

FILED
SUPREME COURT
STATE OF WASHINGTON
5/20/2021 9:29 AM
BY SUSAN L. CARLSON
CLERK

Supreme Court No. 99588-5

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Detention of

David Lewis,

Petitioner.

Snohomish County Superior Court Cause No. 18-2-06699-7
The Honorable Judge Cindy Larsen

Columbia County Superior Court Cause No. 03-2-00041-7
The Honorable Judge Scott Gallina

REPLY TO STATE'S ANSWER

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ARGUMENT

THE SUPREME COURT SHOULD ACCEPT REVIEW EVEN IF MR. LEWIS'S CASE IS TECHNICALLY MOOT.

Mr. Lewis's case is technically moot. He has been conditionally released to an LRA. *See* Appendix A to State's Answer. Nonetheless, the Supreme Court should accept review and decide when a patient's first request for conditional release may be filed following civil commitment.

The Supreme Court will decide a moot case if it involves matters of continuing and substantial public interest. *State v. B.O.J.*, 194 Wn.2d 314, 321, 449 P.3d 1006 (2019). Criteria considered include (1) the public or private nature of the issue, (2) the need for "an authoritative determination which will provide future guidance to public officers," (3) the likelihood that the question will recur, (4) the level of adverseness and the quality of advocacy, and (5) "the likelihood that the issue will never be decided by a court due to the short-lived nature of the case." *Id.* (internal quotation marks and citations omitted).

Here, the first four criteria support review. The need to clarify a statutory scheme is always a matter of continuing and substantial public interest. *Id.* The Supreme Court "has consistently stated that the need to clarify the statutory scheme governing civil commitment is a matter of continuing and substantial public interest." *Matter of Det. of P.P.*, 6 Wn.App.2d 560, 566, 431 P.3d 550 (2018) (addressing commitment under Chapter 71.05 RCW).

In addition, the Supreme Court has not ruled on the issue presented

here. Thus “there is a need for future guidance, meeting the second factor.” *State v. T.J.S.-M.*, 193 Wn.2d 450, 455, 441 P.3d 1181 (2019).

There is also a likelihood that the issue will recur. Every person detained at the Special Commitment Center will have the right to seek conditional release at the appropriate time. RCW 71.09.090. At any conditional release trial, the court will have to rule on the admissibility of the conditional release plan (unless the parties reach an agreement). This is especially true given that the pattern instruction contemplates that the plan will be introduced as an exhibit. *See* 6A Wash. Prac., Wash. Pattern Jury Instr. Civ. 365.32 (WPI 365.32) (7th ed.).

The parties are genuinely adverse. Mr. Lewis remains subject to the provisions of Chapter 71.09 RCW and may be returned to the Special Commitment Center if his LRA is revoked.¹ *See* RCW 71.09.098.

Finally, “the quality of advocacy” is expected to be high. *B.O.J.*, 194 Wn.2d at 321. Both sides are represented by experienced appellate attorneys. Petitioner’s counsel may seek amicus support if the Supreme Court grants review.

This case presents an issue of continuing and substantial public interest. The Supreme Court should grant review, even though the case is technically moot. *Id.*

¹ As of this writing, Mr. Lewis is apparently facing revocation.

CONCLUSION

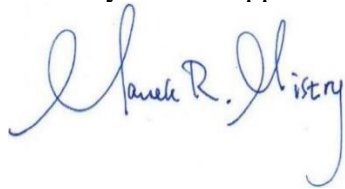
The Supreme Court should grant review even though Mr. Lewis's case is technically moot. The case presents an issue of continuing and substantial public interest.

Respectfully submitted on May 20, 2021

BACKLUND AND MISTRY



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Attorney for the Appellant



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CERTIFICATE OF SERVICE

I certify that on today's date I mailed a copy of the Petition for Review, postage prepaid, to:

David Lewis
McNeil Island Special Commitment Center
P.O. Box 88600
Steilacoom, WA 98388

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on May 20, 2021.

A handwritten signature in blue ink that reads "Jodi R. Backlund". The signature is written in a cursive style with a large initial "J".

Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant

BACKLUND & MISTRY

May 20, 2021 - 9:29 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 99588-5
Appellate Court Case Title: In re the Detention of David James Lewis
Superior Court Case Number: 18-2-06699-7

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