

ELEEMOSYNARY BOARD: Person committed to insane institutions by the Judge of the Circuit Court under Section 8657, R.S. 1929, relating to insanity as a defense under a criminal charge, may be discharged by the Superintendent of the Hospital in the manner as provided in Section 8629, R.S. 1929.

March 31, 1937

H-10

Honorable W. Ed Jameson
President Board of Managers
State Eleemosynary Institutions
Jefferson City, Missouri



Dear Sir:

This Department is in receipt of your letter of March 26, wherein you make the following inquiry:

"Please note the enclosed file re case of Robert P. Doneghy, who was committed to State Hospital No. 2, St. Joseph, on November 18, 1936, by order of the Adair County Court, at the regular November term thereof.

"The attached is a full statement of the case as it came to me from Dr. Orr Mullinax, Superintendent of said Hospital. Will you kindly advise at your early convenience, and officially, whether or not there are any steps State Hospital No. 2 can take looking to securing a court order that said patient may be legally released from this institution. Of if such order is not necessary, will you advise what can be done to properly handle the matter, as it is very clear that said Mr. Doneghy is not now insane.

"Thanking you for such early attention and official opinion in this case, with return of these enclosures, I am."

March 31, 1937

The attached correspondence contains additional facts with reference to your question.

We have considered the copy of the Order of the Circuit Court with reference to Robert P. Doneghy. It will appear that Doneghy was acquitted in the Circuit Court of Adair County of the charge of murder, on the grounds that he was insane at the time of the commission of the crime.

There are special statutes relating to this form of defense. In this connection you are respectfully referred to Section 3660, Revised Statutes Missouri 1929, which is as follows:

"When a person tried upon indictment for any crime or misdemeanor shall be acquitted on the sole ground that he was insane at the time of the commission of the offense charged, the fact shall be found by the jury in their verdict, and by their verdict the jury shall further find whether such person has or has not entirely and permanently recovered from such insanity; and in case the jury shall find in their verdict that such person has so recovered from such insanity, he shall be discharged from custody; but in case the jury shall find such person has not entirely and permanently recovered from such insanity, the prisoner shall be dealt with as provided in the two preceding sections."

We assume that the jury found that the defendant was not guilty by reason of being insane at the time of the commission of the offense charged, and that Doneghy had not entirely and permanently recovered from such insanity. The two preceding sections referred to in Section 3660, namely; 3658 and 3659, throw no special light on the question as they refer to defendant's becoming

insane after the commission of the crime. The court evidently followed the procedure, after the verdict of the jury, as contained in Sections 8656 and 8657. Section 8655 is identical with Section 3660 except as to the following words:

"the prisoner shall be dealt with as provided in the two following sections."

Section 8656 is as follows:

"If the prisoner is not a poor person, and the court is satisfied, from the nature of the offense or otherwise, that it would be unsafe to permit the prisoner to go at large, an order shall be entered of record that he be sent to a state hospital, designating it, and further requiring the sheriff or other ministerial officer of the court, with such assistance as may be specified in the order, to convey such prisoner to the hospital, after first ascertaining from the superintendent that such prisoner will be received into the hospital, and until the receipt of such information, to keep such prisoner in the county jail, poorhouse or other safe custody; and further, that the cost which may accrue in carrying into effect this order, and all expenses for the support and maintenance of such person whilst in the care and custody of the officer and at the hospital, shall be paid out of the proceeds of the estate of such person. And the court shall have power, at

each succeeding term, to tax up, so long as it may be necessary, such cost and expenses as may have accrued since the preceding term, and cause the same to be levied and collected by execution; and the officer collecting the same shall pay to the treasurer of the hospital, and to such other persons as may be entitled thereto, their respective amounts due. The clerk of the court shall furnish a copy of the order of the court, under his official seal, to be lodged with the superintendent, upon the admission of the prisoner into the hospital, and issue a warrant upon said order to the officer named in said order as near as may be of the form specified in section 8649."

Section 8657 is as follows:

"If the prisoner be a poor person, the court shall make an order remanding him to the custody of the sheriff or other officer of court, requiring him to hold the prisoner in safe custody, at the expense of the proper county, until the county court shall cause him to be removed to a state hospital, as in the cases of insane poor persons: Provided, no examination into the insanity of the prisoner shall take place before the county court, as provided in sections 8643, 8644, 8646 and 8647; but the county court and clerk thereof shall proceed, and the prisoner be dealt with in like manner as other insane poor persons

are required to be, after examination had by the county court. It shall be the duty of the clerk of the court trying the prisoner to make out a copy, under his official seal, of the judgment of acquittal of the prisoner, and the order required by the first part of this section, to be delivered to the officer having custody of the prisoner for his authority for such custody."

The circuit court order recites

"That said Robert P. Doneghy has not estate sufficient to support him in State Hospital No. 2 and that he is now a resident of the County of Adair and State of Missouri."

Therefore, the order was made in compliance with Section 8657, quoted supra.

Bearing the above sections in mind, the question resolves itself into the following:

"The Circuit Court having issued its order in compliance with Section 8657 and Doneghy being placed in State Hospital No. 2, in compliance with said order, and he now being restored to reason or no longer insane, in the judgment and opinion of the authorities in charge of the Hospital, what is the procedure necessary for his release?"

The County of Adair is liable for his maintenance

the same as any other person without an estate, or the indigent insane. This question is discussed, as to the effect of the court's order under Section 8657, in the case of State ex rel. Yarnell v. The Cole County Circuit Court 80 Mo. 1. c. 83, as follows:

"The fact that McGirk, then a citizen of Cole county, was placed in the lunatic asylum in July, 1880, as a pay patient, is not controvertible, and in no way dependent on the question whether his sanity at the inquest of lunacy was tried by six or twelve jurors. While such a question might affect the regularity of the action of the probate court in appointing a guardian, it cannot affect the fact that he was confined in the asylum as a pay patient, nor the fact that he was subsequently, by the order of the county court, made a county patient. We will, therefore, in the disposition of the case, consider the order as being sufficiently efficacious to make said McGirk a county patient of Cole County from the time it was made.

"The question which this record presents is: Was it, under the facts above stated, the duty of the county court of Cole county to make an order for the removal of said McGirk to the lunatic asylum at Fulton, as in case of insane poor persons? This question, we think, is answered in the affirmative by sections 4153, 4143 and 4145, Revised Statutes. It is provided in section 4153 that 'every patient in the asylum shall be deemed to be the county patient of the county first sending him, till one year after his regular

discharge from the asylum'. Section 4145 provides 'that when a person tried upon indictment for any crime or misdemeanor shall be acquitted on the sole ground that he was insane, the fact shall be found by the jury in their verdict, and the prisoner shall be dealt with as provided in the following sections.' One of these sections, 4145, provides 'that if the prisoner be a poor person, the court shall make an order remanding him to the custody of the sheriff, or other officer of court, requiring him to hold the prisoner in safe custody at the expense of the proper county, until the county court shall cause him to be removed to the asylum, as in the case of insane poor persons.'

"We think it apparent from the above statutory provisions and the general law regulating asylums, (2 R.S., p. 818,) that it was the intention of the legislature to cast the burden of supporting the insane poor upon each county where such insane poor have acquired a residence or settlement, and that where an insane poor person is sent from a county and is discharged from the asylum, he shall be deemed to be the county patient of such county for the period of twelve months after such discharge, the language of the statute being that every patient in the asylum shall be deemed to be the county patient of the county first sending him till one year after his regular discharge."

We are of the opinion that Section 8657 is a special statute relating to a person who has been tried on a criminal charge and acquitted solely on the ground

that he was insane at the time of the commission of the crime, and the trial of the person before a jury eliminates the necessity of a hearing before the county court as essential to the committing of a person to an insane asylum, as contained in Sections 8643, 8644, 8645, 8646 and 8647. After the institution has received the person committed by the county court, then, in our opinion, the circuit court loses jurisdiction over the person. The Judge of the Circuit Court does not make the order to the county court committing such person to the state insane asylum as a matter of punishment; it is not a commitment for any definite time or period as in the case of a defendant sentenced to jail or to the penitentiary.

Section 8629, Revised Statutes Missouri 1929, contains the power of the Superintendent to parole or release a patient, and is as follows:

"Persons afflicted with any form of insanity shall be admitted into the hospital for the care and treatment of the insane, and any patient may be discharged by the superintendent whenever, in his opinion, the reason of such person is fully restored: Provided, that nothing herein shall be so construed to prevent any superintendent from paroling any patient whenever he deems it best for such person confined in the hospital; and provided further, that county courts are hereby prohibited from removing from the hospital any indigent insane persons, except as herein provided."

Commenting on the effect of Section 8629, the power and authority of the Superintendent to release patients, the Supreme Court of Missouri, in the case of *Ex parte Higgins v. Hector*, 332 Mo. 1. c. 1039, states:

"However, such an order for temporary restraint, as made by the probate court here, is not binding upon the superintendent of a State Hospital to keep the person confined until an order is made in that court for release. It is in no sense like a commitment in a criminal case for a definite term in jail or in the penitentiary. The person may lawfully be either discharged or paroled and set at liberty by the superintendent of his own motion at any time. (Sec. 8629, R. S. 1929.) The hospital is a State institution. (Chap. 46, Arts. 1 and 2, R. S. 1929.) The superintendent is one skilled in the treatment of mental diseases. (Sec. 8578, R. S. 1929.) He is better qualified to determine a person's mental condition and the necessity for his confinement than the probate judge. He is a public officer and improper action on his part will not be presumed. If the person confined desires counsel or to attend the hearing of which he has notice, he has that constitutional right and it would be the duty of the superintendent to allow it, even with the precaution of an attendant if he thought that necessary."

CONCLUSION

The only condition contained in the copy of the order committing Doneghy to State Hospital No. 2 was:

"To be confined until he has been restored to reason."

There is no statutory authority or procedure for the circuit court to determine whether or not he has been restored to reason. In fact, we do not think that the same is necessary or essential because, as stated above, the court has lost jurisdiction of the person; it no longer devolves upon the court to determine whether he has been restored to reason or not; the statute has placed this burden upon the authorities in charge of the hospital. The county court, which has the authority to commit poor persons to state hospitals, has no power to determine whether a person has been restored to reason or not. By the same logic the circuit court would have no greater power. If a person is committed by the Judge of the Probate Court when such person has an estate and it is necessary to appoint a guardian to take charge of such person, then such person could exercise his rights under sections 493 and 494 of the Revised Statutes of Missouri 1929, but, in the instant case, Doneghy is committed as a poor person and the procedure as contained in such statutes does not apply.

We are, therefore, of the opinion that under the authority as contained in Section 8629, quoted supra, Doneghy may be discharged by the Superintendent whenever, in his opinion, his reason is fully restored, or may parole him under the conditions as contained in said section.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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