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THE SUPREME COURT OF NEW HAMPSHIRE

Hillsborough-northern judicial district
Case No. 2025-0028
Citation: State v. Freese, 2026 N.H. 18

THE STATE OF NEW HAMPSHIRE

v.

DONALD FREESE

Argued: March 10, 2026
Opinion Issued: April 24, 2026

John M. Formella, attorney general, and Anthony J. Galdieri, solicitor general (Sam M. Gonyea, assistant attorney general, on the brief and orally), for the State.

Stephanie Hausman, chief appellate defender, of Concord, on the brief and orally, for the defendant.

PER CURIAM.

[¶1] Through this interlocutory appeal, the defendant, Donald Freese, challenges the order of the Superior Court (Delker, J.) reinstating indictments

against him that had been dismissed after the court found the defendant not competent to stand trial and subsequently found that he had not regained competency after twelve months. See RSA 135:17-a (2021). We reverse and remand.

I. Background

[¶2] We accept the statement of facts as presented in the interlocutory appeal statement and rely upon the record for additional facts as necessary. See In the Matter of Landgraf & Landgraf, 176 N.H. 724, 725 (2024), 2024 N.H. 41, ¶2. The defendant was charged with several crimes arising from an incident in September 2020. On August 21, 2023, the Trial Court (Nicolosi, J.) entered an order finding the defendant not competent to stand trial with the potential to be restored within twelve months.

[¶3] On May 28, 2024, the Trial Court (Delker, J.) ordered that the defendant be evaluated to determine whether he had been restored to competency. The court held a contested evidentiary hearing on August 19, 2024, at which the evaluator testified. On September 4, 2024, the trial court issued an order finding that the defendant had not been restored to competency. Accordingly, the court dismissed the criminal charges against the defendant without prejudice pursuant to RSA 135:17-a, IV. The court further found that the defendant was dangerous and ordered that he remain in custody for ninety days to allow the State to pursue civil commitment.

[¶4] As part of the civil commitment process, on September 24, 2024, the trial court granted the State's petition for further evaluation of the defendant. On November 5, 2024, the evaluator concluded that the defendant does not have a mental illness and is not dangerous. Based on that evaluation, the State moved to reconsider the court's September 4 finding that the defendant is not competent to stand trial. Following a hearing, on December 2, 2024 the trial court found that "there is a substantial question about whether the defendant ever was incompetent to stand trial or whether he has been malingering." Accordingly, the court reconsidered its September 4 decision finding the defendant not competent and not restored, vacated its dismissal of the indictments under RSA 135:17-a, IV, and reinstated the indictments. The court determined that "[i]n order to finally resolve the status of the defendant's competency to stand trial," a further evidentiary hearing would be required and it scheduled "a status conference to address whether additional competency evaluations are necessary." On January 9, 2025, the trial court granted the defendant's motion for an interlocutory appeal. We accepted the appeal. See Sup. Ct. R. 8.

II. Analysis

[¶5] The question presented is:

Whether the trial court erred by reinstating the indictments after they were dismissed by operation of law pursuant to RSA 135:17-a, IV, based on new information calling into question whether the defendant was actually incompetent to stand trial when that new information came to light during the dangerousness evaluation conducted pursuant to RSA 135:17-a, V and RSA 135-C:34.

[¶6] This question requires that we engage in statutory interpretation. We review the trial court’s statutory interpretation de novo. State v. Cormiea, ___ N.H. ___, ___ (2025), 2025 N.H. 50, ¶7. We first look to the language of the statute itself, and, if possible, construe that language according to its plain and ordinary meaning. Id. We give effect to every word of a statute whenever possible and will not consider what the legislature might have said or add language that the legislature did not see fit to include. Id. We also construe all parts of a statute together to effectuate its overall purpose. Id. However, we do not construe statutes in isolation; instead, we attempt to construe them in harmony with the overall statutory scheme. Id.

[¶7] RSA 135:17-a sets out the procedures to be followed by the trial court after it makes an initial determination that the defendant is not competent to stand trial. See State v. Salimullah, 172 N.H. 739, 743 (2020). If the court determines that the defendant is not competent to stand trial, it “shall order treatment for the restoration of competency” unless it determines by clear and convincing evidence that there is no reasonable likelihood that the defendant can be restored to competency through appropriate treatment within twelve months. RSA 135:17-a, I.

[¶8] After the defendant is committed for treatment, the court, “[e]xcept for good cause shown,” shall hold a hearing to determine the defendant’s competency “no later than 12 months after the order committing the defendant for treatment.” RSA 135:17-a, III. Prior to the hearing, a further evaluation shall be conducted. See id. Following the hearing, if the trial court determines “that the defendant has not regained competency, the case against the defendant shall be dismissed without prejudice.” RSA 135:17-a, IV.

[¶9] If the charges are dismissed and the defendant has been found dangerous, the trial court “shall order the person to remain in custody for a reasonable period of time, not to exceed 90 days, to be evaluated for the appropriateness of involuntary treatment pursuant to RSA 135-C:34 or RSA 171-B:2.” RSA 135:17-a, V. During that time, the court may order examinations of the person “for the purpose of evaluating appropriateness and completing the certificate for involuntary admission” to a state facility. Id.

[¶10] If the person is ordered to be involuntarily admitted, the court may, “during the period of the involuntary admission and before expiration of the limitations period applicable to the underlying criminal offense, order a further competency evaluation.” RSA 135:17-a, VI. Such evaluation may be ordered if the court finds that “there is a reasonable basis to believe that the person’s condition has changed such that competency to stand trial may have been affected.” Id.

[¶11] Under the plain language of the statute, the State is allowed twelve months to restore a defendant to competency to stand trial. See RSA 135:17-a, I, III, IV. When, as here, the trial court finds the defendant not competent to stand trial and not restored within the twelve-month period, the criminal case “shall be dismissed without prejudice.” RSA 135:17-a, IV; cf. State v. Doyle, 156 N.H. 306, 309 (2007) (explaining that the general rule of statutory construction is that the word “shall” requires mandatory enforcement). We construe the legislature’s mandate that the case be dismissed as expressly limiting the trial court’s inherent authority to take further action as to the criminal matter. Cf. State v. Demesmin, 159 N.H. 595, 598 (2010) (explaining that because the trial court “never dismissed the original indictment against the defendant” under RSA 135:17-a, the State “was not required to re-indict [the defendant] to continue prosecuting him”).

[¶12] Trial courts may not exercise their inherent authority when doing so contravenes clear statutory or constitutional limitations on that authority or jurisdiction. See State v. Southern N.H. Builders Assoc., 121 N.H. 852, 854 (1981); Torr v. Dover, 107 N.H. 501, 503 (1967). In Torr, for example, we held that a trial court could not exercise its inherent authority to extend a statutory limitations period on eminent domain compensation appeals. Torr, 107 N.H. at 501-03. We emphasized that “for the court to invoke its inherent power in the face of a clear statutory limitation would circumvent the intent and purpose of such statutes of limitation.” Id. at 503; cf. In the Matter of Stapleton & Stapleton, 159 N.H. 694, 697 (2010) (explaining that a trial court may invoke its inherent authority and extend a statutory deadline when the statutory scheme “implicitly contemplates that a court may issue a permanent order that differs from any temporary order it may have issued”).

[¶13] Once the trial court has dismissed the indictments, RSA 135:17-a serves as a statutory limitation on the court’s further authority to determine whether the person presents a danger, and, if so, to issue a 90-day detention order for evaluation of the propriety of involuntary treatment. See RSA 135:17-a, V; cf. Southern N.H. Builders Assoc., 121 N.H. at 854 (explaining that dismissal of an indictment “effectively ends a case under that indictment” when statutes are controlling). Neither the trial court’s statutory nor inherent authority extends to reinstating the dismissed criminal indictments at any time after they have been dismissed under RSA 135:17-a, IV.

[¶14] As a result, we conclude that the trial court lacked statutory authority to reinstate the indictments against the defendant after they were dismissed pursuant to RSA 135:17-a, IV. Accordingly, we reverse and remand.

Reversed and remanded.

DONOVAN, COUNTWAY, GOULD, and WILL, JJ., concurred;
MACDONALD, C.J., sat for oral argument but subsequently disqualified himself and did not participate in further review of the case.