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Supreme Court No. 99612-1
(COA No. 80625-4-I)

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MICAH GODFREY,

Petitioner.

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

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER AND DECISION BELOW

Micah Godfrey asks this Court to review the opinion of the Court of Appeals in *State v. Godfrey*, No. 80625-4-I (issued on March 1, 2021). A copy of the opinion is attached as Appendix A.

B. ISSUES PRESENTED FOR REVIEW

1. The trial court ordered a third competency restoration period for Mr. Godfrey following two failed attempts. The Court of Appeals declined to reach the merits of Mr. Godfrey's challenges to the third competency restoration order, finding the appeal was moot because Mr. Godfrey had completed the third restoration period and was found competent to stand trial, and no collateral consequences flowed from the third restoration order. Was the Court of Appeals incorrect in concluding the appeal was moot?

2. Even if the appeal is moot, does the public interest exception to mootness apply to Mr. Godfrey's case?

C. STATEMENT OF THE CASE

Micah Godfrey is diagnosed with schizophrenia. Ex. 1 at 1. He was charged with five counts of felony assault based on alleged actions directly related to his delusions. 10/9/19-RP

24;¹ CP 36; Ex. 1 at 3. His attorney immediately moved for a competency evaluation. CP 1-3, 6-7. The court found Mr. Godfrey incompetent to stand trial and hospitalized him for 90 days of treatment. CP 8-14, 16-20.

Mr. Godfrey's symptoms included hallucinations and paranoid delusions. 10/9/19-RP 20. He reported 20 past psychiatric hospitalizations. Ex. 1 at 3. While there, he complied with his medication program. 10/9/19-RP 20-21. He participated in his treatment plan, including daily groups on topics such as coping with mental illness and understanding the criminal justice system. *Id.*

Following this first restoration period, his hallucinations subsided and his delusions reduced in intensity, permitting him to participate more fully in groups and in conversations. 10/9/19-RP 21; 31-32; CP 36. Yet he remained too delusional to assist in his defense. CP 36.

The trial court again found him incompetent and ordered a second 90-day commitment. CP 38-42. During the second

¹ The verbatim reported proceedings are in four volumes. All citations are all to the hearing from October 9, 2019, and are so noted in the citation.

restoration period, Mr. Godfrey was compliant with his medication and his treatment plan. 10/9/19-RP 20-21.

At the end of the second 90-day period, he was evaluated by Anne Sellers, PhD, at Eastern State Hospital, who found he was not competent. Ex. 1 at 2. She found Mr. Godfrey's auditory hallucinations were "at least partially managed by his medications." 10/9/19-RP 24. However, his "persecutory or paranoid delusions" were fixed delusions that did not "seem to be responding to treatment." *Id.* These delusions "influence[d] his ability to understand the charges and participate in the defense." *Id.*

Dr. Sellers did not believe any further commitment would be productive because Mr. Godfrey's delusions had not improved during the second restoration period. 10/9/19-RP 25; Ex. 1 at 6.

At Mr. Godfrey's bench trial after the second 90 days, Dr. Sellers testified that while hallucinations may respond to medication, delusions are less likely to do so. 10/9/19-RP 25. She noted Mr. Godfrey had had "such a long period of restoration and we really [have not] seen much improvement in delusions." *Id.* His delusions had not responded significantly to medications;

they were “quite fixed,” despite his “other symptoms resolving.”
Id.; 10/9/19-RP 43.

The treating psychiatrist “agreed that there was not a really high likelihood that we would see improvement with further treatment.” 10/9/19-RP 25. He believed “he had done all he could do” for Mr. Godfrey and had kept his medications “the same for more than 60 days,” believing Mr. Godfrey “was as stable as he could make him.” 10/9/19-RP 42. If Mr. Godfrey were to be recommitted, his medication would have no future changes. 10/9/19-RP 43.

Dr. Sellers testified the only significant improvement in Mr. Godfrey’s delusions had occurred during the first restoration period. 10/9/19-RP 31-32, 42. She noted in her evaluation that the delusions had improved during the six months’ treatment. Ex. 1 at 6. Neither she nor Mr. Godfrey’s psychiatrist believed any additional restoration time would make Mr. Godfrey competent to stand trial. 10/9/19-RP 42-43; Ex. 1 at 6.

The trial court found Mr. Godfrey was not competent. 10/9/19-RP 53; CP 43. In ruling on restoration, the court pointed to a single line from Dr. Sellers’s evaluation stating Mr.

Godfrey's delusions had improved. 10/9/19-RP 54 (quoting Ex. 1 at 6). From that one line, the court inferred the delusions had improved in the last 90 days, rather than the actual six month time frame Dr. Sellers reported. *See id.*

The court stated it did not hear "much testimony from [Dr. Sellers] regarding a medical basis for" the psychologist's or psychiatrist's conclusion that restoration would not be effective. 10/9/19-RP 54. The court stated, "Dr. Sellers' view that she could not recommend continued restoration did not seem to be based upon anything that I could really put my fingers on except that he'd just been there a long time." 10/9/19-RP 55.

The court noted Mr. Godfrey had been compliant with medication and "they have definitely seen improvement." 10/9/19-RP 55. The court interpreted the evidence to be that Mr. Godfrey had "improved slowly over time." 10/9/19-RP 55. The court theorized it was "quite possible for [Mr. Godfrey] to continue to improve." 10/9/19-RP 55. Thus, the court concluded, "Mr. Godfrey should be sent for a third restoration period." 10/9/19-RP 55-56.

The court indicated it had considered the testimony that Mr. Godfrey's treating psychiatrist indicated there would be no future changes in medication and nothing would stop Mr. Godfrey's delusions. The court speculated that perhaps non-psychiatric treatment, such as group therapy, could alleviate the delusions. 10/9/19-RP 56-57. The court stated,

Given the degree of improvement that we've seen over time, and I'd say it's substantial, it seems to me that he should be sent for a third restoration to continue to see if we can get him to the point of competency. . . . I think given how far he's come at this point it would be reasonable to continue.

10/9/19-RP 57.

The prosecutor asked if the court would Mr. Godfrey was "a substantial danger to [an]other person or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security and that there's a substantial probability he'll regain competency within a reasonable period of time." 10/9/19-RP 58. The court responded, "Yes." *Id.* The prosecutor stated the court could consider the charges. *Id.* The court stated, "I agree. All right. I will allow you to just do that, take care of [the order] on calendar tomorrow." *Id.*

Signing the document the prosecutor prepared, the court ordered a “third felony restoration period of 180 days” and stated the “court finds that a third restoration period is appropriate under RCW 10.77.086.” CP 44.

The Court of Appeals declined to reach the merits of Mr. Godfrey’s challenges to the trial court’s order for a third competency restoration period. Slip Op. at 3-7. The court concluded it could not provide effective relief to Mr. Godfrey because he has since been restored to competence and is awaiting trial, and no true collateral consequences flow from the third competency restoration order. *Id.* The court further found that the public interest exception to the mootness doctrine did not apply. *Id.*

D. ARGUMENT WHY REVIEW SHOULD BE GRANTED

1. The Court of Appeals incorrectly concluded Mr. Godfrey’s appeal is moot because collateral consequences follow the trial court’s third order for competency restoration.

The expiration of a commitment order does not make an appeal moot if there are collateral consequences flowing from the order. *In re Det. of M.K.*, 168 Wn. App. 621, 626, 279 P.3d 897 (2012). Here, collateral consequences flow from the trial court’s third competency restoration order. In a future action seeking to commit Mr. Godfrey under Chapter 71.05 RCW, evidence of prior incompetency restoration commitments under Chapter 10.77 RCW may be considered. RCW 71.05.212(1)(a), (c); *see M.K.*, 168 Wn. App. at 626; RCW 71.05.012 (“prior history is particularly relevant in determining whether the person would receive, if released, such care as is essential for his or her health or safety.”). Accordingly, this appeal is not moot.

The Court of Appeals found no “true” collateral consequences resulted from the court’s third competency restoration order. Slip Op. at 4. This is so, the court reasoned, because RCW 71.05.212(1)(c) permits consideration of prior

determinations of incompetency under Chapter 10.77 RCW, and Mr. Godfrey challenged the trial court's order for competency restoration. Slip Op. at 5.

This is a hyper-technical reading of the statute, and one that fails to take into consideration the legislature's intent. First and foremost, the trial court's order stems directly from its finding of incompetence, which future courts may consider if the State seeks to commit Mr. Godfrey in the future. Moreover, the legislature specifically intended for courts and mental health evaluators to consider a person's mental health history and prior commitments in the case of future commitments. RCW 71.05.212; RCW 71.05.012.

In Mr. Godfrey's case, any future attempts to involuntarily commit him would surely include review of any prior orders for restoration. Because the trial court's third order for competency restoration results in collateral consequences for Mr. Godfrey in future commitment proceedings, the Court of Appeals was incorrect to find this appeal moot. This is a matter of substantial public interest, and this Court should accept review under RAP 13.4(b)(4).

2. Even if moot, the public interest exception applies, and the Court of Appeals should have reached the merits of Mr. Godfrey’s appeal.

Even if the appeal were moot, the Court of Appeals had discretion to consider the issues under the public interest exception. *In re Det. of H.N.*, 188 Wn. App. 744, 750, 355 P.3d 294 (2015). This Court examines five factors to make this determination: (1) whether the issue is of a public or private nature; (2) whether an authoritative determination is desirable to provide future guidance to public officers; (3) whether the issue is likely to recur; (4) whether the parties are sufficiently adverse and well represented; and (5) whether the issue will likely escape review because the facts of the controversy are short-lived. *Id.* at 749-50.

Here, the Court of Appeals determined the “core question” raised in Mr. Godfrey’s appeal was the sufficiency of the findings where the trial court used “check-the-box” findings.” Slip Op. at 6. Finding there was ample authority rejecting such findings, and thus that reaching the merits in this case would provide little in terms of future guidance, the court declined to reach the merits of Mr. Godfrey’s case.

However, Mr. Godfrey's briefing below raised two additional issues: the lack of evidence of a substantial probability he would attain competence in a reasonable time, and the trial court's application of the wrong probability test in ordering the third restoration period. Both issues were raised as due process violations. These issues are of a public nature; guidance to courts on the issues raised is desirable; the issues may recur without it; the parties are adverse; and these issues will continue to evade future review given their short-lived nature. *See H.N.*, 188 Wn. App at 750 (holding criteria were met in appeal of an involuntary commitment order). As such, the Court of Appeals should have reached the merits of Mr. Godfrey's arguments. This Court should accept review to determine whether the public exception to mootness applies in this case. RAP 13.4(b)(4).

E. CONCLUSION

Based on the foregoing, Mr. Godfrey respectfully requests that review be granted. RAP 13.4(b)(4).

DATED this 31st day of March 2021.

Respectfully submitted,

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APPENDIX A

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

STATE OF WASHINGTON,)	No. 80625-4-1
)	
Respondent,)	
)	
v.)	
)	
MICAH JAMES GODFREY,)	UNPUBLISHED OPINION
)	
Appellant.)	
_____)	

VERELLEN, J. — Micah Godfrey challenges the trial court’s check-the-box findings supporting a third competency restoration in accordance with RCW 10.77.086(4). An appeal is moot if this court may not provide effective relief.

Here, Godfrey did not seek a stay of the court’s decision to order a third competency restoration, and his competency has been restored. As a result, this appeal is moot because no effective relief is available. Godfrey does not establish any collateral consequences resulting from the third competency restoration order, and the public interest exception does not apply because there is little likelihood that reaching the merits would provide future guidance.

Therefore, we dismiss this appeal as moot.

FACTS

Micah Godfrey was charged with five counts of second degree assault with a deadly weapon enhancement on each count. In January 2019, the trial court

found Godfrey incompetent to stand trial and committed him to Eastern State Hospital for a 90-day restoration period.

At the end of the restoration period, Dr. Amy Sellers evaluated him. Dr. Sellers diagnosed Godfrey with delusional disorder and concluded he was incompetent because he continued to “exhibit paranoid delusions.”¹ As a result, she recommended a second 90-day restoration period, which the trial court ordered.

At the end of Godfrey’s second restoration period, Dr. Sellers evaluated Godfrey again and diagnosed him with schizophrenia. Dr. Sellers reported that Godfrey’s auditory hallucinations were partially managed by his medications. But she noted his paranoid delusions, “where he believes people are out to get him,” are fixed.² As a result, Dr. Sellers concluded that Godfrey remained incompetent to stand trial and further efforts to restore competency were not likely to be successful.

On October 9, 2019, the trial court conducted Godfrey’s third competency hearing. The trial court concluded that Godfrey’s “ongoing delusions” made him incompetent, and the court committed him for a third restoration period of 180-days.³ The court reasoned his delusions had improved over time and continued improvement was “quite possible.”⁴

¹ Clerk’s Papers (CP) at 35.

² Ex. 1.

³ Report of Proceedings (RP) (Oct. 9, 2019) at 50-58.

⁴ Id. at 55.

After the court's ruling, the prosecutor asked the court to find that Godfrey "is a substantial danger to other person[s] or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security and that there's a substantial probability he'll regain competency within a reasonable time."⁵ The trial court responded "Yes," and signed an order prepared by the prosecutor. The order included a check-the-box finding that "a third restoration period is appropriate under RCW 10.77.086."⁶

Godfrey appeals the court's decision to order a third competency restoration. At oral argument before this court, the prosecutor confirmed that Godfrey's third restoration period was successful, he was found competent, and is currently awaiting trial.

ANALYSIS

Godfrey contends that the trial court's "findings" were insufficient to order a third competency restoration. Even assuming Godfrey is correct, we conclude this appeal is moot.

"When we can no longer provide effective relief, an appeal is moot."⁷ And "[a]s a general rule, this court will not review a moot case."⁸

Godfrey did not seek a stay of the third competency restoration order pending appeal. He finished his third restoration period during the pendency of

⁵ Id. at 58.

⁶ CP at 44.

⁷ Matter of Dependency of T.P., 12 Wn. App. 2d 538, 544, 458 P.3d 825 (2020) (citing In re Marriage of Horner, 151 Wn.2d 884, 891, 93 P.3d 124 (2004)).

⁸ Id. at 545 (quoting Horner, 151 Wn.2d at 891).

this appeal and has been found competent to stand trial. Godfrey cites no authority supporting the proposition that in the absence of a stay, he is entitled to relief from the court's current determination that his competency to stand trial has been restored. Because we cannot provide effective relief on the issue before us, Godfrey's appeal is moot.

Godfrey contends we should reach the merits of his appeal because exceptions to the mootness doctrine apply here. We disagree.

Specifically, he argues this appeal is not moot because there are collateral consequences to the order committing him to a third restoration period. An appeal is not moot where the decision appealed can have collateral consequences.⁹

Godfrey relies upon In re Detention of M.K., where the court held an appeal of an involuntary civil commitment order is not moot even if the period of commitment has expired.¹⁰ The court explained RCW 71.05.245 allows a court in a future involuntary civil commitment proceeding to consider recent prior civil commitments.¹¹ Because "each order of commitment entered up to three years before the current commitment hearing becomes a part of the evidence against a person seeking denial of a petition for commitment," the civil commitment order was not moot.¹² But unlike the detainee in M.K., Godfrey fails to show any true collateral consequences resulting from the third competency restoration order.

⁹ In re Det. of M.K., 168 Wn. App. 621, 625-26, 279 P.3d 897 (2012).

¹⁰ 168 Wn. App. 621, 629-30, 279 P.3d 897 (2012).

¹¹ Id. at 626.

¹² Id.

At oral argument before this court, Godfrey asserted collateral consequences based upon RCW 71.05.212, where the legislature acknowledges previous efforts to restore competency in a criminal case, chapter 10.77 RCW, can be considered in an involuntary civil commitment. Specifically, he notes that RCW 71.05.212(1)(c) provides a professional conducting an evaluation under the involuntary civil commitment statutes shall consider “[p]rior determinations of incompetency under chapter 10.77 RCW.” But Godfrey has not challenged the trial court’s prior determinations of incompetency in this appeal. Instead, he challenges the adequacy of the trial court’s “findings” to order a third competency restoration.

Further, RCW 71.05.212(a) provides that a professional conducting an evaluation under the involuntary civil commitment statutes shall consider “[p]rior recommendations for evaluation of the need for civil commitments when the recommendation is made pursuant to an evaluation conducted under 10.77 RCW.”¹³ Therefore, the evaluator’s recommendations would be properly before the court whether or not the court ordered a third competency restoration.¹⁴ And RCW 71.05.212(1)(a) undercuts any suggestion that a court’s order of a third competency restoration under chapter 10.77 RCW would have any consequence for a future involuntary civil commitment proceeding.

Therefore, neither RCW 71.05.212(1)(c) nor (1)(a) support a collateral consequence exception to the mootness of Godfrey’s appeal.

¹³ (Emphasis added.)

¹⁴ RCW 71.05.212(1).

Godfrey also invokes the public interest exception to the mootness doctrine. Even though Godfrey’s case is moot, “we may nevertheless decide [a case] if [it] involve[s] matters of continuing and substantial public interest.”¹⁵ Courts weigh five considerations when evaluating the public interest exception, including “whether an authoritative determination is desirable to provide future guidance to public officers.”¹⁶ But the core question of the sufficiency of the “findings” turns largely on the trial court’s use of conclusory check-the-box findings in a mental health proceeding. And there is ample authority rejecting such “findings” in mental health settings.¹⁷ Thus, there are minimal, if any, prospects for future guidance arising out of yet another challenge to check-the-box findings. We are not persuaded we should reach the merits in this context.

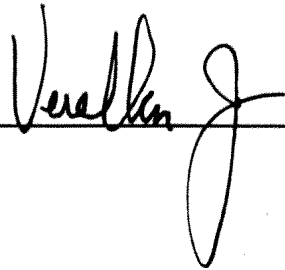
¹⁵ In re Det. of LaBelle, 107 Wn.2d 196, 200, 728 P.2d 138 (1986); Eyman v. Ferguson, 7 Wn. App. 2d 312, 320, 433 P.3d 863 (2019); Cox v. Kroger Co., 2 Wn. App. 2d 395, 408, 409 P.3d 1191 (2018).

¹⁶ In re Det. of H.N., 188 Wn. App. 744, 749-50, 355 P.3d 294 (2015) (“In deciding whether a case presents issues of continuing and substantial public interest three factors are determinative: ‘(1) whether the issue is of a public or private nature; (2) whether an authoritative determination is desirable to provide future guidance to public officers; and (3) whether the issue is likely to recur.’ A fourth factor that ‘may also play a role’ is ‘the level of genuine adverseness and the quality of advocacy of the issues.’ Finally, the court may consider ‘the likelihood that the issue will escape review because the facts of the controversy are short-lived.’”) (internal quotation marks omitted) (quoting Westerman v. Cary, 125 Wn.2d 277, 286-87, 892 P.2d 1067 (1994)).

¹⁷ E.g., LaBelle, 107 Wn.2d at 219-20 (holding that “findings” entered on “preprinted standardized form[s]” that only recite “generally the statutory grounds for involuntary commitment” are not sufficient); Matter of Det. of G.D., 11 Wn. App. 2d 67, 70, 450 P.3d 668 (2019) (holding that in mental health settings the court’s “findings” must be “sufficiently specific to permit meaningful [appellate] review” and they must “indicate the factual bases for the court’s conclusion.”) (citing id. at 218-19).

The relief Godfrey seeks is reversal and remand “for vacation of the commitment order and dismissal of Mr. Godfrey’s charges.”¹⁸ Godfrey fails to show how this remedy is appropriate for inadequate competency restoration “findings.” Because the third restoration period has restored his competency and he is currently awaiting trial, the typical remedy of remanding for entry of “findings” regarding the court’s previous order will not provide effective relief. No exceptions to the mootness doctrine apply.

Therefore, we dismiss this appeal as moot.



Verellen J.

WE CONCUR:



Chun, J.



Appelwick, J.

¹⁸ Appellant’s Br. at 30.

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The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 80625-4-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

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