An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-118

Filed: 19 June 2018

Granville County, No. 16 SPC 156

IN THE MATTER OF: T.S.P.

Appeal by respondent from order entered 18 August 2017 by Judge Vinston M. Rozier, Jr. in Granville County Superior Court. Heard in the Court of Appeals 18 June 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Andrew L. Hayes, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender James R. Grant, for respondent-appellant.

CALABRIA, Judge.

T.S.P. ("respondent") appeals from an involuntary recommitment order stemming from the trial court's prior order finding respondent not guilty by reason of insanity ("NGRI") of attempted first-degree murder and assault with a deadly weapon inflicting serious injury ("AWDWISI"). After careful review, we vacate the order and remand to the trial court.

Respondent has a history of mental illness, including schizophrenia. On 19 August 2013, respondent was indicted for attempted first-degree murder and AWDWISI, following an incident in which respondent shot her 15-year-old daughter and 28-year-old son. At the time of the incident, respondent believed that some entity was going to take her daughter away, rape her, and kill her. On 19 May 2016, the trial court ordered the State to dismiss all charges against respondent, due to the court's "determination that under [N.C. Gen. Stat.] § 15A-959, the defendant was insane at the time the acts for which she is charged were committed." Defendant appealed from the NGRI order.

In *State v. Payne*, __ N.C. App. __, 808 S.E.2d 476 (2017), this Court vacated the NGRI order, concluding that counsel's assertion of an insanity defense over respondent's explicit objection violated her " 'constitutional right to conduct [her] own defense. ' " *Id.* at __, 808 S.E.2d at 485 (quoting *Faretta v. California*, 422 U.S. 806, 836, 45 L. Ed. 2d 562, 582 (1975)). Following our decision in *Payne*, defendant subsequently appealed from two involuntary recommitment orders that were based upon the invalidated NGRI order. *In re T.S.P.*, __ N.C. App. __, 808 S.E.2d 613, 2017 N.C. App. LEXIS 1044 (2017) (unpublished) ("*T.S.P. I*"). We vacated both orders and remanded to the trial court, concluding that we were unable to "affirm the recommitment orders . . . because they relied on the now-vacated criminal judgment." *Id.* at *5.

In the instant case, respondent appeals from the trial court's third involuntary recommitment order premised on the NGRI order vacated in *Payne*. Respondent asserts that the trial court's order, entered 18 August 2017, is "indistinguishable in character" from the first two recommitment orders, and therefore must be vacated. The State concedes that it is unable to distinguish the trial court's third recommitment order from the first two orders vacated in *T.S.P. I*. We agree.

As we explained in *T.S.P. I*,

> [a] judgment finding a defendant [NGRI] triggers a different, more lenient standard for involuntary commitment than the one ordinarily applied in these proceedings. Following a judgment of [NGRI], "the respondent shall bear the burden to prove by a preponderance of the evidence that he (i) no longer has a mental illness as defined in G.S. 122C-3(21), or (ii) is no longer dangerous to others as defined in G.S. 122C-3(11)(b)." N.C. Gen. Stat. § 122C-276.1(c). By contrast, where involuntary commitment is not based on an insanity finding in a criminal case, *the petitioner* bears the burden of showing by "clear, cogent, and convincing evidence that the respondent is mentally ill and dangerous to self . . . or dangerous to others." N.C. Gen. Stat. § 122C-268(j). The differing standards and burdens of proof reflect "important differences between the class of potential civil-commitment candidates and the class of insanity acquittees." *Jones v. United States*, 463 U.S. 354, 367, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983).

Id. at *4-5 (emphasis added).

Like the previous two recommitment orders, the trial court's third order was "based on the underlying judgment of [NGRI] in Respondent's criminal case and the

trial court applied the corresponding standard and burden of proof. But this Court vacated that criminal judgment on appeal, meaning it is legally void." *Id.* at *5 (citations omitted). Accordingly, we "cannot affirm the recommitment order[] in this case because [it] relied on the now-vacated criminal judgment." *Id.*

It is axiomatic that one panel of this Court may not overrule the decision of another panel on the same issue. *In re Appeal from Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989); *N.C. Nat'l Bank v. Va. Carolina Builders*, 307 N.C. 563, 567, 299 S.E.2d 629, 631 (1983). Therefore, in light of our holdings in *Payne* and *T.S.P. I*, we must vacate the involuntary recommitment order entered on 18 August 2017 and remand to the trial court for further proceedings conducted under the appropriate legal standard.

VACATED AND REMANDED.

Judges DAVIS and BERGER concur.

Report per Rule 30(e).