Illinois Official Reports

Appellate Court

In re Harlin H., 2022 IL App (5th) 190108

Appellate Court Caption	*In re* HARLIN H., a Person Found Subject to Involuntary Medication (The People of the State of Illinois, Petitioner-Appellee, v. Harlin H., Respondent-Appellant).
District & No.	Fifth District No. 5-19-0108
Filed	September 14, 2022
Decision Under Review	Appeal from the Circuit Court of Randolph County, No. 19-MH-36; the Hon. Eugene E. Gross, Judge, presiding.
Judgment	Reversed.
Counsel on Appeal	Veronique Baker, Laurel Spahn, and Ann Krasuski, of Illinois Guardianship & Advocacy Commission, of Hines, for appellant. Jeremy R. Walker, State's Attorney, of Chester (Patrick Delfino, Patrick D. Daly, and Sharon Shanahan, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.
Panel	PRESIDING JUSTICE BOIE delivered the judgment of the court, with opinion. Justices Cates and Barberis concurred in the judgment and opinion.

OPINION

¶ 1 The respondent, Harlin H., appeals from a medication order, entered pursuant to the Mental Health and Developmental Disabilities Code (Code) (405 ILCS 5/1-100 *et seq.* (West 2018)), finding him to be subject to the involuntary administration of psychotropic medication. Harlin H. raises five arguments challenging the trial court's order for administration of authorized involuntary treatment (medication order) entered on February 27, 2019. Harlin H. argues that (1) his willingness to take five medications to treat his mental health concerns, while not willing to take all prescribed medications, should have been considered a less restrictive alternative than the court ordering involuntary medication, (2) the State failed to protect Harlin H.'s due process right to complete medication information and failed to prove that he lacked capacity when the written information that he was provided about his medication did not adequately describe the benefits of each medication individually or the benefits and side effects of the medications in combination, (3) the State failed to prove the benefits of the proposed treatment outweighed the harm to Harlin H. when its evidence did not include the benefits and harm of each individual medication or the medications in combination, (4) the trial court's medication order was defective because it failed to specify medication dosages for valproic acid[1] (VPA) and lithium,[2] and (5) Harlin H.'s counsel denied him effective assistance of counsel by failing to subject the State's case to meaningful adversarial testing.

¶ 2 I. BACKGROUND

¶ 3 Harlin H. was 50 years old at the time of the proceedings in this matter. He was admitted to Chester Mental Health Center (CMHC) on August 3, 2018. On February 20, 2019, Harlin H.'s treating psychiatrist, Dr. Terrence Casey, filed a petition seeking authority to administer medication over objection (petition) to Harlin H. On February 27, 2019, the trial court conducted a hearing on the petition.

¶ 4 The State called Dr. Casey as its sole witness. Dr. Casey testified that he was a psychiatrist employed by CMHC. Dr. Casey stated that he had treated Harlin H. since August 8, 2018, and diagnosed him with bipolar disorder, moderate, not otherwise specified, and alcohol and cannabis dependence. There was no further testimony about how Dr. Casey arrived at the diagnosis, its definition, or the symptomology of the diagnosis. Dr. Casey testified that he had prescribed psychotropic medication for Harlin H. and that he was taking the medication because there was a prior 90-day order for involuntary medication, and without the prior petition, Dr. Casey did not believe that Harlin H. would take the prescribed medication.

¶ 5 Dr. Casey testified that Harlin H. had exhibited behaviors indicating that his ability to function had deteriorated and that his behaviors were threatening or disruptive. Specifically,

---

[1]Valproic acid is the generic name for a prescription medication used to treat various types of seizure disorders, manic episodes related to bipolar disorder, and to prevent migraine headaches. *Valproic Acid,* Drugs.com, https://www.drugs.com/mtm/valproic-acid.html (last visited Sept. 1, 2022) [https://perma.cc/W7YN-MZVF].

[2]Lithium is the generic name for a mood stabilizer that is used to treat or control manic episodes of bipolar disorder including hyperactivity, rushed speech, poor judgment, reduced need for sleep, aggression, and anger. *Lithium*, Drugs.com, https://www.drugs.com/lithium.html (last visited Sept. 1, 2022) [https://perma.cc/9NCR-TA64].

Dr. Casey testified that Harlin H. had a verbal altercation with a peer on February 5, 2019, threatened therapists on February 6, 2019, and had threatened to skin a nurse alive. Dr. Casey further testified that Harlin H. was on a hunger strike since January 29, 2019, and had lost 20 pounds. Dr. Casey testified that Harlin H. was hostile, unpredictable, easily agitated, and showed very poor insight.

¶ 6 Dr. Casey testified that, in his opinion, Harlin H. was suffering as a result of his mental illness, although Dr. Casey did not describe how he came to that conclusion, and he believed that the medication helped to relieve Harlin H.'s suffering. Dr. Casey testified that since Harlin H. had been taking the medication, he was "a lot better. He's less volatile and explosive, and he's less of a behavior management issue." Dr. Casey testified that he believed the symptoms of Harlin H.'s mental illness had existed for "a period of time," based on prior hospitalizations in 1992, 1994, 1998, 2000, 2013, and 2015.

¶ 7 Next, the State introduced petitioner's exhibit No. 1. Dr. Casey testified that the exhibit was a "list of medications and side effects" that set forth all of the medications prescribed to Harlin H., including the alternative medications, with the exception of Luvox,[3] which was added to the petition at the beginning of the hearing. Dr. Casey testified, regarding the Luvox, that Harlin H. "had been on Luvox prior to this so he—as far as the medications and side effects with the Luvox." Dr. Casey testified that in the past, although it was not included in the exhibit, the staff had provided a written list of the benefits and side effects of Luvox to Harlin H. since he had taken the medication in the past. Dr. Casey did not testify to the benefits and side effects of the individual medications, instead relying solely on the petition and attachments to introduce that information.

¶ 8 Dr. Casey sought authorization to administer medications to Harlin H. on an involuntary basis, including olanzapine, [4] lithium, risperidone, [5] diphenhydramine, [6] lorazepam, [7]

[3]Luvox is a brand name of the generic medication fluvoxamine, which is a selective serotonin reuptake inhibitor (SSRI). Fluvoxamine is used to treat obsessive-compulsive problems. *Luvox CR*, Drugs.com, https://www.drugs.com/cdi/luvox-cr.html (last visited Sept. 1, 2022) [https://perma.cc/Z67Q-HTWW].

[4]Olanzapine is the generic name of ZyPREXA™, an antipsychotic medication that is used to treat psychotic conditions such as schizophrenia and bipolar disorder. *Olanzapine*, Drugs.com, https://www.drugs.com/mtm/olanzapine.html (last visited Sept. 1, 2022) [https://perma.cc/4QU5-BTRN].

[5]Risperidone is the generic name of an antipsychotic medication used to treat symptoms of bipolar disorder. *Risperidone*, Drugs.com, https://www.drugs.com/risperidone.html (last visited Sept. 1, 2022) [https://perma.cc/P566-3XPC].

[6]Diphenhydramine is the generic name of Benadryl™, an antihistamine that reduces the effects of natural chemical histamine in the body, treating sneezing, runny nose, watery eyes, hives, skin rash, itching, and other cold or allergy symptoms. *Diphenhydramine*, Drugs.com, https://www.drugs.com/diphenhydramine.html (last visited Sept. 1, 2022) [https://perma.cc/7DLR-WNLW].

[7]Lorazepam is the generic name for Ativan™, a benzodiazepine used to treat anxiety disorders. *Lorazepam*, Drugs.com, https://www.drugs.com/lorazepam.html (last visited Sept. 1, 2022) [https://perma.cc/H2M8-QEFN].

fluoxetine,[8] carbamazepine,[9] and fluvoxamine, as primary medications. He further sought authorization to administer the following alternative medications to Harlin H.: chlorpromazine,[10] VPA, quetiapine,[11] benztropine,[12] clonazepam,[13] Effexor XR,[14] oxcarbazepine,[15] and citalopram.[16]

¶ 9 Dr. Casey testified that he was asking the trial court to authorize those medications set forth in the petition, including Luvox, which was added that day, and the alternative medications up to the dosages as set forth in the petition and that he was seeking authorization for testing procedures to ensure the safe administration of the prescribed medications. Those testing procedures were blood testing, urinalysis, weight, vital signs, physical examination, and electrocardiogram. Dr. Casey testified that to date, he had seen no clinical side effects from either testing or his own observations of Harlin H. and that Harlin H. had not complained of any side effects.

¶ 10 Dr. Casey testified that, in his opinion, the benefits of the treatment outweighed any risk of harm, without any elaboration as to how he formed that opinion. Dr. Casey testified that Harlin H. lacked the capacity to make a reasoned decision about his treatment based on Dr.

---

[8]Fluoxetine is the generic name of Prozac™, an SSRI which is sometimes used together with olanzapine to treat manic depression caused by bipolar disorder. *Fluoxetine*, Drugs.com, https://www.drugs.com/fluoxetine.html (last visited Sept. 1, 2022) [https://perma.cc/5BL8-S6T3].

[9] Carbamazepine is the generic name of an anticonvulsant used to treat bipolar disorder. *Carbamazepine*, Drugs.com, https://www.drugs.com/carbamazepine.html (last visited Sept. 1, 2022) [https://perma.cc/GN2Y-8ZB4].

[10] Chlorpromazine is the generic name of Thorazine™, a phenothiazine that is used to treat psychotic disorders such as schizophrenia or manic depression. *Chlorpromazine*, Drugs.com, https://www.drugs.com/mtm/chlorpromazine.html (last visited Sept. 1, 2022) [https://perma.cc/7PV3-5WSM].

[11]Quetiapine is the generic name for Seroquel™, a second-generation or atypical antipsychotic used to treat schizophrenia, bipolar disorder, and depression. *Quetiapine*, Drugs.com, https://www.drugs.com/quetiapine.html (last visited Sept. 1, 2022) [https://perma.cc/RH3H-QKMZ].

[12]Benztropine is the generic name for Cogentin™, an anticholinergic antiparkinson agent used to treat Parkinson-like symptoms caused by using certain medicines. *Benztropine*, Drugs.com, https://www.drugs.com/mtm/benztropine.html (last visited Sept. 1, 2022) [https://perma.cc/AA2S-EJKG].

[13]Clonazepam is the generic name for KlonoPIN™, a benzodiazepine used to treat seizure and panic disorders. *Clonazepam*, Drugs.com, https://www.drugs.com/clonazepam.html (last visited Sept. 1, 2022) [https://perma.cc/YT3T-QFSK].

[14]Effexor XR™ is a brand name for the generic drug venlafaxine and is a selective serotonin and norepinephrine reuptake inhibitor (SSNRI) used to treat major depressive disorder, anxiety, and panic disorder. *Venlafaxine*, Drugs.com, https://www.drugs.com/venlafaxine.html (last visited Sept. 1, 2022) [https://perma.cc/8D2H-YDGP].

[15]Oxcarbazepine is the generic name for an anticonvulsant and is used to decrease nerve impulses that cause seizures and pain. *Oxcarbazepine*, Drugs.com, https://www.drugs.com/mtm/oxcarbazepine.html (last visited Sept. 1, 2022) [https://perma.cc/48GC-TYZL].

[16] Citalopram is the generic name for Celexa™, an SSRI which is used to treat depression. *Citalopram*, Drugs.com, https://www.drugs.com/citalopram.html (last visited Sept. 1, 2022) [https://perma.cc/74TU-N8S5].

Casey's opinion that Harlin H. had very poor insight and judgment, his criminal status of not guilty by reason of insanity, and his multiple psychiatric admissions in the past.

¶ 11 Dr. Casey testified that he had explored less restrictive services but that he found such services inappropriate to treat Harlin H. The less restrictive service explored was individual therapy, where Harlin H. would meet with Dr. Casey, the social workers, and a nurse to discuss any issues that came up, as well as "off unit activities." Dr. Casey testified that he was requesting the trial court to enter a 90-day order authorizing medication to be administered over objection and for authorization for other certified psychiatrists at CMHC to oversee the administration of medication. He further testified that he had made a good faith effort to determine whether a healthcare power of attorney existed and had not found one. The petition and attachments were admitted by the trial court and made a part of the record without objection.

¶ 12 On cross-examination, Dr. Casey testified that Harlin H. agreed to take Luvox but objected to taking the other prescribed medications. He testified that Harlin H. had been taking the medications on an "enforced" basis and was improving with the medication in that he was less hostile and had not threatened staff or peers.

¶ 13 Harlin H. testified that he stopped taking the medication because he was taken into a seclusion room where he did not have an outlet, was subjected to cameras, and felt like he "was being wronged by it." He testified that it was only one to two days that he was not taking his medication before it got enforced. He testified that he wanted to continue taking Luvox. Further, Harlin H. testified that he would like to go back to taking clonazepam and keep lorazepam as needed. His understanding of the lorazepam prescription was that it was prescribed because clonazepam could not be given by injection. He then testified that he had been worried about carbamazepine in combination with clonazepam because he had experienced symptoms such as headaches for two to three days straight, but those had subsided. Harlin H. testified that at the time of the hearing he had difficulty reading. He further testified that he had taken olanzapine in the past and his side effects were worse then, possibly due to a higher dosage. He testified that he had not really had a chance to discuss his concerns with Dr. Casey but that he had no problem taking the olanzapine because it was a good medicine. He testified that, at the time of the hearing, he was experiencing dry mouth, drinking more water, having eyesight issues, and having headaches once in a while.

¶ 14 The trial court found that Harlin H. was an individual suffering from a serious mental illness who had exhibited a deterioration of his ability to function, was suffering, and had exhibited threatening behavior. The trial court found that the mental illness had existed for a period marked by the continuing presence of the symptoms and the repeated episodic occurrences of symptoms and further found that the benefits of the treatment would outweigh the harm. The trial court determined that Harlin H. lacked the capacity to make a reasoned decision about his treatment. The trial court found that despite the fact that Harlin H. was knowledgeable about the effects of his medications, it showed poor insight to refuse medication based on a dispute with staff. The trial court found that less restrictive services were explored and found to be inappropriate. The trial court also found that the testing procedures requested were essential for the safe and effective administration of treatment and that there had been a good faith attempt to determine whether or not Harlin H. had executed a power of attorney for healthcare or a declaration of mental health treatment and none had been located. The trial court found that Harlin H. had received information about the benefits and

side effects of the treatment and the alternatives and was a person subject to involuntary administration of psychotropic medication. The trial court entered the medication order on February 27, 2019, allowing the administration of medication over objection for a period not to exceed 90 days, and authorized the individuals named in the petition to administer the medication and the testing requested to ensure the safe administration of that medication. A notice of appeal was filed on behalf of Harlin H. on March 13, 2019.

¶ 15 II. ANALYSIS

¶ 16 A. Mootness

¶ 17 We first acknowledge that this appeal is moot as of May 28, 2019, when the medication order expired; therefore, our decision in this case will not grant Harlin H. effective relief from that order. See *In re Joseph M.*, 398 Ill. App. 3d 1086, 1087 (2010). This court does not have jurisdiction to decide a moot question or render an advisory opinion unless the case falls within an exception to the mootness doctrine. *In re Barbara H.*, 183 Ill. 2d 482, 491 (1998). While there is no *per se* exception to mootness that universally applies to mental health cases, appeals of otherwise moot mental health orders "will usually fall within one of the established exceptions to the mootness doctrine." *In re Alfred H.H.*, 233 Ill. 2d 345, 355 (2009). The established exceptions are "public interest," "capable of repetition yet avoiding review," and "collateral consequences." *Id.* at 354-61.

¶ 18 On appeal, Harlin H. concedes that the issues are moot but argues that the "capable of repetition" and "public interest" exceptions apply, as he raises statutory compliance issues and has a history of mental illness and several admissions to mental health facilities. Thus, Harlin H. argues that he is likely to face the issues raised here again. The State agrees that the "capable of repetition" exception applies, as Harlin H. has had several previous involuntary admissions and, by his own admission, had been subject to administration of psychotropic medication in the past.

¶ 19 An exception to the mootness doctrine exists for cases where the events are capable of repetition yet are of such a short duration as to evade review. *In re Craig H.*, 2020 IL App (4th) 190061, ¶ 27. This exception has two elements. First, the challenged action must be of a duration too short to be fully litigated prior to its cessation. *Id.* Second, there must be a reasonable expectation that the same complaining party would be subjected to the same action again. *Id.* The same action need not be identical, but the actions must have a substantial enough relation that the resolution of the issue in the present case would be likely to affect a future case involving the respondent. *Id.* This exception must be narrowly construed and requires a clear showing of each criterion. *In re J.T.*, 221 Ill. 2d 338, 350 (2006).

¶ 20 As previously stated, the medication order was limited to 90 days. Because the challenged order was of such short duration, the issues could not have been fully litigated prior to its cessation. As such, the first criterion has been established. See *In re Alfred H.H.*, 233 Ill. 2d at 358. Thus, the only question with regard to this exception is whether there is a reasonable expectation that respondent will be personally subject to the same action.

¶ 21 The record establishes that Harlin H. is a person with a history of mental illness spanning over 20 years. This history included six prior hospitalizations. Therefore, it is very likely that Harlin H. will face future involuntary hospital admissions or involuntary administration of psychotropic medication proceedings and, as such, meets the second element that he would likely be subjected to the same action again.

¶ 22 An appeal that merely challenges the sufficiency of the evidence presented in a particular case will not suffice because any subsequent case involving the respondent will involve different evidence and will require an independent determination of the sufficiency of that evidence. *Id.* at 359-60. However, if the respondent's appeal raises a constitutional issue or challenges the trial court's interpretation of a statute, the exception applies because the court's resolution of these issues could affect the respondent in subsequent commitment proceedings. *Id.* at 360.

¶ 23 The present appeal involves challenges to the sufficiency of the evidence, but also involves the allegations that the State failed to observe several mandatory procedural and substantive requirements of the Code, that the trial court entered an invalid involuntary medication order despite several statutory violations, and that Harlin H.'s counsel was ineffective for failing to object to the errors and omissions. Harlin H.'s arguments that the State and the trial court failed to comply with several mandatory requirements of the Code's involuntary treatment statute (405 ILCS 5/2-107 (West 2018)) fall under the exception. See *In re Marcus S.*, 2022 IL App (3d) 170014, ¶ 48. As Harlin H. is statutorily entitled to counsel during these proceedings (405 ILCS 5/3-805 (West 2018)) and ineffective assistance of counsel issues are likely to recur in future proceedings, the exception applies to the claim of ineffective assistance of counsel as well. *In re Tara S.*, 2017 IL App (3d) 160357, ¶ 17. Accordingly, we find that the issues presented in this case are reviewable under the capable of repetition yet avoiding review exception to mootness. Because we find that the "capable of repetition" exception applies, we do not need to address Harlin H.'s argument that the "public interest" exception also applies.

¶ 24 Harlin H.'s argument that the State failed to prove by clear and convincing evidence that he was subject to involuntary treatment is a sufficiency of the evidence claim. While a routine sufficiency-of-the-evidence argument in a mental health case has been found not to meet the criteria for either exception to the mootness doctrine, because we are addressing the merits of Harlin H.'s statutory compliance arguments under the capable of repetition exception, we will also consider the merits of his sufficiency-of-the-evidence argument. See *In re A.W.*, 381 Ill. App. 3d 950, 956 (2008).

¶ 25 Harlin H. argues that the trial court erred in entering the medication order and raises five issues for this court's review. The issues raised are (1) whether the medication order was defective where it failed to specify medication dosages for VPA and lithium, (2) whether Harlin H.'s willingness to take some medication should have been considered a less restrictive alternative treatment than court-ordered involuntary medication, (3) whether the State failed to protect Harlin H.'s due process right to complete medication information and failed to prove that he lacked capacity when the medication information he was provided did not describe the benefits of each medication individually or the benefits and side effects of combined medications administration, (4) whether the State failed to prove the benefits of the treatment outweighed the harm to Harlin H. when its evidence did not include the benefits and harm of each individual medication or of the medications in combination, and (5) whether Harlin H. received ineffective assistance of counsel.

¶ 26 B. Failure to Comply With the Code

¶ 27 Harlin H. argues that the State, the trial court, and his counsel failed to satisfy certain mandatory requirements of the Code and the errors require reversal. We agree.

¶ 28 The fourteenth amendment's due process clause pertains to persons who suffer from mental illness and recognizes that they have constitutionally protected liberty interests that permit them to refuse the involuntary administration of psychotropic medications. *In re C.E.*, 161 Ill. 2d 200, 213 (1994). Because involuntary mental health services, including the involuntary administration of psychotropic drugs, involve a massive curtailment of liberty (*In re Robert S.*, 213 Ill. 2d 30, 46 (2004)), Illinois courts have repeatedly recognized the importance of "the procedures enacted by our legislature to ensure that Illinois citizens are not subjected to such services improperly." *In re Barbara H.*, 183 Ill. 2d at 496.

¶ 29 We also recognize that the State has a legitimate *parens patriae* interest in furthering the treatment of mentally ill patients who are incapable of making reasoned decisions regarding their own treatment. *In re C.E.*, 161 Ill. 2d at 217. Pursuant to section 2-107.1(a-5)(4) of the Code, psychotropic medications may not be administered to an adult recipient of mental health services against their will unless the State proves the following by clear and convincing evidence:

> "(A) That the recipient has a serious mental illness or developmental disability.
>
> (B) That because of said mental illness or developmental disability, the recipient currently exhibits any one of the following: (i) deterioration of his or her ability to function, as compared to the recipient's ability to function prior to the current onset of symptoms of the mental illness or disability for which treatment is presently sought, (ii) suffering, or (iii) threatening behavior.
>
> (C) That the illness or disability has existed for a period marked by the continuing presence of the symptoms set forth in item (B) of this subdivision (4) or the repeated episodic occurrence of these symptoms.
>
> (D) That the benefits of the treatment outweigh the harm.
>
> (E) That the recipient lacks the capacity to make a reasoned decision about the treatment.
>
> (F) That other less restrictive services have been explored and found inappropriate.
>
> (G) If the petition seeks authorization for testing and other procedures, that such testing and procedures are essential for the safe and effective administration of the treatment." 405 ILCS 5/2-107.1(a-5)(4)(A)-(G) (West 2018).

¶ 30 The statute provides important procedural safeguards that protect the rights of patients while balancing the State's interests by requiring the trial court to find evidence of each of the elements before authorizing the forced administration of psychotropic medication. See *In re Louis S.*, 361 Ill. App. 3d 774, 779 (2005). The statute's strict standards must be satisfied by clear and convincing evidence before medication can be ordered on an involuntary basis. *In re C.E.*, 161 Ill. 2d at 218.

¶ 31 Whether there was compliance with a statutory provision presents a question of law, which we review *de novo. In re Nicholas L.*, 407 Ill. App. 3d 1061, 1072 (2011). A reviewing court, however, will not reverse a trial court's determination as to the sufficiency of the evidence unless it is against the manifest weight of the evidence. *In re Laura H.*, 404 Ill. App. 3d 286, 290 (2010). A judgment is against the manifest weight of the evidence only where the opposite conclusion is apparent or where the findings appear to be unreasonable, arbitrary, or not based on the evidence. *Id.*

¶ 32 1. Medication Dosage

¶ 33 Harlin H. argues that the medication order was defective where it failed to specify medication dosages for VPA and lithium. The State confesses this error, and its confession is well taken.

¶ 34 The petition and the medication order list the same medications and dosages. In the petition, the requested dosage for lithium is listed as "up to therapeutic level daily." The alternative medication, VPA, also has a dosage listed as "up to the therapeutic level daily." Section 2-107.1(a-5)(6) of the Code provides that an order authorizing the use of psychotropic medications on a nonemergency basis must "specify the medications and the anticipated range of dosages that have been authorized." 405 ILCS 5/2-107.1(a-5)(6) (West 2018). We previously addressed this issue in *In re Bobby F.*, 2012 IL App (5th) 110214, ¶ 11, where VPA was ordered " 'up to therapeutic dose.' " Notably, the *Bobby F.* case also occurred in Randolph County and Dr. Casey acted as the State's expert witness. In that case, we held that a trial court's designation of a " 'therapeutic dose' " lacked the specificity required pursuant to section 2-107.1(a-5)(6) of the Code. *Id.* ¶ 28. Again, we find that the medication order is deficient where it does not properly specify the dosage to be administered and that the medication order must be reversed.

¶ 35 The State correctly submits that resolution of this issue could resolve this appeal. While we acknowledge that the review of Harlin H.'s additional contentions of error would not normally be necessary, the numerous defects in this case and their frequent repetition in our mental health courts belie a need to address these errors to ensure they are not repeated in the future. While the State did not argue that any issue raised by Harlin H. was waived, we do note that there was no objection in the trial court by Harlin H.'s counsel to *any* of the issues raised and a motion to reconsider was not filed. However, the waiver rule is a limitation on parties and not on reviewing courts. See *Welch v. Johnson*, 147 Ill. 2d 40, 48 (1992) (reviewing court may, in furtherance of its responsibility to reach a just result, override considerations of waiver). Accordingly, we will consider Harlin H.'s remaining issues on the merits. See *In re Len P.*, 302 Ill. App. 3d 281, 286 (1999) (reversing involuntary-treatment order despite waiver because the trial court failed to specify the type and dosage of medication).

¶ 36 2. Less Restrictive Alternative Treatment

¶ 37 Harlin H. next argues that his willingness to take some medication should have been considered a less restrictive alternative treatment than court-ordered administration of involuntary medication. We agree that the medication order was entered in error based on a failure to comply with section 2-107.1(a-5)(4)(F) of the Code.

¶ 38 Voluntary treatment is the preferred method for recipients to receive mental health services in Illinois. See *In re Stephenson*, 67 Ill. 2d 544, 554 (1977). Voluntarily taking psychotropic medication has been considered less restrictive than being court-ordered to do so under certain circumstances:

> "when a patient is willing to take some forms of psychotropic medication, but not others, and the State seeks to forcibly administer medication in the latter category, the State must first prove by clear and convincing evidence that the drugs that the patient is willing to take 'have been explored and found inappropriate.' " *In re Torry G.*, 2014 IL App (1st) 130709, ¶ 35 (quoting 405 ILCS 5/2-107.1(a-5)(4)(F) (West 2012)).

That less restrictive services have been explored and found to be inappropriate is one of the strict standards that must be complied with before a court can forcibly impose involuntary medication. 405 ILCS 5/2-107.1(a-5)(4)(F) (West 2018).

¶ 39 It is important to recognize that the diagnosis and treatment of mental health disorders is a highly specialized area of medicine that is better left to the experts. *In re Mary Ann P.*, 202 Ill. 2d 393, 406 (2002). Accordingly, where the recommended treatment consists of multiple medications—some to be administered alternatively, some to be administered in combination, and some on an as-needed basis—it is only this treatment in its entirety that may be authorized by a judge or jury. *Id.* at 405-06. The question of whether treatment with medications that the patient is willing to take voluntarily is an appropriate, less restrictive alternative treatment "is not simply whether voluntarily taking those medications is appropriate for the patient at all, but whether taking those medications in lieu of the medications requested in the petition is appropriate." *In re Robert M.*, 2020 IL App (5th) 170015, ¶ 62 (citing *In re Torry G.*, 2014 IL App (1st) 130709, ¶ 39 (pointing out the lack of evidence that any of the medications the respondent was willing to take could be substituted for the medications that he was not willing to take)).

¶ 40 Dr. Casey, through the State, sought an order to administer medication on an involuntary basis, including 16 primary and alternative medications. Harlin H. testified that he would willingly continue to take olanzapine, lorazepam, carbamazepine, and Luvox. Additionally, he wished to add clonazepam, Dr. Casey's alternative to lorazepam, because he had taken the medication in the past and wished to keep lorazepam as an as-needed medication.

¶ 41 The medications that Harlin H. testified he would voluntarily take did not include the entirety of Dr. Casey's proposed medication protocol as his testimony excluded, by omission, the prescribed primary medications: lithium, risperidone, diphenhydramine, and fluoxetine. Similarly, it failed to include voluntarily taking prescribed alternative medications other than clonazepam. However, Harlin H.'s testimony was that he was willing to take all of the medications that he was currently taking (which were olanzapine and lorazepam) and that Dr. Casey testified had resulted in improvement of his symptomology. Further, Harlin H. stated that he would voluntarily add clonazepam. Fluvoxamine (Luvox) was added by Dr. Casey to the petition at the beginning of the hearing because Harlin H. had requested the medication. Dr. Casey was not called by counsel for Harlin H. to testify whether, in his expert opinion, taking those medications in lieu of the medications requested in the petition would be inappropriate, and the State presented no rebuttal evidence.

¶ 42 The State argues that an individual suffering from a serious mental illness and found to be incapable of making reasoned decisions regarding their treatment should not be allowed to parse their treatment and choose among the various medications. Additionally, the State argues that the trial court should not authorize orders allowing treatment with medication that is something less than what the treating physician has prescribed. We agree that the trial court may not enter an order authorizing less than the complete prescribed medication protocol. See *In re Mary Ann P.*, 202 Ill. 2d at 405. If the trial court found, with the aid of expert testimony, that the medication protocol Harlin H. was willing to take voluntarily was more appropriate to treat his mental illness than the prescribed medication protocol, the trial court should deny the petition, and Harlin H. would be treated on a voluntary basis until and unless his treating psychiatrist determined that there was a need for another petition for involuntary medication.

¶ 43 The State also argues that Harlin H. momentarily agreed to take medications at the hearing after recently refusing all psychotropic medications, implying that such an assertion during an involuntary medication hearing could not be sufficient for a denial of the petition. We agree with the State that Harlin H.'s prior refusal to take medication would be a factor for the trial court to consider in determining the veracity of Harlin H.'s claim that he would willingly adhere to a medication protocol absent a court order.

¶ 44 Harlin H. argues that where the medications that he was willing to take were named in the petition, the medications' legitimacy as "appropriate medications" was met. We disagree. The inclusion of the medications Harlin H. testified that he would agree to take in the prescribed medication protocol did not suffice to meet the standard that taking those medications voluntarily, in lieu of the medications requested in the petition, was appropriate to treat his mental illness. The issue here is that there was no evidence presented to the trial court that the voluntary medication protocol was considered and found to be inappropriate.

¶ 45 There are factual issues to resolve in an involuntary medication hearing, but the factual aspects are only the beginning of the inquiry. In the present case, factually, it is not possible from the record to ascertain the details of the proposed medication protocol, which is poorly defined. The evidence presented failed to inform the trial court whether all of the primary medications were intended to be administered together, in combination, or on an as-needed basis. The evidence presented lacked any information indicating what symptomology each individual medication was prescribed to aid. The lack of evidence that any of the medications Harlin H. was willing to take could be substituted for the medications he was not willing to take, and the lack of additional expert testimony regarding the appropriateness of the proposed voluntary protocol compared to the prescribed protocol, made it impossible for the trial court to determine whether the less restrictive form of treatment, voluntarily taking medication, had been explored and found to be inappropriate.

¶ 46 Without expert testimony about the prescribed medication protocol and the inappropriateness, by comparison, of the medication protocol proposed by Harlin H., the trial court could not determine by clear and convincing evidence that the medications Harlin H. was willing to take had been considered and were an inappropriate alternative treatment consistent with the requirements of section 2-107.1(a-5)(4)(F). Absent expert testimony presented by Harlin H., or the State, regarding the inappropriateness of the proposed voluntary medication protocol, the trial court could not render a finding regarding less restrictive alternative treatment that was supported by the evidence.

¶ 47 While we acknowledge that it is highly probable that a psychiatrist's proposed medication protocol would be superior in efficacy to a medication protocol chosen by a layperson, it is also possible that an individual with a lengthy history of engagement with mental health treatment would have valuable insight regarding their own treatment. An expert's opinion is necessary for the trial court to interpret the facts and to make a finding by clear and convincing evidence that the medications that the patient is willing to take have been explored and found inappropriate.

¶ 48 The medication order failed to comply with section 2-107.1(a-5)(4)(F) of the Code where there was no evidence presented to the trial court that the medication protocol Harlin H. agreed to take voluntarily was considered and found to be an inappropriate substitute for the prescribed medication protocol. As such, the evidence presented to the trial court was insufficient to prove that less restrictive services were explored and found to be inappropriate,

and the medication order must be reversed.

¶ 49 3. Incomplete Medication Information

¶ 50 Harlin H. next argues that he did not receive complete medication information in violation of section 2-102(a-5) of the Code. 405 ILCS 5/2-102(a-5) (West 2018). Harlin H. argues that the State failed to prove that he lacked capacity where the medication information he was provided did not describe the benefits of each medication individually or the benefits and side effects of the medications when administered in combination.

¶ 51 Before a trial court can authorize involuntary treatment, the State must prove compliance with section 2-102(a-5) of the Code in order to protect the respondent's due process rights. *In re John R.*, 339 Ill. App. 3d 778, 784 (2003). Section 2-102(a-5) of the Code requires that a treating physician "advise the recipient, in writing, of the side effects, risks, and benefits of the treatment, as well as alternatives to the proposed treatment, to the extent such advice is consistent with the recipient's ability to understand the information communicated." 405 ILCS 5/2-102(a-5) (West 2018). The written notice requirement is a procedural safeguard that must be construed in favor of the respondent, and strict compliance therewith is necessary because liberty interests are involved. *In re Bobby F.*, 2012 IL App (5th) 110214, ¶ 20.

¶ 52 The State argues that Harlin H. was provided the petition with attachments, which included the drug sheets admitted into evidence, and asserts that these documents combined complied with the requirements of section 2-102(a-5). Page one of the care notes contained in the petition and attachments indicate that the drug notes were provided to Harlin H. on February 20, 2019, and was signed by a registered nurse attesting to the same. There are 41 pages of drug notes included in the petition's attachments. We disagree that the petition and attachments provided to Harlin H. constitute compliance with section 2-102(a-5) of the Code (405 ILCS 5/2-102(a-5) (West 2018)).

¶ 53 We first note the State's failure to provide any evidence that Harlin H. was provided written notification of the risks or benefits or any written information about citalopram, the alternative to fluvoxamine. Harlin H. could not be compelled to take citalopram without receiving the statutorily required written information, and therefore, the medication order must be reversed. See *In re Tara S.*, 2017 IL App (3d) 160357, ¶ 26 (reversing medication order where the written medication information omitted information about one of the medications in the petition).

¶ 54 Further, the petition and attachments failed to adequately describe the benefits of the treatment individually, as well as the risks and benefits of the medications in combination. The attachment to the petition, titled petition for administration of enforced medication, indicated that Harlin H. was diagnosed with bipolar disorder, not otherwise specified. He was assessed as volatile and unpredictable, having been involved in altercations with peers and threatening staff members. He was placed on observation for refusing to eat and had displayed psychotic behaviors and a lack of insight into his need for treatment.

¶ 55 The petition stated the benefits and side effects of two categories of medications—antipsychotic medications and anxiolytic medications—as well as medications "overall." The petition did not identify which medications listed in the petition are antipsychotic medications and which are anxiolytic medications.

¶ 56 The drug sheets provided to Harlin H. stated the name of the drug, what conditions it treats, how to take and store the drug, warnings, and side effects. For example, the olanzapine pages indicate that it treats psychotic disorders, such as schizophrenia or bipolar disorder. While Harlin H. was diagnosed with bipolar disorder, not otherwise specified, the drug sheet does not describe how it treats bipolar disorder or that it helps address any symptomology that was exhibited by Harlin H. The benztropine documentation states that it treats Parkinson's disease or the side effects of other drugs. The document does not explain what side effects it treats or what drugs cause the side effects, and Harlin H. was not diagnosed with Parkinson's disease. Importantly, none of the documents provided indicated how the specific drug would be used to benefit Harlin H.'s mental health issues or specific symptomology, as they were either vague or treated multiple conditions.

¶ 57 In *In re Laura H.*, 404 Ill. App. 3d at 291-93, similar drug sheets were found to be insufficient to show statutory compliance with section 2-102 of the Code. In that matter, an expert witness testified to some benefits of the drugs prescribed. *Id.* at 291. The court found, however, that the drug sheets in the common-law record simply stated the name of the drug, what conditions it treated, how to take and store the drug, warnings, and side effects. *Id.* The court noted that none of the documents indicated how the specific drug would be used to benefit the respondent's mental health issues as they were either vague or treated multiple conditions. *Id.* at 292.

¶ 58 In the present case, the drug sheets are similar to those provided to *Laura H.* and were insufficient. While the attachment to the petition described the benefits of types of drugs, the drugs in the petition were unlabeled as to what type, and therefore, there would be no way for a patient to ascertain which drugs were antipsychotic and which were anxiolytic. While the attachment to the petition included an explanation of the overall benefits of the medications generally, the drug sheets failed to indicate the benefits of each drug for the treatment of Harlin H.'s symptoms or the side effects expected to be caused by each medication in the petition. Accordingly, we find that the written documents provided to Harlin H. did not state the benefits of each medication as required by section 2-102(a-5) of the Code. 405 ILCS 5/2-102(a-5) (West 2018).

¶ 59 Before a trial court authorizes involuntary treatment, the State must also show by clear and convincing evidence that the respondent "lacks the capacity to make a reasoned decision about the treatment." *Id.* § 2-107.1(a-5)(4)(E). A necessary predicate to making this informed decision is that the respondent must be informed about the medication's risks and benefits. *In re Cathy M.*, 326 Ill. App. 3d 335, 341 (2001). Absent written information that adequately describes the proposed treatment along with the risks and benefits associated with the proposed treatment, the State fails to show that the respondent lacks capacity. *In re Louis S.*, 361 Ill. App. 3d at 779-80.

¶ 60 The poorly defined treatment protocol and the information provided to Harlin H. via the petition and attachments were inadequate to inform him about the risks and benefits of the treatment, and therefore, Harlin H. did not have the information required to make a reasoned decision. Without this information, the trial court could not have found by clear and convincing evidence that Harlin H. lacked the capacity to make a reasoned decision about whether to take psychotropic medication, and the medication order must be reversed.

¶ 61 Regarding polypharmacy, the proposed medication protocol in the petition and medication order did not indicate which medications would be used in combination, and if medications

were to be used in combination, for what purpose. The petition only indicated that the medications listed *may* be used in combination. It was not possible to ascertain from the information provided to Harlin H. in writing what medications would be administered at the same time.

¶ 62 It is of note that some of the drug sheets contained in the petition's attachments indicated that one should alert their doctor if they are taking other medications because the medication may interfere with how another medication works. For example, the drug sheet provided for olanzapine, a medication on Harlin H.'s primary medication protocol, under the heading "Drugs and Foods to Avoid," directs the reader that "[s]ome medicines can affect how olanzapine works. Tell your doctor if you are using any of the following: Carbamazepine, diazepam, fluoxetine, fluvoxamine, levodopa, omeprazole, or rifampin." Carbamazepine, fluoxetine, and fluvoxamine are all listed under Harlin H.'s primary medications in the medication protocol; however, there was no information provided to Harlin H., nor testimony before the trial court, indicating whether those medications would be administered simultaneously, and nothing in the written information informed Harlin H. of the basis for the warning in the drug sheet.

¶ 63 This court has held that the "possibility of harm resulting from drug interactions is a crucial consideration in determining whether the benefits of a proposed course of treatment outweigh the risk of harm." *In re H.P.*, 2019 IL App (5th) 150302, ¶ 36. "Without pertinent information on the possibility of such harm, courts do not have adequate information to make a meaningful determination." *Id.* We held in *In re H.P.* that in order for the courts to meaningfully assess whether the benefits of treatment outweigh the harm that might occur as a result of the proposed treatment, the State must provide trial courts with expert testimony addressing known drug interactions in order to meet its statutory burden. *Id.* ¶¶ 33-36.

¶ 64 The determination of whether an individual has the capacity to make treatment decisions for themselves rests upon their ability to make a rational choice to either accept or refuse the treatment considering conveyed information concerning the risks and benefits of the proposed treatment. We see no reason to differentiate between the information required for the trial court to consider and the information required for a patient to consider the risks and benefits of proposed treatment. As such, we hold that the patient must also be provided with the information about the benefits of polypharmacy and known drug interactions. See also *In re Alaka W.*, 379 Ill. App. 3d 251, 263-64 (2008) (requiring the State to present evidence of the risks and benefits of each medication it sought to have involuntarily administered, which would provide the court the same information deemed necessary for a patient to make a "reasoned decision" as to whether the benefits of the treatment outweigh the potential harm). Where the medication protocol includes polypharmacy, the patient must be informed of the known drug interactions of the medications that are sought to be administered in combination and that information must describe the benefits and risks that are associated with the combination.

¶ 65 The medication sheets, even when cross-referenced with the petition and attachments, do not sufficiently notify Harlin H. about the benefits of each medication individually or of the benefits and side effects of combined medications so that he could make a reasoned decision about the treatment. The medication order must be reversed where it was entered in violation of the requirements of section 2-102(a-5) of the Code. 405 ILCS 5/2-102(a-5) (West 2018). Additionally, the order must be reversed where the State failed to prove by clear and convincing evidence, pursuant to section 2-107.1(a-5)(4)(E) of the Code (*id.* § 2-107.1(a-

5)(4)(E)), that Harlin H. lacked the capacity to make a reasoned decision where he was not provided with full written information about the medication protocol listed in the petition.

¶ 66 4. Benefits Outweigh the Risk of Harm

¶ 67 Harlin H. next argues that the State did not prove that the benefits of the treatment outweighed the risk of harm posed to him because its evidence did not include the benefits and harm of each individual medication or of the medications in combination. The statute governing orders for the involuntary administration of psychotropic medication requires the State to prove by clear and convincing evidence that the benefits of the proposed treatment outweigh the risk of harm from the treatment. *Id.* § 2-107.1(a-5)(4)(D). The Illinois Supreme Court has found that:

> "Only a physician—such as a psychiatrist—can prescribe medication ***. *** [T]he medical community recognizes that a certain level of knowledge is necessary to safely prescribe medication, to fully recognize its beneficial effects as well as its adverse side effects, to understand its interaction with other drugs, and to anticipate the consequences of using it on certain at-risk groups." *In re Robert S.*, 213 Ill. 2d at 52.

The State's expert must support his opinions with specific facts or testimony as to the basis of those opinions. *In re Alaka W.*, 379 Ill. App. 3d at 263. An expert's opinion alone is not enough to satisfy the clear and convincing evidence standard. *Id.*

¶ 68 In order for courts to meaningfully weigh whether the benefits of the treatment outweigh the harm, the State must present medical evidence of the benefits of *each medication* to be administered as well as the potential side effects of each medication. *Id.* If the petition lists medications to be used in combination, the State must present evidence about the benefits of using multiple medications. *In re H.P.*, 2019 IL App (5th) 150302, ¶¶ 29-31. Further, the medications should treat symptoms the respondent has actually exhibited. *In re Debra B.*, 2016 IL App (5th) 130573, ¶¶ 44, 47. Accordingly, the evidence about medications' benefits should not be vague but instead show how the specific drug will benefit the respondent's mental health issues. See *In re Laura H.*, 404 Ill. App. 3d at 292 (discussing the contents of the written medication information that must be given to respondents).

¶ 69 Clear and convincing evidence is defined as a quantum of proof that leaves no room for reasonable doubt in the fact finder's mind about the truth of the proposition in question. *In re John R.*, 339 Ill. App. 3d at 781. The State did not present sufficient evidence to the trial court about the proposed medication protocol, the benefits and side effects of each individual medication, or the combined administration of the medication as required by the Code. 405 ILCS 5/2-107.1(a-5)(4)(D) (West 2018); *In re Jennice L.*, 2021 IL App (1st) 200407, ¶¶ 30-31.

¶ 70 Dr. Casey was asked if the "benefits and the treatment that you're asking for this court to administer far outweigh any harm that would come from them," and he answered, "Yes." Dr. Casey did not testify about the individual medications, whether they would be given orally or through intermuscular injection (or the dosage associated with each, if different), or their benefits and potential side effects, except to say that Harlin H. feels Luvox helps him and agrees to take it. The petition and attachments were admitted into evidence, but even if they could be a substitute for expert testimony, where the documents failed to sufficiently outline the benefits of the medications individually, or the benefits and side effects of any medications that would be used in combination, they could not. See *In re A.W.*, 381 Ill. App. 3d at 959

("[W]e reject the State's contention that it is sufficient if the petition for involuntary treatment lists the specific requested dosages. Absent (1) the trial court's (a) taking judicial notice of the anticipated dosages listed in the petition or (b) admitting in evidence the petition for the purpose of establishing the anticipated dosages or (2) testimony that the proposed psychotropic medications are requested in the dosages as they are listed in the petition, the petition's listing of anticipated dosages of the proposed psychotropic medication does not suffice.").

¶ 71 Dr. Casey testified that Harlin H. was diagnosed with bipolar disorder, moderate, not otherwise specified, but he did not testify to the definition and symptomology of the diagnosis or how he arrived at the diagnosis, and that information is not contained in the petition and attachments. The attachment to the petition did indicate that Harlin H. displayed psychotic behaviors, but it did not outline what behaviors were suggestive of psychosis nor that psychosis was a feature of bipolar disorder, not otherwise specified.

¶ 72 Dr. Casey did testify to specific behaviors exhibited by Harlin H. while at Alton Mental Health Center; prior to his transfer to CMHC, Harlin H. had threatened to kill staff and peers, thrown furniture, barricaded his room, and broken a window. While at CMHC, Harlin H. got into a verbal altercation with a peer on February 5, 2019. On February 6, 2019, he threatened his therapists. He also threatened to skin a nurse alive. He was on a hunger strike and had lost 20 pounds since January 29, 2019. He was hostile, unpredictable, easily agitated, and had very poor insight. The petition also included an allegation that Harlin H. had shown escalating inappropriate sexual behaviors including masturbating in the open. The attachment to the petition indicated that the benefit of the medications in reducing the intensity of psychotic symptoms as well as mood disturbance and alleviating threatening and aggressive behavior, as well as bizarre and erratic behaviors, outweighed the risks of uncontrolled symptoms.

¶ 73 Testimony that proposed medications are expected to treat specific symptoms is sufficient to demonstrate the benefits of the proposed treatment to the court. *In re H.P.*, 2019 IL App (5th) 150302, ¶ 31. Dr. Casey did not testify regarding the benefits and side effects of any of the individual medications in the petition. Further, while the petition and medication order listed the medications as primary and alternative, they failed to indicate whether the medications would be prescribed individually or in combination. Dr. Casey did not testify whether it was necessary to administer the medications together, if they treated symptoms exhibited by Harlin H. that were a result of his mental illness, or if they treated side effects expected to arise based on the administration of the prescribed medication protocol. Further, Harlin H. was given drug sheets for the injectable and oral forms of some medications, but there was no differentiation in the petition or indication of which would be given or at what dose based on the differing methods of delivery.

¶ 74 The petition included a heading titled "evaluation for enforced medications," which included information about the classification of medications. For example: "Antipsychotic medications are used to decrease and remit symptoms such as delusions and hallucinations, as well as alleviate disorganized and confused thought processes. It also reduces and alleviates hostility and lessens potential for aggression and helps control violent acting out." There is a similar paragraph relating to anxiolytic medications. However, none of the medications in the petition were labeled as antipsychotic or anxiolytic, and there was no testimony offered about these drug classifications. Further, while some of Harlin H.'s behaviors could be attributable to delusions, hallucinations, or disorganized and confused thought processes, there was no testimony and nothing in the record to indicate that Harlin H. was exhibiting those symptoms

as a result of suffering from the same, or that the symptomology was caused by the defendant's bipolar disorder, not otherwise specified.

¶ 75 The petition and attachments included some information about the uses of the prescribed medications by way of the drug sheets provided to Harlin H. prior to the trial and admitted into evidence. There was no drug sheet for citalopram, the alternative medication for fluvoxamine, and no testimony was presented regarding that medication. Six of the requested medications listed treatment of bipolar disorder as a benefit, but the medication sheets did not indicate in what way they would treat the disorder or any of the specific symptoms exhibited by Harlin H. Further, there was nothing in the record to show that Harlin H. suffered from many of the symptoms listed as benefits of the prescribed medications, including the treatment of manic episodes, seizures, nerve pain, Parkinson's disease, panic disorder, hay fever, allergies, cold symptoms, insomnia, motion sickness, depression, obsessive compulsive disorder, bulimia, social anxiety disorder, nausea, porphyria, tetanus, or schizophrenia.

¶ 76 Where an expert fails to support his opinion with specific facts or testimony as to the bases of those opinions, then his testimony alone is insufficient to satisfy the clear and convincing evidence standard. *In re Alaka W.*, 379 Ill. App. 3d at 263. Here, reversal of the medication order is warranted as Dr. Casey's testimony did not rise to the level of clear and convincing evidence where he did not adequately explain the bases for his opinion and his opinion was unsupported by the evidence. As such, the State failed to prove that the benefits of the treatment outweigh the risk of harm to Harlin H. as required by section 2-107.1(a-5)(4)(D) of the Code. 405 ILCS 5/2-107.1(a-5)(4)(D) (West 2018). Therefore, the trial court's finding that the benefits outweighed the harm was against the manifest weight of the evidence and the medication order must be reversed.

¶ 77 C. Ineffective Assistance of Counsel

¶ 78 Harlin H. also argues that his trial counsel provided ineffective assistance during the involuntary medication proceeding by failing to object to the State's failure to present evidence as to each of the required elements of the involuntary treatment statute. Harlin H. further argues that his trial counsel provided ineffective assistance of counsel by failing to hold the State to various other procedural and substantive requirements of the Code and by failing to ensure that the trial court comported with appropriate evidentiary standards. We review a claim of ineffective assistance of counsel under the *de novo* standard. *People v. Davis*, 353 Ill. App. 3d 790, 794 (2004). Based on the following, we agree that Harlin H.'s counsel was ineffective at the involuntary medication proceeding.

¶ 79 A respondent that is subject to involuntary administration of psychotropic medication has a statutory right to counsel. 405 ILCS 5/3-805 (West 2018); *In re Barbara H.*, 183 Ill. 2d at 493-94. This right to counsel includes the effective assistance of counsel; anything less would fail to guarantee due process requirements. *In re Tara S.*, 2017 IL App (3d) 160357, ¶ 17. In determining whether counsel has effectively tested the State's case in proceedings under the Code, this court applies the *Strickland* standard. *In re Daryll C.*, 401 Ill. App. 3d 748, 754 (2010); see *Strickland v. Washington*, 466 U.S. 668 (1984). Under *Strickland*, a respondent must prove that "(1) counsel's performance was deficient, such that the errors were so serious that counsel was not functioning as the 'counsel' contemplated by the Code; and (2) counsel's errors were so prejudicial as to deprive [the respondent] of a fair proceeding." *In re Carmody*, 274 Ill. App. 3d 46, 57 (1995) (citing *Strickland*, 466 U.S. at 687).

¶ 80 The United States Supreme Court has held, however, that a party need not prove the *Strickland* element of prejudice when the petitioner's counsel failed "to subject the prosecution's case to meaningful adversarial testing." *United States v. Cronic*, 466 U.S. 648, 659 (1984). Where counsel fails to subject the State's case to meaningful adversarial testing, prejudice will be presumed (*People v. Hattery*, 109 Ill. 2d 449, 461 (1985)), and counsel's failures will not be considered matters of trial strategy. *People v. Patterson*, 217 Ill. 2d 407, 441 (2005). To be effective, then, counsel must create a "confrontation between adversaries" (internal quotation marks omitted) (*Hattery*, 109 Ill. 2d at 462) and must challenge their opponent's case in a valid way. *People v. Bonslater*, 261 Ill. App. 3d 432, 439 (1994). In involuntary mental health proceedings, whether respondent's counsel held the State to its burden of proof is of paramount importance. *In re Sharon H.*, 2016 IL App (3d) 140980, ¶ 42. In the present case, we find that Harlin H.'s counsel failed to subject the State's case to meaningful adversarial testing.

¶ 81 Here, the State failed to comply with several mandatory requirements of the Code without meeting any challenge or objection from Harlin H.'s counsel. As noted above, the medication order failed to specify the dosages of VPA and lithium, and the State failed to show less restrictive services were considered and found to be inappropriate, failed to show that Harlin H. was properly advised in writing about the prescribed medications, and failed to show that Harlin H. lacked the capacity to make a reasoned decision about the medication protocol. Further, the State failed to prove that the benefits of the treatment outweighed the risk of harm to Harlin H. Harlin H. was prejudiced by counsel's failures because, if counsel had raised these issues, he would have had a viable argument for the denial of the State's petition.

¶ 82 More specifically, Harlin H. had a due process right not to be medicated on an involuntary basis until the State proved that he lacked the capacity to make a reasoned decision about his own medical treatment. *In re Richard C.*, 329 Ill. App. 3d 1090, 1094-95 (2002). The State could not prove that Harlin H. lacked that capacity without first demonstrating that he had received all of the information required by the Code as to each of the proposed medications. *In re Wilma T.*, 2018 IL App (3d) 170155, ¶ 23. By failing to object to the State's failure of proof on this issue alone, Harlin H.'s counsel failed to protect Harlin H.'s fundamental due process right. Because the blatant errors in this matter were so prejudicial as to render Harlin H.'s counsel ineffective, we need not address the several other serious errors allegedly committed by Harlin H.'s counsel individually.

¶ 83 We note, however, that Harlin H.'s counsel conducted a minimal cross-examination of Dr. Casey about whether Harlin H. was currently agreeing to take Luvox and whether he had objected to other medications but was taking them "on an enforced basis." The defense's cross-examination took up less than one page of the transcript. We further note that the lack of any objections to the State's omissions and errors in the medication order did not appear to be trial strategy, as counsel did not save any challenges to the State's evidence for closing argument, because he did not make a closing argument.

¶ 84 This court has previously cautioned that hearings under the Code should not be conducted on a *pro forma* basis and reminded all parties to be vigilant to protect respondents' fundamental liberty interests under the Code. *In re John R.*, 339 Ill. App. 3d at 785. Involuntary medication hearings require more extensive medical testimony than involuntary commitment hearings, and as this hearing demonstrates, its extreme brevity and attempts to circumvent live expert

testimony for documentary evidence resulted in the omission of necessary testimony without objection from counsel.

¶ 85 While we understand that a medication hearing requires expert testimony on a level that demands a great deal of time, attention, expertise, and recall, the State may refresh its expert's recollection when necessary. We acknowledge that written documentation, if properly introduced for the explicit purposes for which it is sought to be included in the record, could serve to meet the State's burden. For example, the 38 pages of drug sheets seem to appropriately outline the potential harm that each individual medication could pose to Harlin H. However, the written information here was not introduced and admitted for every purpose for which it was intended, and even if it were, it was deficient in meeting the State's burden as to the required elements of its case. While we understand the inclination by the State, the expert witnesses testifying in our mental health courts, and the trial courts to attempt to streamline and reduce the hours of testimony that would be required were the doctor to testify to all of the information contained in the petition and exhibit, procedural steps are still required, and expert testimony is of paramount importance.

¶ 86 This case involved multiple flagrant violations of the Code's requirements. Necessary expert testimony was minimal, at best, and the hearing was extremely truncated, lasting approximately 17 minutes. See *Important Things to Know Before Ordering a Transcript*, U.S. Dist. Court, Dist. of Minn., https://www.mnd.uscourts.gov/important-things-know-ordering-transcript (last visited Sept. 6, 2022) [https://perma.cc/K6RK-NGFF] (estimating transcript costs and stating a "rule of thumb" for legal transcripts that one page of transcript is one minute of court time). Further, the supreme court's special advisory committee for justice and mental health planning has drafted, and the supreme court approved, a standardized form order for use in the Illinois courts in involuntary medication hearings. The trial court failed to use the approved form[17] for its order for administration of authorized involuntary treatment, and we take this opportunity to further encourage the use of approved standardized court forms, available on the supreme court's website. We close by reiterating that the Code's procedural safeguards are essential tools to ensure that the liberty interests of respondents are upheld. *In re George O.*, 314 Ill. App. 3d 1044, 1046 (2000). They must be scrupulously observed and strictly construed in favor of the respondent. *In re Marcus S.*, 2022 IL App (3d) 170014, ¶ 50.

¶ 87 III. CONCLUSION

¶ 88 For the foregoing reasons, we reverse the judgment of the circuit court of Randolph County.

¶ 89 Reversed.

[17]The order for administration of authorized involuntary treatment (medication) is available at *Uniform Health Orders*, Office of the Ill. Courts, https://www.illinoiscourts.gov/documents-and-forms/uniform-mental-health-orders/ (last visited Sept. 6, 2022) [https://perma.cc/Q85B-54ZC].