SUPREME COURT NO. 91112-6
COA NO. 70022-7-I

IN THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

RICKEY BEAVER,

Petitioner.

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

The Honorable Brian Gain, Judge

PETITION FOR REVIEW

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RULES, STATUTES AND OTHER AUTHORITIES

A. IDENTITY OF PETITIONER

Rickey Beaver asks this Court to accept review of the Court of Appeals decision designated in Part B of this petition.

B. COURT OF APPEALS DECISION

Beaver requests review of the published decision in State v. Rickey Beaver, Court of Appeals No. 70022-7-I (slip op. filed October 27, 2014), attached as appendix A.

C. ISSUE PRESENTED FOR REVIEW

Whether involuntary commitment in a state mental health facility following revocation of conditional release violates due process in the absence of a judicial finding that the insanity acquittee currently suffers from a mental illness that endangers public safety?

D. STATEMENT OF THE CASE

In 2005, the Honorable Brian Gain found Rickey Beaver not guilty by reason of insanity to the charge of residential burglary. CP 8-10. The court, finding Beaver was mentally ill and dangerous, committed him to a state mental hospital. CP 9-10 (FF 3-5, CL 4).

In 2011, Beaver was conditionally released from confinement. CP 104-09. In 2012, the State petitioned for revocation of Beaver's conditional release. CP 206-69. The State attached a July 2011 report from psychologist Dr. Judd. CP 251-60. Dr. Judd diagnosed Beaver with

polysubstance abuse with physiological dependence in a controlled environment and antisocial personality disorder. CP 258. Dr. Judd opined Beaver was a moderate to high risk to reoffend and was in need of continued treatment. CP 260.

Psychologist Dr. Scholtz diagnosed Beaver with polysubstance abuse with physiological dependence in a controlled environment, cannabis abuse and antisocial personality disorder. CP 267-68. Dr. Scholtz believed Beaver was a moderate but not high risk to the community. CP 268-69. Dr. Scholtz concluded Beaver was not in need of continued psychiatric hospitalization, that he was not currently suffering from a major disorder of thought or mood, and that his psychiatric symptoms appeared to be the direct result of intoxication, prolonged use of drugs and alcohol, and withdrawal. CP 269.

Judge Gain modified Beaver's conditions rather than revoke release. CP 118-21. He ordered Beaver to remain in the community for several reasons, one of which was "[t]he decision to commit Mr. Beaver to Western State Hospital would serve to protect the community in the short term by keeping Mr. Beaver in a secure location, but revocation and commitment would only serve as preventative detention, which is inappropriate at this time." CP 119 (CL 3.c.).

In a series of 2012 reports, Western State Hospital (WSH) evaluators concluded Beaver's psychiatric symptoms were in remission, Beaver was not in need of WSH services and he had "reached his maximum benefit from psychiatric inpatient services." CP 119 (FF 4). Western State Hospital did not recommend that Beaver remain at its facility but noted his need of the recovery skills that community based chemical dependency treatment would provide. CP 119 (FF 4). Sound Mental Health was able to provide increased community-based services and Beaver was amenable to them. CP 118 (FF 3). The Public Safety Review Board recommended revocation and commitment at Western State Hospital because it believed Beaver remained a threat to public safety. CP 119 (FF 5), 113-16.

The March 23, 2012 WSH report prepared by the Risk Review Board restated its position from the year before: "*Given that Western State Hospital is a locked inpatient psychiatric facility with specialization in treatment regarding symptoms of mental illness as opposed to substance abuse, the question arose as to what benefit Mr. Beaver could derive from further inpatient hospitalization.* Mr. Beaver's progress through hospitalization at that time was reviewed and summarized as follows: *He has shown no signs or symptoms of mental illness that cannot be explained by other means such as inducement by substance abuse or*

characterological factors." CP 111. The Risk Review Board concluded, as it did the year before, "*Mr. Beaver has shown no signs or symptoms of mental illness. His presentation does not alter significantly whether or not he is taking psychiatric medication. There has been a pattern of his being sent to WSH without accompanying symptoms warranting psychiatric care*." CP 112. Beaver had experienced "maximal benefit from being at WSH." CP 112.

In January 2013, Judge Gain presided over another hearing to determine whether Beaver's conditional release should be revoked or modified. CP 138-39; RP 4-33. Beaver had violated release conditions, including driving while intoxicated and using cocaine. CP 143-44. Defense counsel argued Beaver should be allowed to remain on conditional release on modified conditions, noting his concern that Western State Hospital does not provide substance abuse treatment and "if the Court were to return him there indefinitely, it would be sort of a warehouse situation." RP 28.

Judge Gain revoked conditional release and recommitted Beaver to Western State Hospital. RP 33; CP 142-44. The court determined it was appropriate to revoke Beaver's conditional release "[d]ue to the violations of the conditional release and the threat to the public presented by Mr. Beaver." CP 144 (FF 9).

Judge Gain, however, told defense counsel that he wanted to go over "the complications" of Beaver's case so that counsel could adequately represent Beaver. RP 30. The judge noted his concern that Western State Hospital, in its last evaluation, "was of the opinion that there was no mental health disease." RP 30. He expressed concern about "using public safety as a reason to keep somebody in the mental health system basically at Western State, which is basically preventative detention when there is no longer mental health issues that raise concern. And in this case it is other issues that raise the public safety concerns rather than mental illness unless we broaden the scope to consider alcohol and substance abuse as mental illness, which they probably to some extent are. However, with those concerns about preventing [sic] detention, I am satisfied at this point I don't have any authority to do anything other than grant the State's motion. But I am concerned about using not guilty by reason of insanity as a preventative detention for persons who are otherwise risky to the public." RP 31-32.

Defense counsel requested a conditional release hearing be scheduled, given that there was no treatment at Western State Hospital and "there appears to be an absence of mental health issue [sic] to be addressed at Western State." RP 32. The judge declined: "We've been here too many times. But I'm bringing that issue to your attention because I am

concerned about the possibility of -- and it would not be as egregious as other countries have used it but using mental health facilities as preventative detention, but basically that's what's happening. That was the disagreement between the treatment evaluators and the board in this particular case. So I'm satisfied, other than bringing that to your attention, I don't have any other options at this point but to revoke." RP 33.

On appeal, Beaver argued due process required a finding of current mental illness before the court could revoke his conditional release and recommit him to a mental hospital. Brief of Appellant 10-27; Reply Brief at 1-11. The Court of Appeals disagreed, holding neither substantive nor procedural due process requires such a finding. Slip op. at 1.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. WHETHER A PERSON CAN BE INVOLUNTARILY CONFINED IN A MENTAL HOSPITAL WITHOUT A FINDING OF CURRENT MENTAL ILLNESS IS A SIGNIFICANT QUESTION OF CONSTITUTIONAL LAW AND IS OF SUBSTANTIAL PUBLIC IMPORTANCE.

Can a person be involuntarily confined in a mental hospital without a finding of current mental illness? The Court of Appeals thinks so. And now the Court of Appeals' view is the law unless this Court takes review and restores due process to its proper place within the civil commitment scheme.

This case presents a significant question of constitutional law under RAP 13.4(b)(3). Whether there must be a finding of current mental illness before an insanity acquittee can be sent back to a mental institution is the flipside of the issue addressed by this Court in State v. Bao Dinh Dang, 178 Wn.2d 868, 876, 312 P.3d 30 (2013), which held due process requires a finding of dangerousness before an insanity acquittee's conditional release can be revoked.

The Court of Appeals reached the merits of Beaver's moot due process claim because it constitutes an issue of continuing and substantial public importance.[1] Slip op. at 3-4. For the same reason, the issue is one of substantial public importance that should be determined by the Supreme Court under RAP 13.4(b)(4). Because many other insanity acquittees are subject to conditional release revocation proceedings, a decision on what due process requires in terms of a mental illness finding provides guidance to lower courts and public officers. The Court of Appeals decision provides guidance to the lower courts and public officers on this recurring issue, but not the right kind of guidance. Review is appropriate to prevent others in Beaver's situation from suffering the same fate of being involuntarily institutionalized in a mental hospital without a judicial finding that a mental illness still exists.

[1] Beaver was unconditionally discharged in 2014.

a. Substantive Due Process Requires A Judicial Finding That An Insanity Acquittee Continues To Suffer From A Mental Illness Before That Person Can Be Recommitted To A Mental Hospital.

The trial court, in recommitting Beaver to a mental hospital, did not find Beaver currently suffered from a mental illness that caused him to endanger public safety. In the absence of that finding, Beaver's commitment violated due process. U.S. Const. amend XIV; Wash. Const. art. I, § 3.

"Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." Foucha v. Louisiana, 504 U.S. 71, 80, 112 S. Ct. 1780, 118 L. Ed. 2d 437 (1992). "[C]ommitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." Jones v. United States, 463 U.S. 354, 361, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983) (quoting Addington v. Texas, 441 U.S. 418, 425, 99 S. Ct. 1804, 60 L. Ed. 2d 323 (1979)). In Foucha, the Court stressed the substantive component of the due process clause, which "bars certain arbitrary, wrongful government actions 'regardless of the fairness of the procedures used to implement them.'" Foucha, 504 U.S. at 80 (quoting Zinermon v. Burch, 494 U.S. 113, 125, 110 S. Ct. 975, 983, 108 L. Ed. 2d 100 (1990)). Substantive due process "requires that the nature of commitment bear

some reasonable relation to the purpose for which the individual is committed." Foucha, 504 U.S. at 79.

"Civil commitment is permitted, but the commitment system 'must require that an individual be both mentally ill and dangerous for civil commitment to satisfy due process.'" In re Detention of D.W., 181 Wn.2d 201, 332 P.3d 423, 426 (2014) (quoting In re Detention of Albrecht, 147 Wn.2d 1, 7, 51 P.3d 73 (2002)). An insanity acquittee, like all those subject to civil commitment, may be committed to a mental institution "so long as he is both mentally ill and dangerous as a result of that mental illness, but no longer." State v. Reid, 144 Wn.2d 621, 631, 30 P.3d 465 (2001). In accordance with that bedrock law, this Court recently held "in order to confine an insanity acquittee to institutionalization against his or her will, the trial court must make two determinations: first, that the acquittee suffers from a mental illness and second, that the acquittee is a danger to others." Bao Dinh Dang, 178 Wn.2d at 876. That standard applies to the revocation of conditional release. Id. at 876-77.

Revocation of conditional release amounts to "confin[ing] an insanity acquittee to institutionalization against his or her will." Id. at 876. Due process therefore required the court to find Beaver was both dangerous and mentally ill before the State could constitutionally revoke

Beaver's conditional release and subject him to involuntary institutionalization.

The Court of Appeals, however, held substantive due process does not require a finding of mental illness before revocation of conditional release because an insanity acquittee's mental illness is presumed to continue. Slip op. at 1.

There is a presumption that the mental condition of a person acquitted by reason of insanity continues. State v. Klein, 156 Wn.2d 103, 114, 124 P.3d 644 (2005). But "that inference does not last indefinitely." State v. Sommerville, 86 Wn. App. 700, 710, 937 P.2d 1317 (1997) (citing United States v. Bilyk, 29 F.3d 459, 462 (8th Cir. 1994)), review denied, 133 Wn.2d 1023, 950 P.2d 477 (1997). "Otherwise, the periodic reports and subsequent hearings mandated by RCW 10.77 would be purposeless, as would the directive that the State must release the insanity acquittee when the basis for holding him or her in the psychiatric facility disappears." Sommerville, 86 Wn. App. at 710.

The presumption of mental illness is rebuttable. It does not last forever regardless of changed circumstances. The Supreme Court has never suggested otherwise. Yet the Court of Appeals treats the presumption of continued mental illness as irrefutable and from that flawed premise concludes substantive due process does not require a

current finding of mental illness before an insanity acquittee can be recommitted to a mental hospital.

In concluding the presumption controls, the Court of Appeals dismissed Beaver's reliance on this Court's decision in Bao Dinh Dang. According to the Court of Appeals, due process requires a finding of dangerousness to justify revocation only if the trial court never previously found the acquittee was dangerous. Slip op. at 8. From that, the Court of Appeals distinguished Bao Dinh Dang from Beaver's case by pointing out Beaver was found to be mentally ill upon acquittal. Id.

The Court of Appeals misinterpreted Bao Dinh Dang. The constitution requires a specific finding of dangerousness before ordering the confinement of an insanity acquittee. Bao Dinh Dang, 178 Wn.2d at 870-71, 874, 888.[2] The Court in Bao Dinh Dang rejected the State's proposed interpretation of RCW 10.77.110 that presumes Dang was dangerous by virtue of acquittal by pointing out Dang was not found dangerous following acquittal. Id. at 881. But the Court did not hold a required finding of dangerousness was limited to the context where there is no previous finding. It also did not hold a presumption, if it exists, is

[2] The Court of Appeals' misinterpretation Bao Dinh Dang is another reason why review should be granted here. The Court of Appeals has severely limited the impact of Bao Dinh Dang through its published decision in Beaver's case.

irrefutable and relieves the court of its obligation to find current dangerousness.

Comparison with the civil commitment scheme under chapter 71.09 RCW is instructive. The annual review statute in sexually violent predator (SVP) proceedings satisfies substantive due process because the statutory basis for continued commitment requires current mental abnormality and dangerousness, which the State must periodically reevaluate. State v. McCuistion, 174 Wn.2d 369, 385, 388, 275 P.3d 1092 (2012), cert. denied, 133 S. Ct. 1460, 185 L. Ed. 2d 368 (2013).

The SVP's mental abnormality is established after a full hearing at the initial commitment trial, just as the insanity acquittee's mental condition is established after a full hearing at the initial criminal trial. McCuistion, 174 Wn.2d at 379; State v. Platt, 143 Wn.2d 242, 251 n.4, 19 P.3d 412 (2001), cert. denied, 534 U.S. 870, 122 S. Ct. 161, 151 L. Ed. 2d 110 (2001). And an SVP's mental abnormality, recognized as a verity in determining whether an individual is mentally ill and dangerous at a later date, is considered severe, chronic and in need of long term treatment. McCuistion, 174 Wn.2d at 385, 389-90. Yet substantive due process still requires periodic review of whether a current mental abnormality exists in order to continue to confine the SVP after the initial commitment. Id. at 384-85, 387-88.

The same must hold true of the insanity acquittee, who is also subject to civil commitment on the basis of a mental illness that causes dangerousness. Due process requires more than blinkered reliance on the presumption of continued mental illness in the face of prima facie evidence that the person whose liberty is at stake no longer suffers from a mental illness. Trial judges need not turn a blind eye to evidence from the mental hospital that a mental illness no longer exists. Beaver's release was revoked seven years after his initial commitment. Judge Gain was aware that reports from Western State Hospital provided a basis to find Beaver was not currently mentally ill. RP 30-33. He expressed grave reservation about sending Beaver back to Western State Hospital because it was a form of preventative detention. RP 31-33.

Without a mental illness to be treated, involuntary civil commitment constitutes nothing but punishment, which is anathema to any statutory scheme for civil commitment. See In re Pers. Restraint of Young, 122 Wn.2d 1, 21-22, 857 P.2d 989 (1993) ("the civil commitment goals of incapacitation and treatment are distinct from punishment, and have been so regarded historically."). A constitutional civil commitment scheme does not function as "preventative detention" precisely because a person must be both mentally ill and dangerous to be civilly committed. Young, 122 Wn.2d at 39.

"Anyone detained by the state due to 'incapacity has a constitutional right to receive such individual treatment as will give each of them a realistic opportunity to be cured or to improve his or her mental condition.'" D.W., 332 P.3d at 426 (quoting Ohlinger v. Watson, 652 F.2d 775, 778 (9th Cir. 1981) (quoting Wyatt v. Stickney, 325 F. Supp. 781, 784 (M.D. Ala. 1971)) (internal quotation marks omitted). In Beaver's case, Western State Hospital — the entity responsible for providing constitutionally required treatment — reported that Beaver did not have a mental illness in need of treatment. Yet Beaver was recommitted to Western State Hospital anyway. At that point, the nature of commitment ceases to bear some reasonable relation to the purpose for which the individual is committed. That is a substantive due process violation. Foucha, 504 U.S. at 79.

b. Procedural Due Process Requires A Judicial Finding That An Insanity Acquittee Continues To Suffer From A Mental Illness Before That Person Can Be Recommitted To A Mental Hospital.

The Court of Appeals' procedural due process analysis is misplaced. A substantive due process inquiry resolves the question of whether a judicial finding is required before an insanity acquittee can be recommitted to a mental health hospital. In a number of cases, this Court

has held a judicial finding was required by due process without resorting to a procedural due process analysis.[3]

Assuming a procedural due process analysis is called for, the result is the same. The following factors are balanced under the procedural due process test: (1) the private interest affected, (2) the risk of erroneous deprivation of that interest through existing procedures and the probable value, if any, of additional procedural safeguards, and (3) the governmental interest, including costs and administrative burdens of additional procedures. Mathews v. Eldridge, 424 U.S. 319, 334, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).

The insanity acquittee's interest in liberty is substantial. Addington, 441 U.S. at 425. The risk of erroneous deprivation of that liberty interest

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[3] See, e.g., Bao Dinh Dang, 178 Wn.2d at 870-71, 874, 888 (finding of dangerousness required before insanity acquittee's conditional release can be revoked); In re Detention of Harris, 98 Wn.2d 276, 284-85, 654 P.2d 109 (1982) (while involuntary commitment under RCW 71.05.020 does not explicitly require that evidence of dangerous behavior be recent, RCW 71.05.020 interpreted as requiring a showing of a substantial risk of physical harm as evidenced by a recent overt act to comport with substantive due process); In re Dependency of K.R., 128 Wn.2d 129, 141-42, 904 P.2d 1132 (1995) (although Washington's termination statute, RCW 13.34.180(1), does not explicitly require evidence of current parental unfitness, statute interpreted to implicitly contain the requirement and thus "comports with the constitutional due process requirement that unfitness be established by clear, cogent, and convincing evidence."); In re Welfare of A.B., 168 Wn.2d 908, 920, 232 P.3d 1104 (2010) (holding a parent has constitutional due process right not to have his or her relationship with a natural child terminated in the absence of a trial court finding of fact that the parent is currently unfit to parent the child).

is significant in the absence of a finding of current mental illness. Such a revocation procedure does not ensure that individuals who are to be recommitted continue to meet the constitutional standard for commitment, namely dangerousness *and* mental illness. A procedure that does not require the court to find current mental illness is likely to result in an erroneous deprivation of liberty — recommitment to a mental hospital — at least where prima facie evidence exists that rebuts the presumption of continued mental illness.

The Court of Appeals held the risk of erroneous deprivation did not require a judicial finding of mental illness in revocation proceedings because the acquittee still has the option of pursuing the unconditional release procedure under RCW 10.77.200. Slip op. at 9-11, 12-13.

The due process problem, however, is that a revoked acquittee loses his liberty interest in being recommitted as part of the revocation procedure before an unconditional release hearing takes place. Liberty is already lost. The existence of an unconditional release procedure does not exonerate the lack of safeguard in a revocation procedure. The same argument made by the Court of Appeals could be lobbed against requiring a finding of dangerousness in the revocation context. If the Court of Appeals' argument were sound, then there would be no due process requirement for a dangerousness finding in the revocation context either.

Bao Dinh Dang forecloses that attempt to sidestep due process protections. Bao Dinh Dang, 178 Wn.2d at 876.

Further, the burden on the government to provide for a judicial finding of current mental illness in revocation proceedings is minimal. The Court of Appeals overstates the additional resources needed for that finding. Slip op. at 11-12. The revocation hearing already takes place to determine whether an acquittee has violated conditions of release and is dangerous. RCW 10.77.190. Periodic reports on mental illness are generated as a matter of course and are used as part of all revocation hearings. Insanity acquittees are already "entitled to an immediate mental examination before the revocation hearing. RCW 10.77.190(2). This assures that the trial court has expert information concerning the insanity acquittee's mental health before deciding whether to modify or revoke [a less restrictive alternative] disposition." State v. Derenoff, 182 Wn. App. 458, 332 P.3d 1001, 1005 (2014). Thus, evidence regarding mental illness is routinely presented as part of the revocation hearing process. The evidence upon which to make a determination is already there.

The procedural due process factors favor a judicial finding of current mental illness before an insanity acquittee can be recommitted to a mental hospital.

c. RCW 10.77.190(4) Is Capable Of Being Interpreted Consistent With Due Process Requirements, But If This Court Determines Otherwise, Then It Is Unconstitutional.

"[C]ivil commitment statutes are constitutional only when both initial *and continued confinement* are predicated on the individual's mental abnormality and dangerousness." McCuistion, 174 Wn.2d at 387 (emphasis added). Whenever possible, courts will read a requirement into a statute, even where it is not explicitly present, to save a statute from constitutional infirmity. Bao Dinh Dang, 178 Wn.2d at 878-80; Harris, 98 Wn.2d at 284-85; K.R., 128 Wn.2d at 141-42; A.B., 168 Wn.2d at 920.

RCW 10.77.190 governs hearings on modification and revocation of conditional release. RCW 10.77.190(4) provides "The issue to be determined is whether the conditionally released person did or did not adhere to the terms and conditions of his or her release, or whether the person presents a threat to public safety." There is no explicit statutory requirement that the court find a current mental illness before revoking conditional release. But it is possible to read such a requirement into the statute when the civil commitment scheme for insanity acquittees is considered as a whole.

Treatment of mentally ill individuals is the civil commitment scheme's reason for being. RCW 10.77.120(1) ("The secretary shall provide adequate care and individualized treatment to persons found

criminally insane at one or several of the state institutions or facilities under the direction and control of the secretary"); RCW 10.77.210 ("[a]ny person involuntarily detained, hospitalized, or committed pursuant to the provisions this chapter shall have the right to adequate care and individualized treatment.") The statutory mandate to treat the mental illness of those involuntarily confined in state mental hospitals reflects a due process requirement. D.W., 332 P.3d at 426.

The statutory scheme provides for a periodic review process. And what is reviewed is not only whether the acquittee is still dangerous. Review encompasses whether the acquittee is still mentally ill. RCW 10.77.140 thus mandates "Each person committed to a hospital or other facility or conditionally released pursuant to this chapter shall have a current examination of his or her mental condition made by one or more experts or professional persons at least once every six months."

Reading the statutory scheme for civil commitment under chapter 10.77 RCW as a whole makes it possible to interpret RCW 10.77.190(4) as requiring a finding of mental illness before revocation of conditional release is authorized. A contrary interpretation of RCW 10.77.190(4) undermines why the involuntary commitment scheme exists in the first place: to treat those that are mentally ill. It would make no sense for the legislature to authorize involuntary confinement in a state mental hospital

to treat a mental illness where the person does not in fact suffer from mental illness. Statutes must be construed to avoid unlikely, absurd, or strained consequences. City of Seattle v. Fuller, 177 Wn.2d 263, 270, 300 P.3d 340 (2013).

If, however, RCW 10.77.190(4) cannot be interpreted to require a finding of mental illness as a prerequisite to revocation and total confinement in a mental hospital, then that provision violates due process for the reasons set forth above.

F. CONCLUSION

For the reasons stated above, Beaver requests that this Court grant review.

DATED this 26th day of November 2014.

Respectfully submitted,

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APPENDIX A

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

STATE OF WASHINGTON,	)	No. 70022-7-I
	)	
Respondent,	)	
	)	
v.	)	
	)	
RICKEY A. BEAVER,	)	PUBLISHED OPINION
	)	
Appellant.	)	FILED: October 27, 2014
	)	

VERELLEN, A.C.J. — As a matter of due process, an individual who is found not guilty by reason of insanity may be confined for treatment as long as he is both mentally ill and dangerous. Once the acquittee has been found mentally ill, his insanity is presumed to continue to exist. Because of this presumption, substantive due process does not require a renewed finding of mental illness in order to revoke an insanity acquittee's conditional release. Furthermore, procedural due process does not require such a finding at a revocation hearing primarily because alternative procedures provide acquittees with a meaningful opportunity to demonstrate sanity, thereby minimizing the risk of erroneous commitment. For these reasons, Rickey Beaver has not established that his due process rights were violated by the trial court's order revoking his conditional release without a finding that his mental illness continued to exist. Accordingly, we affirm.

FACTS

In August 2004, Beaver committed a residential burglary. In August 2005, the trial court entered a judgment of acquittal by reason of insanity pursuant to RCW 10.77.080, finding that Beaver was suffering from a mental disease or defect at the time he committed the offense.[1] The trial court also found that Beaver was dangerous and ordered that he be detained in a state mental hospital.

In July 2011, the trial court granted Beaver a conditional release pursuant to RCW 10.77.150.[2] In 2012, the State sought to have Beaver's conditional release revoked because he violated release conditions. Instead of revoking Beaver's conditional release, the trial court modified the conditions of release.

Beaver again violated several release conditions.[3] In January 2013, the trial court held a revocation hearing to determine whether Beaver's conditional release should be modified or revoked. At the hearing, the trial court expressed concerns about confining Beaver in light of recent medical evaluations suggesting that he was not currently suffering from any mental illness.[4] Nevertheless, the trial court revoked

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[1] Various forensic psychological reports prepared in 2005 diagnosed Beaver as suffering from a psychotic disorder, paranoia, a significant depressive disorder, cocaine dependence, alcohol and cannabis abuse, posttraumatic stress disorder, and an antisocial personality disorder.

[2] Earlier, in January 2007, Beaver had been granted conditional release, but it was revoked in January 2010 because Beaver violated release conditions.

[3] For example, Beaver used cocaine in October 2012 and drove a motor vehicle under the influence of alcohol in December 2012.

[4] Medical reports prepared in 2012 indicated that Beaver's psychiatric symptoms were in remission and that he had "reached his maximum benefit from psychiatric inpatient services." Clerk's Papers at 119. Indeed, the Department of Social and Health Services, through its Risk Review Board, recommended that Beaver be released from commitment, indicating that "Mr. Beaver has shown no signs or symptoms of mental

Beaver's conditional release "[d]ue to the violations of the conditional release order and the threat to the public presented by Mr. Beaver," and it ordered that he be recommitted for inpatient treatment.[5]

Beaver appealed. While this appeal was pending, Beaver was conditionally released in October 2013 and then finally discharged in May 2014.[6]

DECISION

Beaver challenges the trial court's order revoking his conditional release. Because Beaver was again conditionally released and then finally discharged while this appeal was pending, the State contends that the claims presented in this appeal should be dismissed as moot. We disagree.

"A moot case is one which seeks to determine an abstract question which does not rest upon existing facts or rights."[7] Generally, "we do not consider questions that are moot."[8] However, we may address a moot issue if it presents a matter of "continuing and substantial public interest."[9] In determining whether a sufficient public interest is involved, we consider "(1) the public or private nature of the question presented; (2) the desirability of an authoritative determination which will provide future

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illness." Clerk's Papers at 112. In contrast, the Public Safety Review Board recommended revocation and recommitment because it believed that Beaver remained a threat to public safety.

[5] Clerk's Papers at 144.

[6] We grant the State's motion to supplement the clerk's papers to include this order.

[7] Hansen v. W. Coast Wholesale Drug Co., 47 Wn.2d 825, 827, 289 P.2d 718 (1955).

[8] State v. Hunley, 175 Wn.2d 901, 907, 287 P.3d 584 (2012).

[9] Id.

guidance to public officers; and (3) the likelihood that the question will recur."[10] We may also consider a fourth factor: the "level of genuine adverseness and the quality of advocacy of the issues."[11]

Given these considerations, we conclude that the moot issues presented here raise matters of continuing and substantial public interest.[12] Notwithstanding that Beaver has been finally released, many other insanity acquittees are subject to conditional release revocation proceedings. We believe that a decision on the trial court's authority to revoke conditional release in the absence of information regarding the acquittee's current mental health condition will provide useful guidance to lower courts and public officers. The parties have adequately briefed and argued the legal issues presented.[13] Thus, we turn to the issues raised in this appeal.

Beaver contends that he was deprived of due process by the trial court's failure to find that he has a current mental illness, and he asserts that the statute authorizing revocation of conditional release is unconstitutional if it does not require such a finding. We disagree.

The federal constitution guarantees that federal and state governments will not deprive an individual of "life, liberty, or property, without due process of law."[14] The due

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[10] In re Cross, 99 Wn.2d 373, 377, 662 P.2d 828 (1983).

[11] Hart v. Dep't of Soc. & Health Servs., 111 Wn.2d 445, 448, 759 P.2d 1206 (1988).

[12] See In re Dependency of H., 71 Wn. App. 524, 528, 859 P.2d 1258 (1993) ("Where a technically-moot issue implicates due process rights, it is one in which there is sufficient public interest to warrant deciding it.").

[13] See State v. Sansone, 127 Wn. App. 630, 637, 111 P.3d 1251 (2005).

[14] U.S. CONST. amends. V, XIV, § 1.2. Generally, "Washington's due process clause does not afford broader protection than that given by the Fourteenth Amendment to the United States Constitution." State v. McCormick, 166 Wn.2d 689, 699, 213 P.3d

process clause confers both procedural and substantive protections.[15] In his appellate briefing, Beaver does not clearly state whether he believes his recommitment violates the substantive or procedural component. During oral argument, Beaver clarified that he primarily relies upon substantive due process concerns. Regardless, we will address both due process components.

Substantive due process "'bars certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them.'"[16] The level of review applied in a substantive due process challenge depends upon the nature of the interest involved.[17] "State interference with a fundamental right is subject to strict scrutiny," which "requires that the infringement is narrowly tailored to serve a compelling state interest."[18]

Liberty is a fundamental right.[19] "Accordingly, a civil commitment scheme . . . is constitutional only if it is narrowly drawn to serve compelling state interests."[20] The United States Supreme Court has "'consistently upheld such involuntary commitment statutes' when (1) 'the confinement takes place pursuant to proper procedures and

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32 (2009). Beaver does not argue that the state constitution provides greater due process protections. See In re Pers. Restraint of Dyer, 143 Wn.2d 384, 393-94, 20 P.3d 907 (2001). Therefore, we conduct our due process analysis solely under the federal constitution. See Amunrud v. Bd. of Appeals, 158 Wn.2d 208, 216, 143 P.3d 571 (2006).

[15] Amunrud, 158 Wn.2d at 216.

[16] Foucha v. Louisiana, 504 U.S. 71, 80, 112 S. Ct. 1780, 118 L. Ed. 2d 437 (1992) (internal quotation marks omitted) (quoting Zinermon v. Burch, 494 U.S. 113, 125, 110 S. Ct. 975, 108 L. Ed. 2d 100 (1990)).

[17] Amunrud, 158 Wn.2d at 219.

[18] Id. at 220.

[19] Foucha, 504 U.S. at 80.

[20] State v. McCuistion, 174 Wn.2d 369, 387, 275 P.3d 1092 (2012), cert. denied, 133 S. Ct. 1460, 185 L. Ed. 2d 368 (2013).

evidentiary standards,' (2) there is a finding of 'dangerousness either to one's self or to others,' and (3) proof of dangerousness is 'coupled . . . with the proof of some additional factor, such as a 'mental illness' or 'mental abnormality.'"[21] Beyond that, "[s]ubstantive due process requires only that the State conduct periodic review of the patient's suitability for release,"[22] because "[t]he committed acquittee is entitled to release when he has recovered his sanity or is no longer dangerous."[23]

Consistent with these constitutional principles, Washington's commitment scheme allows a defendant to be acquitted of felony criminal charges by reason of insanity if the defendant shows "by a preponderance of the evidence that he or she was insane at the time of the offense or offenses with which he or she is charged."[24] Upon acquittal, the individual may be released if the court finds "that he or she is not a substantial danger to other persons, and does not present a substantial likelihood of committing criminal acts jeopardizing public safety or security."[25] But if the court finds

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[21] Kansas v. Crane, 534 U.S. 407, 409-10, 122 S. Ct. 867, 869, 151 L. Ed. 2d 856 (2002) (quoting Kansas v. Hendricks, 521 U.S. 346, 357-58, 117 S. Ct. 2072, 138 L. Ed. 2d 501 (1997)); see also Foucha, 504 U.S. at 77 (holding that, as a matter of due process, an insanity acquittee "may be held as long as he is both mentally ill and dangerous, but no longer"); McCuistion, 174 Wn.2d at 387-88 ("[C]ivil commitment statutes are constitutional only when both initial and continued confinement are predicated on the individual's mental abnormality and dangerousness.").

[22] McCuistion, 174 Wn.2d at 385.

[23] Jones v. United States, 463 U.S. 354, 368, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983); see State v. Reid, 144 Wn.2d 621, 631, 30 P.3d 465 (2001) ("When an insanity acquittee demonstrates he has regained his sanity, the basis for his confinement in a mental institution vanishes and he must be released.").

[24] RCW 10.77.080; see also RCW 10.77.030(2). To establish the insanity defense, the defendant must show that because of a mental disease or defect at the time of the commission of the offense, the defendant was either unable to perceive the nature and quality of the act with which he is charged or was unable to tell right from wrong with reference to the particular act charged. RCW 9A.12.010(1).

[25] RCW 10.77.110(1).

that the acquittee is dangerous, the acquittee may be detained for treatment.[26] An insanity acquittee detained for treatment may be released into the community subject to conditions if the court finds that "the person may be released conditionally without substantial danger to other persons or substantial likelihood of committing criminal acts jeopardizing public safety or security."[27] But the court may revoke the conditional release or modify the terms of release if the defendant violates release conditions or presents a public safety threat.[28]

Beaver's recommitment upon the revocation of conditional release is supported by adequate findings of mental illness and dangerousness.[29] At the revocation hearing here, the trial court determined that Beaver violated release conditions and presented a danger to the community. And Beaver's insanity, as asserted by Beaver in his criminal proceeding and established by the trial court's original findings, was presumed to continue to exist.[30] Given these findings, the State's action in recommitting Beaver was

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[26] Id. Specifically, the court must find that the acquittee "is a substantial danger to other persons, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions." Id. Such an individual may be detained until no longer mentally ill or dangerous, but in any event no longer than the maximum possible penal sentence for the crime of which they were acquitted by reason of insanity. RCW 10.77.025.

[27] RCW 10.77.150(3)(c); see RCW 10.77.110(3).

[28] RCW 10.77.190.

[29] See In re Det. of Post, 145 Wn. App. 728, 756, 187 P.3d 803 (2008).

[30] See Jones, 463 U.S. at 366 ("It comports with common sense to conclude that someone whose mental illness was sufficient to lead him to commit a criminal act is likely to remain ill and in need of treatment."); State v. Klein, 156 Wn.2d 103, 114, 124 P.3d 644 (2005) ("'Washington law since 1905 has presumed the mental condition of a person acquitted by reason of insanity continues and the burden rests with that individual to prove otherwise.'" (quoting State v. Platt, 143 Wn.2d 242, 251 n.4, 19 P.3d 412 (2001))).

not arbitrary and his confinement is consistent with substantive due process demands.

Beaver relies on State v. Bao Ding Dang to assert that due process nevertheless requires that the trial court find a current mental illness for revocation.[31] In Bao Ding Dang, our Supreme Court held that the trial court was required to make a finding that the acquittee was dangerous in order to revoke his conditional release. But this finding was required because the trial court had never previously found that the acquittee, who had been conditionally released immediately upon his acquittal, was dangerous: "Because Dang had never been found dangerous—indeed, his conditional release required a specific finding of nondangerousness—the trial court was required to find Dang dangerous to revoke his conditional release."[32] In contrast, the trial court here explicitly found at the time of Beaver's acquittal that he suffered from a mental disease or defect and that he was dangerous. Consequently, Beaver's insanity is presumed to continue.[33] Bao Ding Dang does not support Beaver's substantive due process claim.

Procedural due process requires that, when the State seeks to deprive a person of a protected interest, the "individual receive notice of the deprivation and an opportunity to be heard to guard against erroneous deprivation."[34] "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a

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[31] 178 Wn.2d 868, 312 P.3d 30 (2013).

[32] Id. at 877; see also id. at 879-80 ("These related statutory provisions demonstrate that the legislature did not intend to involuntarily confine insanity acquittees without a judge determining that they are dangerous. We interpret RCW 10.77.190(4) consistently with this intent."); Reid, 144 Wn.2d at 627 ("While the acquittee is presumed to continue to labor under a mental defect, there is no presumption with respect to whether the acquittee continues to be dangerous at the time of acquittal." (citation omitted)).

[33] See Platt, 143 Wn.2d at 251.

[34] Amunrud, 158 Wn.2d at 216; see Mathews v. Eldridge, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).

meaningful manner.'"[35] "[D]ue process is flexible and calls for such procedural protections as the particular situation demands."[36] To determine whether a particular procedure satisfies due process, the court must balance three factors:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.[37]

"It is clear that 'commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.'"[38] Because the acquittee's "confinement rests on his continuing illness and dangerousness,"[39] there must be "assurance that every acquittee has prompt opportunity to obtain release if he has recovered."[40] But this does not mean that the acquittee must be given the opportunity at *every* stage of the proceedings to demonstrate that he has recovered. Rather, due process requires only that he be given a *prompt* opportunity to obtain release.

Beaver concentrates on the absence of any statutory requirement that the trial court make a finding that the acquittee is suffering from a current mental illness before

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[35] Mathews, 424 U.S. at 333 (quoting Armstrong v. Manzo, 380 U.S. 545, 552, 85 S. Ct. 1187, 14 L. Ed. 2d 62 (1965)).

[36] Morrissey v. Brewer, 408 U.S. 471, 481, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).

[37] Mathews, 424 U.S. at 335.

[38] Jones, 463 U.S. at 361 (quoting Addington v. Texas, 441 U.S. 418, 425, 99 S. Ct. 1804, 60 L. Ed. 2d (1979)). The confinement of an individual in a psychiatric hospital involves a "'massive curtailment of liberty.'" Vitek v. Jones, 445 U.S. 480, 491, 100 S. Ct. 1254, 63 L. Ed. 2d 552 (1980) (quoting Humphrey v. Cady, 405 U.S. 504, 509, 92 S. Ct. 1048, 31 L. Ed. 2d 394 (1972)).

[39] Jones, 463 U.S. at 369.

[40] Id. at 366.

revoking a conditional release.[41] But his narrow focus on one statutory provision ignores the statutory scheme as a whole. Individuals detained under chapter 10.77 RCW have significant procedural rights,[42] and substitute procedural safeguards—namely the statutory procedures for obtaining final discharge—greatly diminish any risk of an erroneous deprivation of liberty. Specifically, the statutory scheme provides insanity acquittees with the right to petition the Secretary of the Department of Social and Health Services or the court directly for final discharge at any time following initial commitment.[43] After such a petition is filed, the court must promptly hold a hearing and

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[41] See RCW 10.77.190(4) ("The issue to be determined is whether the conditionally released person did or did not adhere to the terms and conditions of his or her release, or whether the person presents a threat to public safety.").

[42] For example, detained insanity acquittees are entitled to periodic mental examinations at least every six months. RCW 10.77.140. They may have their own experts conduct mental examinations, and indigent individuals can have independent experts appointed by the court to conduct the examinations. Id. Such experts are required by statute to be given access to all of the hospital records. Id. All of this information is compiled into a periodic report, which is given to the Secretary of the Department of Social and Health Services. Id. The individual may seek conditional release or final discharge either by applying to the Secretary or by petitioning the court directly. RCW 10.77.150(1), RCW 10.77.200(1), (5). The court may conduct a hearing and discharge the person from commitment, either conditionally or unconditionally. RCW 10.77.150(3), RCW 10.77.200(3). They are also entitled to the assistance of counsel at all stages of the proceedings. See RCW 10.77.020(1).

[43] RCW 10.77.200(1), (5); see State v. Kolocotronis, 34 Wn. App. 613, 618, 663 P.2d 1360 (1983). The statute does not include any "prohibition or time limitation against the filing of successive petitions," id. at 622, but there is some disagreement among the appellate courts regarding extra-statutory limitations on the frequent filing of successive petitions. Compare id. at 622-23 ("no subsequent petition [for final discharge] shall be considered or heard by the court *within one year of a prior determination* unless the petition is accompanied by a valid affidavit showing improvement of the petitioner's mental condition since the last trial."), with State v. Haney, 125 Wn. App. 118, 124-25, 104 P.3d 36 (2005) ("[W]e do not agree . . . that the court can impose a requirement of an affidavit of improvement if the petition is to be considered within one year of a prior determination. . . . The requirement under Kolocotronis may be reasonable, but it is not the law under the plain language of the statute."). In any event, Beaver had not filed any final discharge petition within one year prior to the January 2013 revocation hearing.

the acquittee may request a trial by jury.[44] To obtain final discharge, the insanity acquittee has the burden of proving "by a preponderance of the evidence" that he "no longer presents, as a result of a mental disease or defect, a substantial danger to other persons, or a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions."[45] These procedures for obtaining release provide an insanity acquittee with an adequate opportunity to rebut the presumption of continuing mental illness.[46] These alternate procedures provide "assurance that every acquittee has prompt opportunity to obtain release if he has recovered."[47]

Furthermore, the State has an interest in preserving the integrity and efficiency of the current statutory scheme. The "revocation/modification proceeding under RCW 10.77.190 is designed to efficiently determine whether an insanity acquittee has

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[44] See RCW 10.77.200(3) ("The court, upon receipt of the petition for release, shall within forty-five days order a hearing. Continuance of the hearing date shall only be allowed for good cause shown. . . . The hearing shall be before a jury if demanded by either the petitioner or the prosecuting attorney."); Haney, 125 Wn. App. at 123-24 (holding that the procedural requirements apply whether the petition is filed with the Secretary or with the court directly); Kolocotronis, 34 Wn. App. at 620-21 (same).

[45] RCW 10.77.200(3); see also RCW 10.77.200(5).

[46] See Matter of Lewis, 403 A.2d 1115, 1119 (Del. 1979). Notably, this statutory scheme, providing for consideration of the acquittee's mental health condition upon a petition for release rather than at a revocation hearing, makes sense because "if [an] individual proves he or she is no longer mentally ill, such individual would be entitled to a *final discharge*." Platt, 143 Wn.2d at 252 (emphasis added). It would not be enough to simply deny the State's petition for revocation of conditional release. See Reid, 144 Wn.2d at 631 (holding that the trial court's "factual determination [that the insanity acquittee no longer suffered from a mental disease or defect] vitiates the basis to confine Mr. Reid to a psychiatric facility pursuant to RCW 10.77.110. His continued detention, even if it is merely conditional, is therefore contrary to the plain language of the commitment statute which requires discharge after cure.").

[47] Jones, 463 U.S. at 366.

violated the conditions of her release and presents a danger to herself or others."[48] Beaver's proposal would effectively turn every revocation hearing into a de novo commitment hearing. Instead of focusing on the critical question of whether the acquittee violated release conditions or presents a public safety threat, the court would need to additionally consider whether the acquittee has recovered his sanity.[49] Such an expanded hearing would likely consume valuable resources of time and effort on a proceeding that would do little more than replicate separate release proceedings available to acquittees. In addition, blurring the distinction between the various types of hearings risks shifting the primary responsibility for establishing the condition of the acquittee's mental health from the acquittee to the State.[50] "Maintaining the trial court's discretion to efficiently address and modify conditions of an acquittee's release is a significant governmental interest."[51]

Balancing these factors, we conclude that an insanity acquittee's procedural due process rights are not violated when a conditional release is revoked without a renewed finding that the acquittee suffers from a mental illness. Although the acquittee's interest in liberty is substantial, so too is the State's interest in avoiding unnecessarily costly and confusing revocation hearings. Most importantly, the risk of erroneous commitment is minimal because existing procedures provide acquittees with the opportunity to be

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[48] State v. Derenoff, ___ Wn. App. ___, 332 P.3d 1001, 1006 (2014).

[49] See Jones, 463 U.S. at 366.

[50] See United States v. Jain, 174 F.3d 892, 897 (7th Cir. 1999). The State is given the burden of demonstrating that the conditionally released acquittee violated release conditions. See RCW 10.77.190. In contrast, the burden of demonstrating that the acquittee has regained his sanity rests with the acquittee. Klein, 156 Wn.2d at 114; Platt, 143 Wn.2d at 251 n.4; see also Jones, 463 U.S. at 370.

[51] Derenoff, 332 P.3d at 1006.

heard at a meaningful time and in a meaningful manner separate from conditional release revocation hearings.[52] Beaver's procedural due process rights were not violated.

We further note that Beaver would not prevail even if we accepted his premise that the trial court must find that the insanity acquittee suffers from a current mental illness in order to revoke conditional release. Because the acquittee has the burden to prove that he has regained his sanity,[53] Beaver bears the consequences of failing to obtain such a finding. Here, the trial court did not make any findings regarding Beaver's mental health. "'In the absence of a finding on a factual issue we must indulge the presumption that the party with the burden of proof failed to sustain their burden on this issue.'"[54] Thus, in the absence of a finding that Beaver has recovered his sanity, we presume that he remains mentally ill.

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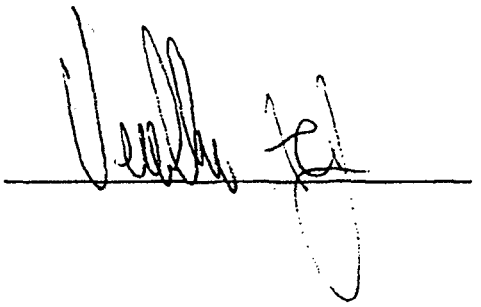
[52] See Mathews, 424 U.S. at 335; McCuistion, 174 Wn.2d at 395.

[53] The acquittee bears this burden for purposes of final release, RCW 10.77.200(3), and Beaver provides no compelling authority that the burden of proof should be different at a revocation hearing. Practical considerations support this allocation of the burden of proof: "If the State had the burden of proof, an insanity acquittee could refuse to participate in testing, prevent the State from obtaining critical information about his mental health, and then seek release because the State cannot prove that he is mentally ill." State v. Platt, 97 Wn. App. 494, 505, 984 P.2d 441 (1999), aff'd, 143 Wn.2d 242, 19 P.3d 412 (2001); see also Hickey v. Morris, 722 F.2d 543, 548 (9th Cir. 1983) ("[B]ecause the defendant himself first raised and proved his insanity, fairness suggests that release should require his own showing of recovery rather than the state's showing of continued insanity."). Furthermore, consistent with our Supreme Court's observation when considering the burden of proof for conditional release, "[i]t would be anomalous for chapter 10.77 RCW to place the burden of proving insanity on the defendant and the grounds for final discharge on that individual, but then place the burden on the State with respect to [revoking] the individual's conditional release." Platt, 143 Wn.2d at 251.

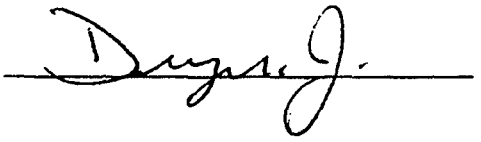
[54] In re Welfare of A.B., 168 Wn.2d 908, 927 n.42, 232 P.3d 1104 (2010) (quoting State v. Armenta, 134 Wn.2d 1, 14, 948 P.2d 1280 (1997)); see also Ellerman v. Centerpoint Prepress, Inc., 143 Wn.2d 514, 524, 22 P.3d 795 (2001) ("That being the case, the absence of a finding of fact is to be interpreted as a finding against him.").

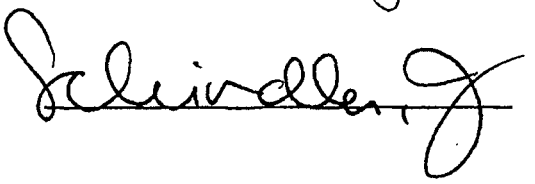
We need not consider any of the vague claims that Beaver raises in passing in his statement of additional grounds for review.[55]

We affirm.



WE CONCUR:





[55] See RAP 10.10(c) ("[T]he appellate court will not consider a defendant's statement of additional grounds for review if it does not inform the court of the nature and occurrence of alleged errors.").

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON Respondent, vs. RICKEY BEAVER, Petitioner.	)))))))))	SUPREME COURT NO. _____ COA NO. 70022-7-I

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 26TH DAY OF NOVEMBER, 2014, I CAUSED A TRUE AND CORRECT COPY OF THE **PETITION FOR REVIEW** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] RICKEY BEAVER
630 MOSES LANE SOUTH APT. B
RENTON, WA 98057

SIGNED IN SEATTLE WASHINGTON, THIS 26TH DAY OF NOVEMBER, 2014.

X Patrick Mayovsky