

Verified Correct Copy of Original 6/4/2019

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF WASHINGTON

STATE OF OREGON,

Plaintiff,

vs.

ERIC GILBRETH, GALE MERRILL, DUSTIN LEE  
WOOD, and CARLOS ZAMORA-SKAAR

Defendants

Case No.: 18CR84318 and 19CR06058; 18CR65775;  
19CR01852 and 18CR79575 and 17CR75655;  
18CR79052 and 18CR84154

COURT DECISION ON DEFENDANT'S REQUEST  
TO HOLD THE OREGON STATE HOSPITAL IN  
CONTEMPT

This having come before the court on May 1, 2019 for Defendants request to hold the Oregon State Hospital in contempt for not following the court's order of accepting defendants to the state hospital within seven days of said orders signature date. Defendants were represented by their assigned counsel, but most questions and arguments were performed by Amanda Thibeault, counsel for Mr. Zamora-Skaar. The Oregon State Hospital (hereafter "OSH") was represented by Craig Johnson and Sheila Potter. Based on the evidence presented and the current law, the court finds OSH in contempt for willfully violating the courts orders.

Each of the above defendants have asked the court to hold OSH in contempt for failing to follow an order admitting each of the defendants to the state hospital within seven days of a court signing an order of commitment. It is largely undisputed that each defendant was not transported within seven days of a court order. It is also largely undisputed that the delay, especially in Mr. Zamora-Skaar's case, has even exceeded more than a month. It is also largely undisputed that jails are inferior to the OSH for evaluations and treatment. Again, Mr. Zamora-Skaar is a great example. While OSH ignored the court's .365 order and Mr. Zamora-Skaar sat in the Washington County Jail, Mr. Zamora-Skaar mental status deteriorated from the court being unsure if he was or was not competent, to defendant shouting delirious statements while the court tried to conduct hearings, that is, clearly not competent. Given the above facts, the only factual issue is whether the undisputed failure to follow the court order was a willful violation, thus, contemptuous.

Before moving to the ultimate issue, the court needs to resolve a legal issue. OSH argues that the federal district court opinion in *Oregon Advocacy Center v. Mink*, 2002 WL 35578910 and the affirmation of that opinion by 9<sup>th</sup> Circuit Court (*Oregon Advocacy Center v. Mink*, 322 R.3d 1101 (9<sup>th</sup> Cir. 2003) does not apply to ORS 161.365, only ORS 161.370 orders.

COURT DECISION ON DEFENDANT'S REQUEST TO HOLD THE OREGON STATE HOSPITAL IN  
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1 Under both a .370 commitment order and .365 order the court orders the defendant to OSH. The  
2 main difference between a .365 order and a .370 order to commit, is the length of time at the OSH and the role of  
3 OSH. For .370 commitment orders, the length of stay is largely undetermined, and the role of OSH is to try and  
4 restore the defendant to competency. For .365 orders, the stay is 30 days and OSH's role is to observe the defendant  
5 and assist the court in deciding if the defendant lacks competency, thus, in need of a .370 commitment order. Under  
6 both orders the defendant is at OSH (not the jail) and receiving some medical care. Moreover, under both orders,  
7 there is largely nothing a court or the parties can do (if being intellectually honest) until OSH performs its role and  
8 informs the court of their observations.

9 In *Mink*, OSH did not dispute that a mentally ill person accused of a crime had certain due process  
10 rights that the state, including OSH, is required to follow. *Id.* One of those rights is to have their case(s) proceed in a  
11 timely matter, especially when their liberty is at stake. *Id.* Moreover, OSH did not "seriously contest" that jails are  
12 inferior, and that defendant's denied care are harmed. *Id.* Finally, the federal court made it clear that under Oregon's  
13 statutory scheme, OSH is responsible to accept defendants once a decision has been made by a circuit court. *Id.* In  
14 sum, by understanding the reasons behind the due process rights, it is clear from *Mink* that defendants should have  
15 similar due process rights in .365 orders that the *Mink* court set out in .370 commitment orders.

16 Having decided that defendants have a due process right in both .365 and .370 commitment  
17 orders, the court now turns to whether OSH should be held in contempt for violating the court orders, thus, violating  
18 defendants' due process rights. Under ORS 33.015, to prove contempt, the moving party need only show the  
19 existence of a valid order and that a person knew about the order and willfully chose not to comply with it. *State v*  
20 *Montgomery*, 216 Or.App. 221, 224 (2007); see also *State v. Crombie*, 267 Or.App. 705 (2014) and *Couey v. Couey*,  
21 312 Or. 302 (1991). In this matter, the moving parties need only show that there was a valid court order for each  
22 defendant and that OSH voluntarily chose not to comply with it.

23 Having taken judicial notice of all the defendants' files, the evidence is clear that each defendant  
24 had been ordered to the state hospital either under a .370 commitment order or a .365 observation order. The  
25 evidence clearly demonstrated that OSH did not comply with the orders by accepting the defendants within seven  
26 days of the orders being signed (as outlined above, the court sees no need to distinguish the .365 orders which  
27 included a seven day requirement from the .370 orders which did not specifically state "seven days" since *Mink* set  
28

1 it at seven days as a matter of due process right). The only remaining question is whether the non-compliance with  
2 the orders was "voluntary" or not.

3 Evidence established at other hearings (which the court took judicial notice of) included party  
4 opponent admissions by OSH employees that the court was better off converting .365 orders to .370 orders (despite  
5 a lack of factual basis) because they were giving priority to the .370 commitment orders due to the *Mink* decision.  
6 That OSH was given money from the legislature that they chose to use to fund community restoration in counties  
7 other than Washington County. That OSH had beds available but has chosen not to use those beds for the  
8 defendants due to resource issues. That OSH did nothing to inform the court or the parties of their non-compliance  
9 with the court orders. That OSH has known about the problem for years and especially in the last year as  
10 demonstrated by their request for more funding from the legislature (in part which they received and used above and  
11 in part which was denied by the legislature). As *Mink* made clear, due to Oregon's statutory scheme, a voluntary  
12 non-compliance with a court order, hence, violating a defendant's due process rights, cannot be blamed on "lack of  
13 funds, staff, facilities..." *Oregon Advocacy Center v. Mink*, 322 R.3d 1101 (9th Cir. 2003). In sum, the evidence was  
14 clear that OSH voluntarily and openly chose not to comply with the orders, thus, is in contempt of court.

15 Having determined that OSH has willfully violated the courts orders, the court next turns to what  
16 is the remedy for the contempt. Here the decisions must vary per defendant as the defendant's contempt requests  
17 varied. For Mr. Gilbreth, his request was for remedial contempt, that is, some sanction to apply until OSH complied  
18 with the order. At the time of the hearing OSH had complied, thus, Mr. Gilbreth's case has been remedied. As to  
19 all the other defendants, at the time of the hearing OSH had not complied. For each of those defendants (and all  
20 defendants who make a request to for sanctions after a valid order has been signed) the court sanctions OSH to \$100  
21 a day for each day past the seven days (starting from date of signature) given to them to comply with the order until  
22 the defendant is admitted to OSH. The \$100 should be placed into a trust with the Oregon Public Defense Services  
23 to be used exclusively for evaluations of Washington County defendants who may not be competent.

24  
25 IT IS SO ORDERED,

26 Signed: June 3, 2019



27 \_\_\_\_\_  
D. Charles Bailey  
Washington County Circuit Court Judge