No. 45030-5

COURT OF APPEALS DIVISION II

OF THE STATE OF WASHINGTON

In re Detention of Jerrod D. Stoudmire

STATE OF WASHINGTON, Respondent

v.

JERROD D. STOUDMIRE, Appellant

APPEAL FROM THE SUPERIOR COURT

OF PIERCE COUNTY

REPLY BRIEF

Marie J. Trombley, WSBA 41410
PO Box 829
Graham, WA
509.939.3038

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I. ASSIGNMENT OF ERROR

The State Failed To Meet Its Burden To Prove Beyond A Reasonable Doubt That Mr. Stoudmire Meets The Definition Of A Person Who Should Be Committed Under RCW 71.09.

II. STATEMENT OF FACTS IN REPLY

Mr. Stoudmire rests on the facts as presented in appellant's opening brief, with inclusion of the following.

1. Participation in Sex Offender Treatment

In its reply brief the State has erroneously included the following statements:

> "Dr. Hoberman considered Stoudmire's participation in sex offender treatment and found that Stoudmire had not completed it." (Br. of Respondent at 9).
>
> and again,
>
> "Dr. Hoberman considered Stoudmire's participation in sex offender treatment and found that Stoudmire had not completed treatment and that he "talks a good game but does not produce." (Br. of Resp. at 19).

There were two different time periods in which Mr. Stoudmire participated in the sex offender treatment program. In 1996-97, Mr. Stoudmire enrolled in the sex offender treatment program at Twin

Rivers. Treatment was interrupted when he was transferred to Airway Heights Corrections Center. (5/29/13 RP 87).

DOC records and policy indicated that approximately two years prior to a release date inmates were eligible to enroll in the treatment program. (5/29/13 RP 49; 88-89). About two years before his release date, Mr. Stoudmire became eligible and again entered the sex offender treatment program at Twin Rivers. He began the program in August 2006 and completed it in August 2007. (5/29/13 RP 100-101). His treatment providers prepared weekly progress notes and cited that he had done very well in the treatment, which consisted of Cognitive Behavioral Therapy, Relapse Prevention, and Arousal Reconditioning. (5/29/13 RP 27;90; 94;100-101).

2. Prison Infractions

In its reply brief, the State has included the following:

> "He (Dr. Hoberman) opined that Stoudmire's antisocial personality was demonstrated by his long history of arrests and convictions for stealing, assault, and sexual offenses, his long list of prison infractions; his many instances of deceitfulness and conning; and his history of impulsivity, aggression, irritability, anger and lack of remorse."
> (5/28/13 RP 127-131)
> (Br. of Respondent at 16).

On direct examination, Dr. Rosell was questioned about prison infractions by Mr. Stoudmire over the previous 20 years. (6/3/13 RP 53-54). The records showed there were a few infractions when Mr. Stoudmire was first incarcerated, from the early to mid 1990's. After 1997, however, there was only one infraction in 2004 that was work-related. It did not involve violent behavior. (*Id.* at 54.). Dr. Rosell also stated the records showed that in the previous 9 years there had been no infractions and in the previous 16 years there had been only the one infraction. Additionally, there was no evidence of antisocial behavior at the SCC. (6/3/13 RP 51-55).

III. ARGUMENT

The State Did Not Prove Beyond A Reasonable Doubt That Mr. Stoudmire Should Be Committed Under RCW 71.09

Mr. Stoudmire incorporates the arguments presented in appellant's opening brief by reference.

Before a person can be civilly committed, due process requires proof beyond a reasonable doubt that he is both mentally ill and presently dangerous. *Addington v. Texas,* 441 U.S. 418,

426, 99 S.Ct. 1804, 60 L.Ed.2d 323 (1979). This Court has said "the only basis for involuntary commitment is dangerousness." *In re Patterson,* 90 Wn.2d 144, 153, 579 P.2d 1335 (1978), *overruled on other grounds by Dunner v. McLaughlin,* 100 Wn.2d 832, 676 P,2d 444 (1984). If the link between a mental abnormality and an offender's serious difficulty in controlling behavior, that is, current dangerousness, is challenged, the reviewing court must analyze the evidence and determine whether sufficient evidence exists to establish a serious lack of control. *In re Det. of Thorell,* 149 Wn.2d 724, 736, 72 P.3d 708 (2003). Mr. Stoudmire argues the evidence shows ample ability and volitional capacity to control behavior.

In *Thorell*, the Court acknowledged that treatment for sexually violent predators may be long and different from traditional treatments. Nevertheless, the State has a compelling interest in providing such treatment. *Id.* at 750. Treatment offered by the State includes cognitive behavioral therapy, relapse prevention, and arousal reconditioning. (5/29/13 RP 90;100).

Despite the skepticism of the State's expert, Dr. Hoberman, the clinical supervisor for the Washington State Sex Offender Treatment Program, Dr. Hover, testified at trial that the reoffense rates of individuals who completed sex offender treatment ranged

between 5% and 10% over a 25-year period. (5/29/13 RP 107; 5/30/13 RP 65).

Mr. Stoudmire successfully completed the sex offender treatment program. At trial, he presented numerous witnesses, including DOC personnel, who testified that as Mr. Stoudmire progressed through treatment he demonstrated an understanding of his cognitive distortions, took responsibility for his prior offenses, and experienced empathy for his victims and remorse for his actions. He met the goals of the treatment offered by the State.

Expert testimony at trial drew a distinction between the diagnosis of pedophilia and pedophilic disorder. A diagnosis of pedophilia, in and of itself, does not cause an individual serious difficulty in controlling his behavior. Under Washington law, there must be a connection between the mental disorder and difficulty controlling behavior. *Thorell,* at 736.

Case law is replete with examples of individuals who, while incarcerated, were unable to control their pedophilic urges. *See Thorell,* 149 Wn.2d at 759 (While incarcerated, Thorell modified children's pictures to make pornography, wrote pornographic stories about children, and concealed store advertisements featuring children: combined with a diagnosis of pedophilia and a

lengthy history of child molestation, there was evidence of a serious lack of control); *Froats v. State,* 134 Wn.App. 420, 140 P.3d 622 (2006) (While incarcerated and during treatment Froats consistently characterized his child molestation offenses as romantic and consensual, maintained hundreds of pictures of children which he fantasized about and masturbated to, and made unwanted sexual advances on a fellow inmate. The Court found he had a continued inability to control his pedophilic urges, which made it very likely he would reoffend.); *In re Detention of Williams,* 163 Wn.App. 89, 264 P.3d 570 (2011) (While incarcerated Williams attempted to obtain photos of other inmates' children, passed letters and drawings to a 13 year old girl, and possessed child pornography.) By significant contrast, Mr. Stoudmire did not have a single incident of any type of sexual misbehavior in 25 years.

In it's response brief, the State has cited the facts that Mr. Stoudmire entered treatment, prepared a release plan that provided information on how he would support himself and where he would reside, detailed his commitment to sex offender treatment on an outpatient basis, and his marriage, as evidence of behaviors (spanning a 4-year period) designed to avoid civil commitment. (Br.

of Resp. at 6-7). Mr. Stoudmire argues he did exactly what he was supposed to do to prepare to live in the community.

Because current dangerousness is the foundation of commitment under RCW 71.09, Mr. Stoudmire's ability to control his behavior is dispositive. *In re Det. of Henrickson,* 140 Wn.2d 686, 692, 2 P.3d 473 (2000). Even when viewed in the light most favorable to the State, there is insufficient evidence to allow a rational trier of fact to conclude Mr. Stoudmire should be committed under RCW 71.09.

IV. CONCLUSION

Based on the foregoing facts and authorities, Mr. Stoudmire respectfully asks this court to reverse his commitment.

Dated this 27th day of March 2014.

Respectfully submitted,

Marie Trombley, WSBA 41410
PO Box 829
Graham, WA 98338
509-939-3038
marietrombley@comcast.net

CERTIFICATE OF SERVICE

I, Marie Trombley, attorney for Jerrod D. Stoudmire, do here by certify under penalty of perjury under the laws of the United States and the State of Washington, that on March 27, 2014, a true and correct copy of the reply brief of appellant was mailed by USPS, first class, postage prepaid to:

Jerrod D. Stoudmire
OP Box 88600
Steilacoom, WA 98338-0647

Mary Robinett
Office of the Attorney General
800 5th Ave Suite 2000
Seattle, WA 98104

Marie Trombley, WSBA 41410
PO Box 829
Graham, WA 98338
509-939-3038
marietrombley@comcast.net

TROMBLEY LAW OFFICE

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