-committed.

was admitted to AKFC only forty-eight hours earlier and, as a result, had not undergone a psychiatric examination.

At the November 19, 2020 hearing, T.G. asked to be discharged because the hearing was four days after the October 26 TOC had expired. The request was denied. The treating psychiatrist expressed concern that T.G. could be a danger to others if released due to his reluctance to take required medication.

The court held the County had not established that T.G. was a danger to others and signed an order of CEPP on November 19, 2020. R. 4:74-7(h)(2). T.G. was discharged from AKFC on December 7, 2020.

#### S.G.

S.G. was an inmate at New Jersey State Prison, primarily in the residential treatment unit. With the acceleration of his sentence under the CRP, S.G. was scheduled to be released on November 4, 2020. On October 22, 2020, the court in Mercer County signed a TOC placing S.G. at AKFC.

The psychiatric evaluators concluded he required intensive inpatient psychiatric services. According to the evaluators, S.G. presented an imminent danger to others.

On November 30, 2020, S.G. was transferred from New Jersey State Prison to AKFC. He was placed in COVID-19 quarantine shortly thereafter.

A hearing took place on December 3, 2020, at which the court adjourned the matter until December 10, 2020, with the consent of both sides.

At the December 10 hearing, S.G. moved for release from commitment based on the delay in his transfer to AKFC as well as the court's delay in according him a hearing. County counsel argued the delay in transfer was due to available beds being limited as a result of COVID-19 quarantines, as well as a processing error. The court agreed with the County and the DOH that the delay was due to exceptional circumstances and denied S.G.'s motion.

The treating psychiatrist recommended continued commitment in a less restrictive environment like Trenton Psychiatric Hospital. The court ordered that commitment be continued, finding there was a continued risk S.G. would exhibit dangerous behavior towards others. Ultimately, S.G. was discharged from Trenton Psychiatric Hospital by order on April 29, 2021.

C.L.

As a result of the CRP, C.L.'s release from New Jersey State Prison, where he was serving a sentence for burglary and weapons offenses, was accelerated to December 1, 2020. On November 30, 2020, an examining psychiatrist certified C.L. would be dangerous to others for the foreseeable

future. The psychiatrist determined C.L. was in need of more inpatient psychiatric services. On December 1, 2020, the court signed a TOC.

Due to a two-week COVID-19 quarantine, C.L. remained at New Jersey State Prison. He was admitted to AKFC on December 22, 2020. On December 31, 2020, the court signed a second TOC continuing C.L.'s placement at AKFC. After a hearing on January 14, 2021, the court signed an order continuing C.L.'s commitment until a new hearing on February 11, 2021. The psychiatrist considered C.L. to be a danger to himself and others and recommended continued commitment.

C.L. argued for discharge from civil commitment based on the delay in his transfer to AKFC and the delay in his hearing. According to AKFC, C.L.'s arrival was delayed due to AKFC being under quarantine as a result of COVID-19. AKFC had difficulty getting a hearing date after C.L. had been admitted because the December 1 TOC had expired. The court denied C.L.'s motion to be discharged based on the failure to hold a hearing until mid-January on the December 1 TOC: "I find that the delay, which resulted from the pandemic and quarantining and confusion that arose . . . established good cause to extend the period of time for commitment."

C.L.'s psychiatrist testified at the February 11, 2021 hearing that he had made good improvement and could be transferred to a less restrictive hospital such as Trenton Psychiatric Hospital. The court found the County had not established C.L. was a threat to himself and others and placed him on CEPP status pending a hearing on March 11, 2021.

Commitment was subsequently continued until a hearing on May 27, 2021. C.L. was conditionally discharged from Trenton Psychiatric Hospital on June 24, 2021.

#### A.O.

A.O. was incarcerated at Northern State Prison and his release was accelerated to November 4, 2020, under the CRP. He was described as a "ward of the [S]tate." On November 20, 2020, the court signed a TOC for A.O. to be involuntarily committed to AKFC, with a hearing scheduled for December 10, 2020. At that hearing, Essex County informed the court that A.O. was still at Northern State Prison because there was no bed available at AKFC due to a COVID-19 outbreak. The court granted Essex County's request to adjourn the hearing for two weeks due to extraordinary circumstances, namely, the COVID-19 quarantine reducing the availability of beds at AKFC. A.O. was admitted to AKFC on December 22, 2020.

At a December 24, 2020, hearing, Essex County stated that it would not seek to proceed under the existing TOC because it had expired. The court placed A.O. on CEPP status pending discharge and pending a hearing on January 21, 2021. By way of an order dated April 15, 2021, the court continued A.O. on CEPP status until a review hearing on July 8, 2021. As of September 2021, A.O. remained committed on CEPP status at AKFC.

### L.B.

L.B.'s release from South Woods State Prison, where he was serving a sentence for a parole violation, was accelerated to November 4, 2020, under the CRP. On October 27, 2020, the court signed a TOC committing L.B. to AKFC.

The evaluator recommended that L.B. be committed to the least restrictive available inpatient facility. L.B. was admitted to AKFC on December 2, 2020. Upon admission, L.B. tested positive for COVID-19. A December 9, 2020 hearing was adjourned until December 16, 2020. On December 10, 2020, the court signed a new TOC.

At the December 16, 2020 hearing, the court signed an order continuing L.B.'s commitment at AKFC until a hearing scheduled for January 6, 2021. At that hearing, L.B.'s treating psychiatrist concluded L.B. needed to continue to

be committed because he was a danger to himself and others. The court signed an order continuing commitment until a hearing scheduled for January 20, 2021, and L.B. was transferred to Trenton Psychiatric Hospital.

On that date, the court signed an order continuing commitment until a hearing scheduled for February 17, 2021. At that time, the court placed L.B. in CEPP status pending a hearing scheduled for April 14, 2021. On that date, the court signed an order continuing L.B.'s CEPP status pending a review hearing on July 9, 2021. As of September 2021, L.B. remained committed on CEPP status at Trenton Psychiatric Hospital.

#### H.H.

H.H. was serving a sentence for a parole violation at the South Woods State Prison that was accelerated under the CRP so that he was scheduled to be released on November 4, 2020. H.H.'s evaluators concluded it was not safe for him to be released either into the community or to a less supervised setting. They recommended he be committed to the least restrictive inpatient facility available.

On October 27, 2020, the court signed a TOC. H.H. was admitted to AKFC on November 30, 2020, and upon admission, tested positive for COVID-19. A new TOC was signed by the court on December 9, 2020.

On December 16, 2020, a hearing was held where H.H.'s treating psychiatrist and the court found H.H. required continued commitment and directed that a six-week review take place.

On December 28, 2020, after a hearing, the court issued a decision denying H.H.'s and L.B.'s requests to rescind their civil commitment orders on the ground that they were illegally detained at South Woods Prison without a hearing after their initial TOCs had expired. The court also ordered that neither individual was financially responsible for any part of their transfer to, or commitment at, AKFC. The court noted the October 27, 2020 orders required the inmates' hearings be held within twenty days of their inpatient admission to AKFC, and that this requirement had been met. "[A]ll the evidence shows that both patients are mental[ly] ill and subject to involuntary civil commitment." Releasing them "on [to] the street" only to rescreen and readmit them would have been "cruel."

On January 27, 2021, the court continued H.H.'s commitment until a hearing scheduled for March 10, 2021. On April 21, 2021, the court signed an order continuing H.H.'s commitment until a hearing scheduled May 12, 2021. As of September 2021, H.H. was still committed at AKFC.

On December 8, 2020, T.G. filed a notice of appeal and an amended appeal on December 15, 2020. On December 18, 2020, all but T.G. filed motions for an emergency consolidated appeal. On the same date, we denied the motions without prejudice, pending motion practice in the trial court.

On January 19, 2021, S.G. and T.D. filed separate notices of appeal. C.L. and A.O. filed separate notices of appeal on January 22, 2021. On January 25, 2021, H.H. and L.B. filed a joint notice of appeal and an amended notice of appeal on March 16, 2021. On February 26, 2021, we granted a motion to consolidate the appeals. We later granted the DOH's motions to appear as amicus curiae on behalf of AKFC and to supplement the record in each appeal.

## I.

Our first inquiry is to determine whether these appeals are moot. We conclude they are not. Due to the nature of involuntary civil commitments, the liberty interests raised here are capable of repetition while evading review, and therefore should not be considered moot.

"[B]edrock liberty interests are threatened whenever the State seeks an involuntary commitment." In re Commitment of C.M., 458 N.J. Super. 563, 566 (App. Div. 2019). Despite circumstances that preclude the availability of

an effective remedy, courts may still decide a case when its issues are of great public importance or are capable of repetition yet will escape judicial review. Id. at 568. As this court recognized in C.M., "[t]he existence of an unlawful commitment order is a matter of public importance," and may fall under this doctrine. Id. at 565. Thus, the release of an individual from involuntary confinement does not preclude a court from reaching the legitimacy of the commitment order even though the matter is technically moot. Id. at 565-66.

In addition, release from involuntary commitment will not moot an appeal when the patient remains liable for his or her hospital bill because "a finding in the patient's favor will entitle the patient to a credit for any period of illegal commitment." In re Commitment of B.L., 346 N.J. Super. 285, 292 (App. Div. 2002). Moreover, "[a]n order on the merits might be persuasive or preclusive in a subsequent civil action asserting an alleged wrongful confinement." C.M., 458 N.J. Super. at 568 n.4. Furthermore, such an order "might alter future hospitalizations." Ibid.

## II.

Appellants argue they were deprived of their due process rights because they were not transferred to AKFC in a timely manner and were denied an

initial hearing within twenty days of their TOCs without the State establishing exceptional circumstances for the delay.

Generally, "[t]he scope of [our] review of a commitment determination is extremely narrow and should be modified only if the record reveals a clear mistake." In re D.C., 146 N.J. 31, 58 (App. Div. 1996). However, the issues raised by these appeals are largely legal and procedural, and as such our review is de novo. See Paff v. N.J. State Firemen's Ass'n, 431 N.J. Super. 278, 286 (App. Div. 2013).

The authority of a state to civilly commit an individual is an "exercise of its police power to protect the citizenry and its parens patriae authority to act on behalf of those unable to act in their own best interests." In re S.L., 94 N.J. 128, 136 (1983). Because commitment effects a great restraint on individual liberty, the State must adhere to certain procedures, such as notice, hearing, and representation of counsel, and satisfy specific criteria, as set forth below, when committing individuals in order to protect their right to procedural due process. Id. at 137-38. See also Vitek v. Jones, 445 U.S. 480, 491-92 (1972) (noting that involuntary commitment produces "a massive curtailment of liberty" requiring due process protection). Because a patient's liberty is at stake, "meticulous adherence to statutory and constitutional criteria is

required." In re Commitment of M.M., 384 N.J. Super. 313, 329 (App. Div. 2006) (internal quotation marks omitted) (quoting In re Commitment of D.M., 285 N.J. Super. 481, 486 (App. Div. 1995)).

A court may enter an order of temporary commitment pending a final hearing if it finds probable cause to believe that the person is in need of involuntary commitment to treatment. R. 4:74-7(c). Such an order must include a date certain for the commitment hearing, "which shall be within [twenty] days from the initial commitment to treatment." R. 4:74-7(c)(1). "The date shall not be subject to adjournment except that in exceptional circumstances" the hearing may be adjourned for a fourteen-day period. Ibid. N.J.S.A. 30:4-27.12(a) similarly provides in pertinent part: "A patient who is . . . involuntarily committed to treatment and admitted to a short-term care or psychiatric facility or special psychiatric hospital shall receive a court hearing with respect to the issue of continued need for involuntary commitment within [twenty] days from initial commitment . . . ."

The commitment order must be based on either the submission of a clinical certificate and a screening certificate,<sup>2</sup> N.J.S.A. 30:4-27.10(a), or, in

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<sup>2</sup> Both certificates shall not be signed by the same psychiatrist unless the psychiatrist has made a reasonable but unsuccessful attempt to have another psychiatrist conduct the evaluation and execute the certificate.

the case of an inmate who is scheduled for release upon the expiration of a maximum term, initiation of court proceedings by the submission to the court of two clinical certificates, at least one of which prepared by a psychiatrist, N.J.S.A. 30:4-27.10(c). See also R. 4:74-7(b)(1) and (2) (referring to screening service referral or independent applications).

A prison inmate "scheduled for release upon expiration of a maximum term of incarceration," and subject to an involuntary commitment proceeding under N.J.S.A. 30:4-27.10(c), "immediately shall be committed" to AKFC or other facility designated for the criminally insane for the duration of the twenty-day waiting period. N.J.S.A. 30:4-27.12(a). In addition, N.J.S.A. 30:4-27.10(h) provides:

If the court finds that there is probable cause to believe that a person whose commitment is sought pursuant to subsection c. of this section is in need of involuntary commitment to treatment, it shall issue an order setting a date for a final hearing and authorizing the Commissioner of the Department of Corrections to arrange for temporary commitment . . . to the [AKFC] . . . or other facility designated for the criminally insane pending the final hearing and prior to the expiration of the person's term. The order shall specifically provide for transfer of custody to the [AKFC] . . . or other facility designated for the criminally insane if the person's maximum term will expire prior to the final hearing.

A court may enter a final order of involuntary commitment if it finds, by clear and convincing evidence, the patient is in need of continued treatment by reason of the fact that the patient is mentally ill and a danger to self or others. R. 4:74-7(f)(1). Such an order is subject to periodic review. R. 4:74-7(f)(2).

A court may also enter a CEPP order when a patient otherwise entitled to discharge from an inpatient facility cannot be immediately discharged due to the unavailability of an appropriate placement. R. 4:74-7(h)(2). "[T]he court shall enter an order conditionally extending the patient's hospitalization and scheduling a placement review hearing within 60 days thereafter." Ibid. The order applies to those who are "incapable of survival on their own." In re M.F., 468 N.J. Super. 197, 204 (App. Div. 2021) (quoting Matter of Commitment of G.G., 272 N.J. Super. 597, 604-05 (App. Div. 1994)). However, "CEPP is not a means through which a judge may delay a conditional release." Ibid. The order placing the patient on CEPP status must be supported by evidence that the patient is incapable of surviving discharge, not a subjective judgment as to whether the patient has desirable or optimal living arrangements and family relationships. Ibid.

"If the court finds by clear and convincing evidence that the patient needs continued involuntary commitment to treatment, it shall issue an order

authorizing the involuntary commitment." N.J.S.A. 30:4-27.15(a). If the court finds the patient does not need continued involuntary commitment to treatment, the general rule requires discharge upon completion of discharge plans within forty-eight hours. N.J.S.A. 30:4-27.15(b); In re Commitment of M.C., 385 N.J. Super. 151, 160 (App. Div. 2006). Two exceptions to that requirement are conditional release under N.J.S.A. 30:4-27.15(c) and Rule 4:74-7(c)(1), and CEPP. Id. at 160.

To establish exceptional circumstances and good cause for a delay of the statutory deadline for a hearing on civil commitment, "absent a request by the patient, the circumstances must be atypical, rather than routine, and reasonably unforeseen and unavoidable, rather than within the reasonable control of the state or the court." M.M., 384 N.J. Super. at 321. "Good cause" exists when "the state's interest in extending the time for a hearing due to 'exceptional circumstances' substantially outweighs the patient's interest in terminating confinement that is not supported by clear and convincing evidence of the existence of grounds for commitment." Id. at 321-22. Such circumstances may include an emergency closing of the courthouse. Id. at 331. The "duration of the extension must be reasonably attributable to the exceptional circumstance and the need to address it. For example, an exceptional

circumstance such as the closing of the courthouse would establish good cause for an extension limited in duration by the time essential to address the emergency closure." Ibid. The inquiry is fact-specific and left to the sound discretion of the trial judge and reviewed for abuse of that discretion. Id. at 332.

In determining whether relaxation of a statutory deadline or procedural rule is warranted, we consider "the purpose of the requirement at issue and the public and individual interests implicated from a decision to enforce or relax it." Id. at 328. The purpose of the twenty-day period is to afford a prompt hearing as to whether the individual's commitment is warranted. Ibid. "A secondary purpose is providing a time period sufficient to permit preparation essential to a fair hearing with a reliable outcome." Id. at 330.

Appellants argue that "[s]imply pointing [to] a pandemic does not meet good cause" for adhering to the time requirements for inmate transfer and hearings. That argument overlooks the obvious. Notwithstanding that meticulous adherence to statutory and constitutional criteria is required, the State had an overriding obligation to keep inmates, patients, and staff healthy and alive. Our Supreme Court stated that "COVID-19 has created an ongoing health crisis of enormous proportions for all of society—including individuals

held in jail." In re Request to Release Pretrial Detainees, 245 N.J. 218, 230 (2021).

In State v. Vega-Larregui, 246 N.J. 94 (2021), in light of the "public health threat of COVID-19," which became a "dire reality for the residents of New Jersey," the Supreme Court held that its temporary suspension of in-person grand juries and jury trials was a "public health imperative—a step necessitated to protect jurors, prosecutors, and court staff from potential serious illness and death." Id. at 102, 121. The Court added:

When the Court entered its first [o]rder temporarily suspending grand jury sessions, it could not know the duration of the pandemic, the death toll it would reap, or whether an effective vaccine or treatment would be developed within a year or much longer. Confronting the Court was whether the Constitution required a shutdown of the criminal justice system for an indeterminate period while arrests continued and detentions climbed.

[Id. at 121-22.]

Appellants assert the hearing requirement of Rule 4:74-7(c)(1) and N.J.S.A. 30:4-27.12(a) mandates a hearing be held within twenty days of the issuance of the TOC.

Without question, the exceptional circumstances exception can be applied to the delayed transfers during the relevant time period, because

COVID-19 presented a "health crisis of enormous proportions" and a "public health imperative." Request to Release Pretrial Detainees, 245 N.J. at 230; Vega-Larregui, 246 N.J. at 122. The public and individual interests in keeping mentally ill inmates, set for release, in confinement before a hearing also supports application of the exceptional circumstances exception. The following discussion of the individual appellants demonstrates our consideration of these factors.

A TOC was issued for T.D. on October 26, 2020, and his prison release date was November 4, 2020. However, AKFC was under quarantine between the date the TOC was issued and November 6, 2020. T.D. was admitted on November 9, 2020, three days after the quarantine had ended. The five-day delay in admission was the result of the COVID-19 quarantine. We conclude these were "extraordinary circumstances" for the delayed transfer from prison to AKFC. Because the admission date was three days before T.D.'s November 12, 2020 scheduled hearing, AKFC was unable to examine T.D. and prepare a report within that time period. The hearing was therefore moved to November 19. That date was within twenty days of commitment. T.D. was not deprived of due process.

With respect to T.G., the dates were identical to T.D., except T.G. was admitted to AKFC one day after T.D., November 10. Thus, the same rationale applies equally in his case; he was not deprived of due process.

With respect to S.G., his TOC was signed on October 22, 2020, and his release date was scheduled for November 4, 2020. However, he was not admitted to AKFC until November 30, 2020, and his December 3, 2020, hearing was adjourned to December 10. Despite the adjournment, S.G. received a hearing within the required twenty-days-from-admission time period.

For much of November 2020, the COVID-19 quarantine at AKFC satisfied the good cause/extreme circumstances exception for the failure to immediately transfer S.G. from prison. However, between November 7 to November 10, and November 25 to November 29, S.G. could have been admitted to the center. Despite this, he was not admitted until November 30.

While the COVID-19 emergency can partially be blamed for the delay, there also was an unspecified "processing error" by Mercer County during this time. Despite this incongruity, the clear intention of N.J.S.A. 30:4-27.12(a)'s immediate confinement requirement for inmates is that individuals subject to civil commitment not be released from confinement while awaiting their

hearing, where they could pose a danger to themselves and others. To hold that due process required the State to release S.G. during those brief windows would violate that purpose. The three- and four-day gaps were not long enough to warrant such a holding. Any failure to "meticulously adhere" to due process in this instance is offset by the COVID-19 emergency which we have determined to be an extraordinary circumstance during the relevant time period.

With respect to C.L., a TOC was signed on his scheduled release date, December 1, 2020. He was not admitted to AKFC until December 22, 2020, due to the December 7 to December 21 COVID quarantine. A new TOC was entered on December 31, 2020, and a hearing held on January 14, 2021. Thus, C.L. was not accorded a hearing until twenty-three days after his admittance. No reason was proffered as to why the delay took place, other than the State believed it could not continue to operate under the original TOC. But, the twenty-three-day time period was within the extension permitted by Rule 4:74-7(c)(1) for exceptional circumstances such as COVID-19. In addition, although C.L. could have been transferred between December 1 and December 6 when AKFC was not under quarantine, as with S.G., that delay was not long enough to be considered a due process violation, and the ensuing two-week

quarantine provided extraordinary circumstances for delaying C.L.'s transfer to AKFC for three weeks.

As to A.O., his scheduled release date was November 4, 2020, but a TOC was not signed until November 20, 2020. A hearing was scheduled for December 10, 2020, but was postponed for two weeks due to the quarantine at AKFC. A.O. was not admitted to AKFC until December 22. At the December 24, 2020, hearing, A.O. was placed on CEPP status due to the expired TOC and another hearing was scheduled for January 21, 2021.

No explanation was offered as to why a TOC was not signed until more than two weeks after A.O.'s scheduled release date, and why A.O. could not have been admitted to AKFC between November 25 and December 6 when there was no quarantine. Thus, A.O. remained in prison for forty-eight days after his release date. Given the lack of a timely TOC, and the failure of the State or County to explain why A.O. could not have been admitted to AKFC during the eleven-day window, we conclude A.O.'s due process rights were violated. Because A.O. is already on CEPP status, we remand for a determination as to whether A.O. should be responsible for any confinement costs.

As to L.B., a TOC was signed on October 27, 2020, in advance of his November 4, 2020, scheduled release date. L.B. was not admitted to AKFC until December 2, 2020, apparently due to the COVID-19 quarantine which was in effect for eighteen of the twenty-eight days between TOC and admission. Upon admission he tested positive for COVID-19, and a hearing scheduled for December 9, 2020, was postponed to December 16. A new TOC was signed on December 10. After the December 16, 2020, hearing, an order was entered continuing L.B.'s commitment. He was deemed not liable for any commitment costs. While L.B. was not transferred for twenty-eight days, despite a November 7 to November 9 and November 25 to December 1 non-quarantine window, this was a far cry from A.O.'s forty-eight days where the window for admission was far greater. Moreover, unlike A.O., a TOC was signed before L.B.'s release date, not sixteen days after.

With respect to H.H., a TOC was signed on October 27, 2020, in advance of his scheduled release date on November 4, 2020. H.H. was admitted to AKFC on November 30, 2020, whereupon he tested positive for COVID-19. A new TOC was signed on December 9, 2020, and a commitment hearing commenced on December 16, 2020. Appellants argue that the court erred in the instance of H.H., L.B., and C.L. by relying on a second TOC after

the initial TOC had expired. We agree the court cannot ordinarily rely upon a second TOC, but because this happened under the circumstances it did, we discern no error.

Finally, appellants argue that they could have been transferred to other psychiatric hospitals, or AKFC could have made room for them by transferring existing patients to other less restrictive psychiatric hospitals, rather than requiring them to wait in prison. However, there is insufficient evidence in the record to determine whether those options were available. The Division of Mental Health and Addiction Services (DMHAS) had "diversion hospital agreements" with Northbrook Behavioral Hospital, Carrier Clinic and Hampton Behavioral Health Center. Under these agreements, a certain number of beds were set aside by the hospitals for referral by DMHAS. However, there is nothing in the record as to whether there were beds available at these facilities given the COVID quarantines, or whether there were patients at AKFC who could have been transferred to other facilities to make room for appellants. Thus, appellants have not sustained their burden to establish a due process violation. Cf. State v. Townsend, 186 N.J. 473, 489 (2006) (noting the burden of establishing a due process violation from a pre-indictment delay is on the defendant).

Appellants also argue the trial judges involved in these appeals failed to set forth the requisite findings of fact and conclusions of law in support of their decisions. We disagree.

"The court shall, by an opinion or memorandum decision, either written or oral, find the facts and state its conclusions of law thereon in all actions tried without a jury [and] on every motion decided by a written order that is appealable as of right[.]" R. 1:7-4(a).

The court made detailed findings as to L.B. and H.H. Even if the findings were deficient as to T.G., S.G., and C.L., their release obviates the need to consider whether a remand is in order. See M.M., 384 N.J. Super. at 333 (declining to remand for a statement explaining the trial court's decision on the legal question whether there were exceptional circumstances in the interest of judicial economy and where the patient had already been discharged). As for T.D., the court's one-paragraph decision sufficiently set forth its determination that the psychiatrist's findings and conclusions supported the need for T.D.'s continued confinement. However, the court's one-sentence statement in putting A.O. on CEPP status was insufficient. Since we are now remanding A.O.'s appeal, there will be an opportunity to readdress his status. As to A.O. and any other appellants who remain confined, their

status is subject to review on an ongoing basis. As noted above, a final order of commitment is subject to periodic review. R. 4:74-7(f)(2).

Appellants maintain, with respect to T.G. and C.L., that the court improperly considered the appropriateness of their living situations in placing them on CEPP status. The "unavailability of an appropriate placement" under CEPP cannot rest on whether the patient "has desirable or optimal living arrangements and family relationships." M.C., 385 N.J. Super. at 163. "CEPP is not a means through which the judge may delay a conditional release." Id. at 162.

As to C.L., the court found the State had not met its burden to establish that C.L. was a threat to himself and others and placed C.L. on CEPP status rather than conditional discharge because "support . . . in the setting" for C.L. was apparently lacking. Thus, the court acted improperly in placing C.L. on CEPP status. However, since C.L. was ultimately conditionally discharged, any error in this respect has been cured. The same is true with respect to T.G., who was placed on CEPP status on November 19, 2020, and discharged eighteen days later.

Notwithstanding that we did not find due process violations requiring reversal because of the extraordinary circumstances in each case, the costs of

those additional days occasioned by COVID-19 delays should entitle the patient to a credit for hospital bills. B.L., 346 N.J. Super. at 292. Although S.G., T.G., and C.L. were discharged from commitment, it is not clear from the record whether they were liable for any of the costs of commitment. Only the orders involving L.B. and H.H. absolved them of the cost of treatment.

By this decision we in no way minimize the fact that otherwise mandatory procedural deadlines were not met. We also make clear that the extraordinary circumstances that existed at that time no longer exist.

Thus, we remand to address this issue as is relevant to each appellant.

We also reverse and remand regarding A.O. for a determination as to whether he is responsible for any confinement costs.

Affirmed in part, reversed and remanded in part. We do not retain jurisdiction.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION