No. 71651-4-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

BENJAMIN WILLIAM BRATTON,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

APPELLANT'S SUPPLEMENTAL REPLY BRIEF

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A. SUPPLEMENTAL ARGUMENT IN REPLY

This Court should address and decide whether the trial court erred in concluding the charged offense was sufficiently serious *per se* to satisfy the first Sell factor without considering the individual circumstances of the case

1. The issue is not moot because it will recur on remand if the State again seeks an order for involuntary medication

This issue is not moot. First, as the State acknowledges, the issue will recur on remand if the State again seeks an order for involuntary medication. State's Supplemental Response, at 2-4. Second, as argued in the opening brief, Sell v. United States, 539 U.S. 166, 123 S. Ct. 2174, 156 L. Ed. 2d 197 (2003) and the Due Process Clause require the trial court to look beyond the charged offense—notwithstanding RCW 10.77.092(1)(a)—and consider the individual circumstances of the case before it may conclude that the State's interests are sufficiently serious to justify forced medication. Whether the trial court misapplied the first Sell factor by considering only the nature of the charged offense is a *legal* question subject to *de novo* review, and not a factual question as suggested by the State. State's Supplemental Response, at 4. Any decision reached by this Court

would be binding on the trial court regardless of what other facts might be presented at a new hearing on remand.

When an appellate court agrees with an argument presented on appeal and reverses a case on that basis, it will generally address other issues raised that will possibly recur on remand. In State v. Fedoruk, __ Wn. App. __, 2014 WL 6944787, at *1 (Dec. 9, 2014, No. 43693-1-II), for example, the Court reversed a criminal conviction after concluding Fedoruk received ineffective assistance of counsel because his attorney did not investigate a possible mental health defense. Although not necessary to its decision, the Court also addressed issues of prosecutorial misconduct and the erroneous admission of evidence, because "those issues may recur on remand." Id.

Similarly, in State v. Jain, 151 Wn. App. 117, 120, 210 P.3d 1061 (2009), the Court reversed two criminal convictions based on its conclusion that the "to convict" instructions erroneously allowed the jury to convict based on allegations not charged in the information. The Court also addressed Jain's arguments that the jury instructions failed to include all essential elements of the offenses charged, that the trial court impermissibly commented on the evidence, and that the trial court violated ER 404(b) by admitting certain evidence. Id. at 131.

Similarly, here, the Court should address Mr. Bratton's argument that the trial court misapplied the first Sell factor because that issue will recur on remand if the State seeks to obtain another order authorizing forced medication. If such an event occurs, the trial court and the parties would need a decision from this Court to guide them.

2. *Even if the issue is technically moot, this Court should address it because whether or not a trial court must consider the individual circumstances of the case in applying the first Sell factor is an issue of substantial public importance*

Generally, the appellate court will not consider a question that is "purely academic," that is, if the "court can no longer provide effective relief." State v. Ross, 152 Wn.2d 220, 228, 95 P.3d 1225 (2004). Here, as stated, the issue of whether the trial court misapplied the first Sell factor is not "moot," though, because the Court *can* provide effective relief. If the Court decides that the trial court misapplied the first Sell factor, and then another Sell hearing is held on remand, the Court's decision will benefit Mr. Bratton because it will increase the State's burden to demonstrate that involuntary medication is warranted.

Moreover, even if the question is technically moot, this Court should still address it. When "a case presents an issue of continuing and substantial public interest and that issue will likely reoccur, [the

Court] may still reach a determination on the merits to provide guidance to lower courts." Ross, 152 Wn.2d at 228. Criteria to be considered are: "the public or private nature of the question presented, the desirability of an authoritative determination for the future guidance of public officers, and the likelihood of future recurrence of the question." Sorenson v. City of Bellingham, 80 Wn.2d 547, 558, 496 P.2d 512 (1972).

These criteria are met here. First, the question of whether a trial court may simply rely on the list of offenses provided in RCW 10.77.092(1)(a) in determining that the State's interests are sufficiently "serious" to justify forced medication is undoubtedly a question of public—rather than simply private—concern. Cf. State v. C.B., 165 Wn. App. 88, 94, 265 P.3d 951 (2011), review denied, 173 Wn.2d 1027, 273 P.3d 982 (2012) (concluding that whether the Department of Social and Health Services may petition for the involuntary medication of criminally insane individuals committed to state institutions is "a matter of public concern").

Second, the proper interpretation and application of Sell is an issue that may reoccur in any case where a Sell hearing is held.

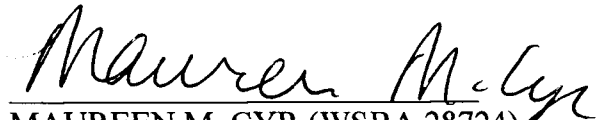
Finally, an authoritative determination from this Court is desirable because there is little case law in Washington addressing the proper interpretation and application of the Sell factors. In particular, Mr. Bratton is aware of no published case addressing whether a trial court satisfies the first Sell factor by simply considering whether the charged offense is included within the list of offenses provided in RCW 10.77.092(1)(a). Thus, "because there are no binding court decisions on this issue, a decision on the merits will provide future guidance for public officers." C.B., 165 Wn. App. at 94.

In sum, the issue is not moot because it may recur on remand. Even if the issue is technically moot, the Court should still address it because it presents an issue of continuing and substantial public interest that will likely reoccur.

B. CONCLUSION

For the reasons given above and in the opening brief, this Court should hold that the trial court misapplied the first Sell factor.

Respectfully submitted this 22nd day of December, 2014.



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DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 22ND DAY OF DECEMBER, 2014, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] KING COUNTY PROSECUTOR'S OFFICE [paoappellateunitmail@kingcounty.gov] APPELLATE UNIT 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) ( ) ( )	U.S. MAIL HAND DELIVERY E-MAIL BY AGREEMENT VIA COA PORTAL
[X] WILLIAM BRATTON 12508 LAKE CITY WAY NE #410 SEATTLE, WA 98125	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 22ND DAY OF DECEMBER, 2014.

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