

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the  
City of Richmond on* Monday *the* 18th *day of* May, 2015.

William Jeffrey Willis, Appellant,

against Record No. 141117  
Circuit Court No. CL1100023P-03

Commonwealth of Virginia, Appellee.

Upon an appeal from a  
judgment rendered by the Circuit  
Court of the City of Newport  
News.

During oral argument in the above styled case, the Court learned that an agreement between the appellant, William Jeffrey Willis ("Willis"), and the Commonwealth had been reached regarding the determination of his current status as a sexually violent predator under Code §§ 37.2-900, 37.2-910. The Court directed the parties to furnish evidence of any agreement reached between parties and to each file a letter brief addressing the subject of potential mootness of the pending appeal. Upon consideration of these submissions, as well as the record, briefs and argument of counsel, the Court is of the opinion that the pending appeal is moot.

On April 25, 2014, the Circuit Court of the City of Newport News ("trial court") conducted Willis' second annual review hearing pursuant to Code §§ 37.2-910 and 37.2-912, to determine whether Willis remained a sexually violent predator and, if so, whether Willis still required in-patient treatment or could receive out-patient treatment under conditional release. Based upon the evidence presented at the hearing, the trial court found that

Willis remained a sexually violent predator and ordered him to be recommitted.

At issue in this appeal were certain assigned evidentiary errors in the trial court's determination. During oral argument in this appeal, the Commonwealth disclosed that a consent order for the preparation of a conditional release plan ("Consent Order") had been entered by the trial court, wherein Willis and the Commonwealth stipulated that Willis remains a sexually violent predator.

The Consent Order, entered by the trial court on March 31, 2015, states that Willis "continues to suffer from a mental abnormality or personality disorder and thus remains a sexually violent predator as defined in Virginia Code § 37.2-900 et seq." The parties also stipulated that Dr. Mario Dennis and Dr. Craig King have both opined that Willis is a candidate for conditional release. Based upon the agreed stipulations of fact, the trial court held, by clear and convincing evidence, that Willis remains a sexually violent predator. The trial court continued Willis' third annual review hearing to allow for the preparation of a conditional release plan and to consider possible alternatives to civil commitment. The hearing was originally set for April 24, 2015; however, the hearing was continued again until May 29, 2015.

"Generally, a case is moot and must be dismissed when the controversy that existed between litigants has ceased to exist." Va. Broad. Corp. v. Commonwealth, 286 Va. 239, 247, 749 S.E.2d 313, 318 (2013).

Whenever it appears or is made to appear that there is no actual controversy between the litigants, or that, if it once existed, it has ceased to do so, it is the duty of

every judicial tribunal not to proceed to the formal determination of the apparent controversy, but to dismiss the case. It is not the office of courts to give opinions on abstract propositions of law, or to decide questions upon which no rights depend, and where no relief can be afforded. Only real controversies and existing rights are entitled to invoke the exercise of their powers.

E.C. v. Va. Dep't of Juvenile Justice, 283 Va. 522, 530, 722 S.E.2d 820, 831 (2012) (quoting Franklin v. Peers, 95 Va. 602, 603, 29 S.E. 321, 321 (1898)).

In the absence of an actual, ongoing dispute, there may still be a narrow set of circumstances under which the mootness doctrine is inapplicable, like when the underlying dispute is one capable of repetition, yet evading review. Daily Press, Inc. v. Commonwealth, 285 Va. 447, 452, 739 S.E.2d 636, 639 (2013). However, "the capable-of-repetition doctrine applies only in exceptional situations," involving a "challenged action [that is] in its duration too short to be fully litigated prior to its cessation," where there exists "a reasonable expectation that the same complaining party [will] be subject to the same action again." Spencer v. Kemna, 523 U.S. 1, 17 (1998) (internal citations and quotation marks omitted).

The fact that a matter has been settled or has ceased to exist "may be shown by extrinsic evidence, and being so shown, the writ of error will be dismissed." Franklin, 95 Va. at 603, 29 S.E. at 321.

Willis' assignments of error in this appeal challenge the trial court's 2014 ruling that Willis remains a sexually violent predator. However, in the Consent Order, Willis has stipulated the

previously disputed fact that he remains a sexually violent predator. Willis' concession renders moot the controversy before this Court. Furthermore, the capable-of-repetition exception is inapplicable to this case. The dispute in this case was not rendered moot because it was a dispute of inherently short duration, subject to evading review; but rather, it is Willis' stipulation that ends the controversy. Accordingly, this appeal is dismissed as moot.

This order shall be certified to the said circuit court.

A Copy,

Teste:

*Pat L Haminger*

Clerk