

FILED
COURT OF APPEALS
DIVISION II

Received
Washington State Supreme Court

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STATE OF WASHINGTON

WASHINGTON STATE SUPREME COURT

E CRF
Ronald R. Carpenter
Clerk

BY [Signature]
DEPUTY STATE OF WASHINGTON,

Respondent,

v.

Lakent Mateo Brasseur,

Appellant.

No. 4077-7-11

91583-1

MOTION FOR
DISCRETIONARY REVIEW

- PRV -

I. IDENTITY OF PETITIONER

Mr. Brasseur asks this Court to accept review

of the decision designated in Part II of this motion.

II. DECISION

Mr. Brasseur asks this Court to accept review

of the following decision filed on the 19th day of March,

2015. The decision (Did what): Failed to take into

consideration the issues concerning my

rights to due process.

The decision also failed

to take into consideration the serious-

ness of my mental health disability.

A copy of the decision is attached as Attachment Q.

MOTION FOR DISCRETIONARY REVIEW

PAGE: OF

III. ISSUES PRESENTED FOR REVIEW

A) Broussard was denied the right to call witnesses on his behalf

- COMPULSORY PROCESS -

B) I was denied the right to examine a possibly hostile witness, and I was unable to inspect his motive (RP 56) or to have a Daubert test performed

C) unable to form the intent called for to commit crime, MENS REA

D) Right to effective assistance of counsel

IV. STATEMENT OF THE CASE

^A The state charged Laurent Broussard with one count of failure to register as a sex offender (3rd offense), Pursuant to RCW 9A.44.132 (2)(b). (CP 1) Broussard was evaluated before trial and determined to be competent at that time to assist in his own defense. (12/02/13 RP 4-5; CP 12-13) Broussard waived his right to jury trial, and was found guilty following a bench trial. (RP 10-11, 89-96; CP 29, 51-58) The trial court imposed \$800.00 in mandatory LFO.

^B In 1994 a then 17 yrs old Broussard was adjudicated guilty of 3rd degree rape and as a result he has to register. In 2012 Broussard was convicted 2 of FTR. On June 5th 2013, after being released from confinement Broussard reported to P.C Sheriff and completed a full registration packet. At that time he listed his address

IV. STATEMENT OF THE CASE

at East K street in Tacoma, Broussard returned on June 11th 2013, and re-registered homeless. Broussard was told that as a transient, he was required to report weekly, and he was given a card reminding him that he should return to the Sheriff office on June 18th 2013, Broussard failed to return.

Broussard was sworn in and testified that he suffers from numerous mental conditions including ~~a~~ psychotic disorder and affective disorder which he has struggled with since the age 18. He has repeatedly tried to get treatment and medication while he was incarcerated and after release but no facility would treat him (RP 60564)

The voices and delusions became increasingly worse as time passed by mid June of 2013 the voices were

IV. STATEMENT OF THE CASE

telling him to kill himself and he came
to believe that he was a CIA or DEA
detective (RP 63, 66-67) He testified
he was "scatterbrained and wasn't
thinking right and wasn't balanced" so
he did not realize he ~~should~~^{was} report
and did not mean to violate the
registration statute (RP 67)

V. ARGUMENT WHY REVIEW SHOULD BE GRANTED

A This Court should grant review because: ^A The 6th Amend
provides: In all criminal prosecution
, the accused shall enjoy the right
to be confronted with the witness
against him [and] to have compul-
sary process for obtaining witness in
his favor.

Article Sec
22 of Washington State Constitution
which guarantees that "In criminal
prosecution the accused shall have the
right... to testify in his own behalf
to meet the witness against him face
to face, to have compulsory process to
compel the attendance of witnesses
in his own behalf.

Lalout
Broussard due process right were
precluded when the court denied
him to ~~prepare~~ and present expert testimony

1 witness to testify to fact that he is legally disabled
2 under 20 CFR 416.922 (c) of the Social Security Act for
3 the following severe impairment: psychotic disorder, and
4 affective disorder (please see exhibit A pg 4 of 7-2.) (Please
5 see Exhibit A pg 4 of 7 part A - pg 5 of 7 part B SSI mental
6 health history)

7
8 I sought to
9 compell the witness to also testify to the court
10 and to the fact that some one diagnosed with
11 psychotic disorder displays I ^{Exhibit X} quoted from THE FAMILY
12 GUIDE TO MENTAL HEALTH CARE by LLOYD I. SEDERBER,
13 MD pg 153-154 "The acute psychotic state can include
14 halucination, delusion, disorganized thinking, incoherent
15 talk, volatile moods, disorientation, impaired attention
16 and memory and bizarre behavior. An acute psychotic
17 disorder is brief, in the clinical sense it only last for
18 up to 30 day, and often much less. Although these 30
19 days might feel interminable to you, there is an end
20 in sight. If psychosis last longer than 30 day, it means
21 that another condition is affecting the person, and
22 other diagnosis need to be considered"; exactly the same
23 ~~for~~ ^{for} ~~problems~~ ^{problems} I repeatedly sought help for and was
24 denied over and over again, and exactly what I
25 testified to on the stand. under or the
26

1 Also one of the
2 question I wanted to ask Dr. Duris in court was
3 Would a person with psychotic disorder and affective
4 disorder have problems maintaining reality and important
5 task and responsibility while having an psychotic
6 episode.

7
8 I would have
9 also so asked Dr Duris in court is there a way to tell
10 when some one with psychotic disorder is going to
11 have an episode.

12 I also would have asked are you ever
13 wrong when it comes to diagnosing and
14 diagnosing people with psychotic disorder

15 Being that I
16 am a sufferer of mental disease and not a lawyer
17 I'm sure my attorney would have compelled the
18 witness to testify to info pertinent to my defense
19 which questions I don't know, but these are things a
20 lawyer are well trained to do.

21 Please see Definitions

22 B

23
24
25 Dr Duris
26 out of court testimony was used to deny my

1 contumacious to call Dr Duris as a witness
2 (RP56) my attorney told the court to the effect
3 that Dr Duris said out of court that his oral
4 did not support an insanity defense. Dr Duris out
5 of court statement prejudiced me in Judge
6 Cuthersson and Judge Murphy court, my due process
7 was violated when I was not allowed the right
8 to examine his finding and examine his motive,
9 Crawford v. Washington, Bullcoming v. New Mexico,
10 Harris v. White, 745 F.2d 523 (8th Cir) state defendant
11 are entitled to adequate means to impeach witnesses
12 credibility and motive during criminal trial,
13 Washington Supreme Court, 147 Washington - 2d 424,
14 54 P.3d 656... Hearsay Federal Rules of Evidence
15 Rule 804, 28 USC... 6th Amend, in all criminal
16 prosecution, the accused shall enjoy right to be
17 confronted with witness against him contemplates
18 that witnesses who makes testimonial statements
19 admitted against defendant will ordinarily be present
20 at trial for cross examination, and that if witness
21 is unavailable his prior testimony will be introduced
22 only if defendant had prior opportunity to cross
23 examination of him", USCA Constitution Amend 6th
24
25
26 The Supreme Court Justice held that

1 out of court statement by witness that are
2 testimonial are barred, under the constitutional
3 clause unless witness are available and defendants
4 had prior opportunity to cross examine witness, regard-
5 less of whether such statement are deemed reliable by
6 court abrogating Ohio v Roberts 448, U.S. 56, 100 S.
7 Ct 2531, 65 LEd. 2d 597. Based on the above
8 Broussard case should be remanded.
9

10
11 C

12
13 Based on the
14 facts and evidence (please Exhibit A & K) Broussard
15 suffers from severe mental health problems, psychotic
16 disorder and affective disorder, which are known to
17 cause delusion and such, and please take into
18 account his sworn testimony, decision should be
19 reversed because at the time of the crime Broussard
20 did not knowingly and intentionally seek to break
21 the law. At the time of the crime Broussard thought
22 he was a law enforcement agent (RP 66-67, 78).
23 GA. 44-132 FTR states "A person commits the crime
24 of failure to register as a sex offender if the
25 person has a duty to register under BCK 9A.
26

1 44-130 for a felony sex offense and knowingly fail
2 to comply with any of the requirements.

3 RCW 9A.12.010

4
5 D

6
7 Brassard
8 right to effective assistance of counsel was
9 violated by A) when the court denied him or
10 his attorney the continuance to investigate
11 and prepare witness GLASSER v. US, 315 US 60 (1942)...
12 and B) by his refusing to pursue the Demerol Capacity
13 defense which was an easier to meet the element
14 of that defense WP SERIES TM VOL 13 CRIM LAW
15 CH31 3104. . . . WEST'S REVISED CODE OF WA
16 CONSTITUTION OF THE STATE OF WA ART 1 DEC
17 OF RIGHTS § 22 Right of the accused.

18 Brassard's
19 case should be reviewed and remanded
20 on the above grounds
21
22
23
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25
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Received
Washington State Supreme Court

JUN - 8 2015

Ronald R. Carpenter
Clerk

VI. CONCLUSION

Based on the foregoing facts and arguments, this Court should
accept review.

Dated this ^{2nd} ~~1st~~ day of ~~May~~ June, 2015.

Walter Brasseur

(Print) _____
Petitioner, *Pro se*.
DOC# _____, Unit _____
Monroe Correctional Complex
(Street address) _____
P.O. Box 727
Monroe, WA 98272

COPY

VI. CONCLUSION

Based on the foregoing facts and arguments, this Court should
accept review.

Dated this 18 day of May, 2015.

(Print) _____
Petitioner, *Pro se*.
DOC# _____, Unit _____
Monroe Correctional Complex
(Street address) _____
P.O. Box _____
Monroe, WA 98272

COPY

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

DECISION

IN THE CASE OF

CLAIM FOR

Lamont Mateo Broussard
(Claimant)

Supplemental Security Income

(Wage Earner)

533-82-3038
(Social Security Number)

JURISDICTION AND PROCEDURAL HISTORY

This case is before the undersigned on remand from the Appeals Council pursuant to a remand from the United States District Court for the Western District of Washington from a decision of another administrative lawjudge with instructions to offer the claimant an opportunity for a hearing, take any further action to complete the administrative record and issue a new decision (Exhibits 8A and 9A).

The claimant protectively filed an application for supplemental security income payments on January 19, 2007, alleging an onset date of January 1, 1997. The application was initially denied on March 14, 2007. On September 7, 2007, the claim was denied on reconsideration. The claimant filed a request for hearing on November 28, 2007. The claim was dismissed on April 25, 2008 by Administrative Law Judge Verrell Dethloff who determined that the request for hearing was not filed within the stated time period and that the claimant did not establish good cause for missing the deadline for the request (Exhibit 3A). The case was remanded to Judge Dethloff by the Appeals Council by order dated February 13, 2009. A hearing was held June 24, 2009 that the claimant did not attend due to his incarceration. Judge Dethloff issued an unfavorable decision on July 27, 2009 (Exhibit 7A). The Appeals Council upheld Judge Dethloff's decision on May 12, 2010 and the claimant sought relief in District Court, which remanded the case for further proceedings.

Pursuant to the Court remand order, the undersigned convened a hearing on this matter on December 13, 2011, in Seattle, Washington. The claimant appeared at the hearing telephonically from the Pierce County Jail where he was incarcerated. Also appearing and testifying were Maxine Hoggan, PsyD, an impartial medical expert, and Anne M. Kysar, an attorney who represents the claimant in this matter. Rachel Steilberg, an impartial vocational expert, appeared but did not testify. At hearing, the claimant amended the alleged onset date of disability to January 19, 2007.

While the decision issued on July 27, 2009 has been vacated by the action of the Court, it remains in the record as a discussion and summary of the evidence and is hereby incorporated into this decision for that purpose.

ISSUES

The issue is whether the claimant is disabled under section 1614(a)(3)(A) of the Social Security Act. Disability is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

If the claimant is under a disability and there is medical evidence of a substance use disorder(s), there is an additional issue as to whether the substance use disorder(s) is a contributing factor material to the determination of disability under section 1614(a)(3)(j) of the Social Security Act. If so, the individual is not under a disability.

After careful review of the entire record, the undersigned finds that the claimant has been disabled from January 19, 2007, through the date of this decision.

APPLICABLE LAW

Under the authority of the Social Security Act, the Social Security Administration has established a five-step sequential evaluation process for determining whether an individual is disabled (20 CFR 416.920(a)). The steps are followed in order. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, the undersigned must determine whether the claimant is engaging in substantial gainful activity (20 CFR 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. If an individual engages in SGA, he is not disabled regardless of how severe his physical or mental impairments are and regardless of his age, education, or work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the undersigned must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. If the claimant does not have a severe medically determinable impairment or combination of impairments, he is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

At step three, the undersigned must determine whether the claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 416.920(d), 416.925, and 416.926). If the claimant's impairment or combination of impairments is of a severity to meet or medically equal



2. The claimant has the following severe impairments: psychotic disorder, affective disorder, and polysubstance abuse in remission (20 CFR 416.920(c)).

The claimant has also alleged physical impairments, including Crohn's disease. However, because the undersigned finds the claimant disabled based on his mental impairments alone, no discussion of the claimant's physical impairments is included.

3. The severity of the claimant's impairments meets the criteria of sections 12.03 and 12.04 of 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 416.920(d) and 416.925).

In making this finding, the undersigned considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence, based on the requirements of 20 CFR 416.929 and SSRs 96-4p and 96-7p. The undersigned has also considered opinion evidence in accordance with the requirements of 20 CFR 416.927 and SSRs 96-2p, 96-6p and 06-3p.

The severity of the claimant's impairments meet the criteria of section 12.04. The "paragraph A" criteria are satisfied because the claimant has exhibited anhedonia, decreased energy, feelings of guilt and worthlessness, difficulty concentrating or thinking and thoughts of suicide (Exhibits 6F and 37F). The "paragraph A" criteria of Section 12.03 are satisfied because the record documents the persistence of hallucinations. The "paragraph B" criteria are the same for both listings and are satisfied because, as discussed further below, the claimant's impairments cause marked restriction in activities of daily living, marked difficulties in maintaining social functioning, moderate difficulties in maintaining concentration, persistence or pace, and three episodes of decompensation, each of extended duration.

A The medical evidence reflects a history of mental health conditions that cause significant functional limitations. The record shows that the claimant was hospitalized at West Seattle Psychiatric Hospital from April 24, 2007 through May 2, 2007 after presenting to the emergency room at Harborview Medical Center with reports of depression and suicidal ideation (Exhibit 11F). The claimant complained of vegetative symptoms such as sporadic sleep and appetite, a history of psychotic symptoms, poor concentration and suicidal ideation with plans of "walking into traffic." Discharge diagnoses included a history of polysubstance abuse and depression not otherwise specified. He was assigned a Global Assessment of Functioning (GAF) score of 40, indicating some impairment in reality testing or communication or major impairment in several areas such as work, family relations, judgment, thinking, or mood. On discharge, the claimant's affect was restricted, his mood was depressed and his overall insight was impaired (Exhibit 6F).

The claimant subsequently received treatment at Sound Mental Health, records of which document a diagnosis of major depressive disorder that was treated with medications including Wellbutrin (Exhibit 17F). Records show that the claimant reported persistent symptoms despite treatment, including depression and difficulty being around others (Exhibit 33F). King County Jail records show that despite medications including Celexa and Prozac, the claimant continued to report hearing voices and presented with depressed mood and affect. The claimant required



the addition of antipsychotic medications to address his hallucinations. Records also show that the claimant was in isolation for altercations with other inmates (Exhibits 32F and 41F).

The claimant was examined by Brett Trowbridge, PhD, in June 2009. Dr. Trowbridge reviewed various medical records, interviewed him and administered three psychological tests. The claimant scored 26/30 on the mini-mental status examination and became frustrated as he was unable to do many of the simple subtraction problems. His results on the Beck Depression Inventory and Beck Anxiety Inventory reflected that the claimant was substantially depressed and anxious. It was Dr. Trowbridge's opinion that the claimant had bipolar disorder as evidenced by racing thoughts, grandiose ideas, paranoia and poor judgment, and that his mental illness caused him to have difficulty conforming his conduct to the requirements of the law. Dr. Trowbridge noted his minimal work history and stated that his ability to function appropriately with co-workers and supervisors was severely limited. He found the claimant's thought processes to be tangential and scattered and that he had less than average intelligence. Dr. Trowbridge also diagnosed mixed drug abuse/dependence (Exhibit 37F/5).

Subsequent records document persistent symptoms. For example, in July 2011, the claimant was treated at the emergency room with antipsychotic medications after reporting command hallucinations with suicidal ideation (Exhibits 44F and 45F). The claimant was admitted to Pioneer Center North (PCN) on September 8, 2011 and discharged on November 1, 2011. On admission, the claimant reported that he began hearing voices and having visual hallucinations at the age of 17 and that he had three previous suicidal episodes between 2005 and 2008 for which he was hospitalized twice. The claimant's treating psychiatrist diagnosed amphetamine and nicotine dependence, mood disorder not otherwise specified, and rule out psychotic disorder not otherwise specified. The discharge summary noted that throughout his treatment "it was difficult for staff to assess whether his negative behavior was based on manipulation, mental health issues, anger, poor impulse control, or not being able to trust staff/figures in authority (Exhibit 46F).

The claimant testified at hearing that he was currently in Pierce County Jail and had served 30 days for outstanding warrants. The claimant stated that he was incarcerated by the Department of Corrections for a total of 29 months between January 2008 and January 2011. During that time, he did not use drugs or drink alcohol and spent approximately 14 months in isolation. The claimant stated that he was in isolation because of his inability to get along with people and because he gets jumpy when people get behind him or around him. However, the claimant stated that he preferred to be in isolation when incarcerated because he had difficulty getting along with people and could concentrate. He stated that, when he was in isolation, his medication helped him sleep for approximately 6 hours and he was able to get his GED, although occasionally he had to stop working on it when he heard voices in his head. The claimant also stated that he also had problems with some of the corrections officers based on his previous incarcerations. The claimant testified that he took mental health medications while he was incarcerated. He stated that he still heard voices, but that they were more manageable. Even with medication, the voices called him racially derogatory names and told him that he should kill himself. The claimant testified that he last drank and used marijuana and methamphetamines approximately three months prior to the hearing. However, after using he decided that he wanted treatment and went to PCN. The claimant testified that he had trouble getting along with people at PCN, but he was

able to stop using. However, he was discharged from the program for throwing some trash on the floor that hit one of the staff on the foot.

After considering the evidence of record, the undersigned finds that the claimant's medically determinable impairments could reasonably be expected to produce the alleged symptoms, and that the claimant's statements concerning the intensity, persistence and limiting effects of these symptoms are generally credible.

Medical expert Dr. Hoggan testified that she had reviewed all of the claimant's medical records in evidence. It was Dr. Hoggan's opinion that the claimant's symptoms were clearly sufficient to make a diagnosis of 12.04 for an affective disorder based on Exhibits 7F, 37F and 6F. The symptoms referenced by Dr. Hoggan included anhedonia, decreased energy, feelings of guilt and worthlessness, difficulty concentrating and thinking, and thoughts of suicide, which she stated were supported by Exhibits 7F, 37F and 6F. Dr. Hoggan stated that the claimant also meets criteria sufficient to make a diagnosis of 12.09 for substance addiction disorder, referencing Exhibits 6F, 37F, and 46F. Although Dr. Hoggan stated that the primary substance was methamphetamines, she also noted the claimant's statement to Dr Trowbridge that he was a "crack head."

In terms of the "B" Criteria, Dr. Hoggan found marked restrictions in the claimant's activities of daily living based on the fact that he never held a job and had no significant social life. In terms of social functioning, Dr. Hoggan assessed marked limitations and stated that record indicates that the claimant has marked difficulties maintaining any social relationships with anyone. Dr. Hoggan also noted that the record confirmed three or more episodes of decompensation as evidenced by the claimant's suicide attempts. Dr. Hoggan found moderate limitations in concentration, persistence or pace, noting that he was able to complete his GED while he was incarcerated.

The undersigned adopts Dr. Hoggan's testimony because it is consistent with the record, which documents the persistence of the claimant's symptoms despite treatment, including ongoing psychotic symptoms. In addition, Dr. Hoggan's opinion is consistent with other opinion evidence of record. Specifically, examining source Dr. Trowbridge assessed moderate to marked limitations in cognitive and social functioning (Exhibit 37F/7-8). Dr. Trowbridge's opinion is persuasive because it was based on a review of records and an examination of the claimant. The undersigned therefore adopts Dr. Hoggan's testimony regarding the "B" criteria.

B The State agency psychological consultants were unable to assess the claimant's alleged mental impairments due to insufficient evidence (Exhibits 3F and 14F). However, evidence received at the hearing level supports the testimony of the medical expert, which is given significant weight.

Accordingly, based on Dr. Hoggan's opinion and the record as a whole, the undersigned finds that the claimant's cognitive impairments meet listings 12.03 and 12.04.

4. The claimant has been under a disability as defined in the Social Security Act since January 19, 2007, the amended alleged onset date of disability (20 CFR 416.920(d)).

5. The claimant's substance use disorder(s) is not a contributing factor material to the determination of disability (20 CFR 416.935).

Although the record documents a history of substance abuse, medical expert Dr. Hoggan opined that the claimant's mental health condition existed independently of his substance abuse. Therefore, substance abuse is not material to the finding of disability. However, given this history, appointment of a representative payee is necessary.

DECISION

Based on the application for supplemental security income filed on January 19, 2007, the claimant has been disabled under section 1614(a)(3)(A) of the Social Security Act since January 19, 2007.

The component of the Social Security Administration responsible for authorizing supplemental security income will advise the claimant regarding the nondisability requirements for these payments and, if the claimant is eligible, the amount and the months for which payment will be made.

The record reflects periods of incarceration since the established onset date of disability. Accordingly, the effectuating component shall determine the periods of incarceration and the effect, if any, on the claimant's benefits. 20 C.F.R. § 416.211.

The claimant's substance addiction disorder is a condition of disability. The provisions of Public Law 104-121 require the appointment of a representative payee. In addition, because claimant has a medically determinable substance use disorder which requires the appointment of a representative payee, a treatment referral is required pursuant to 42 USC 422(e), which provides that:

In the case of any individual whose benefits under this subchapter are paid to a representative payee pursuant to section 405(j)(1)(B) of this title, the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x-21 et seq.)

/s/ Mary Gallagher Dilley

Mary Gallagher Dilley
Administrative Law Judge

December 22, 2011

Date

s/lh

Exhibit
X

The
FAMILY
GUIDE
to
MENTAL
HEALTH
CARE

*Advice on Helping Your Loved Ones,
from the medical director of the country's
largest state mental health system and the
mental health editor of The Huffington Post*

LLOYD I. SEDERER, MD
FOREWORD BY GLENN CLOSE

No Yes

ethnic background or community?

N

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1 2 3 4 5 6 7 8 9 0

Acute Psychotic Disorder

Mary, a college student, was brought to the emergency room by her parents after her roommate had called them to say that Mary was "pacing around, not sleeping, and talking nonsense about voices telling her she is no good." There was no evidence that Mary had been drinking or using drugs. Her vital signs and appearance gave no suggestion of any acute medical problem, though the emergency room physician performed a physical exam and ordered a variety of blood tests. After the doctor had finished the exam, he called me in for a consultation.

I took Mary and her parents to a quiet room. I listened to her and then asked questions about what she was experiencing. Mary said that a man's voice was telling her that she was "ugly" and a "horrible girl." She was scared and couldn't sit still.

After observing Mary's discomfort and with the assessment mostly done, I asked Mary if she would be willing to take a medication that would make her less frightened and restless. She agreed. I explained that a nurse would bring a tranquilizer pill that would help her feel better within an hour.

I also told Mary that she was having a severe stress reaction, and that I knew from her parents that her behavior was markedly different from her usual self. I said that I thought this reaction would pass quickly and that the medication would help in the short-term as she figured out what had happened.

While waiting for the medication to take effect, I began to ask about the weeks before Mary's episode in order to obtain a good medical history. I learned that Mary had ended

a short but disastrous relationship with a young man who had quickly become emotionally abusive to her. At the same time, Mary's schoolwork was suffering because she couldn't focus on her studies, and she was having difficulty sleeping and concentrating during the day. The night before the psychotic symptoms began, Mary's ex-boyfriend had shown up at her dorm insisting on seeing her. Mary refused, but the incident had rattled her and she couldn't sleep at all that night. By morning, she was experiencing the full-blown symptoms of an acute psychotic disorder.

Acute psychotic disorders are uncommon, but when they come on, they can do so intensely and rapidly. Acute psychotic states typically affect individuals in their twenties and often follow a stressful event, like the breakup of a relationship, a family fight, the loss of a job, or a traumatic accident.

When a woman has an acute psychosis after giving birth, it is called a *postpartum psychosis* and should be differentiated from other forms of acute psychosis.

WHAT MIGHT AN ACUTE PSYCHOTIC EPISODE LOOK LIKE TO YOU?

Your otherwise well family member or friend will suddenly seem "out of his mind." He or she will behave in a markedly different way, almost overnight. The person may do bizarre things like walk in the street without clothing or call elected officials, or may talk incoherently, sing or yell, or seem fearful or expansive. People experiencing an acute psychotic episode are usually very agitated, unable to sit still and unable to sleep. And although it's clear to you that something is seriously wrong, your loved one has very limited insight and may not think there is a problem. All of these behaviors occur after some highly troubling event has caused your loved one's world to come crashing down.

DIAGNOSING ACUTE PSYCHOTIC DISORDER

The acute psychotic state can include hallucinations, delusions, disorganized thinking, incoherent talking, volatile moods, disorientation, impaired attention and memory, and bizarre behavior. An acute psychotic disorder is brief, in the clinical sense—it only lasts for up to 30 days, and often much less. Although those 30 days might feel intermi-

nable to you, there is an end in sight. If the psychosis lasts longer than 30 days, it means that another condition is affecting the person, and other diagnoses need to be considered.

It is important to distinguish an acute psychotic disorder from *toxic* or *medical* states, especially those induced by:

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COURT OF APPEALS
DIVISION II

2015 MAR 17 AM 8:43

STATE OF WASHINGTON

BY  DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

LAMONT M. BROUSSARD,

Appellant.

No. 46077-7-II

UNPUBLISHED OPINION

MAXA, J. — Lamont Broussard appeals his conviction for failing to register as a sex offender. Broussard argues that the trial court erred in denying his motion for a continuance because he needed more time to obtain an expert's report to support that his theory that his mental condition prevented him from knowingly failing to register. In his statement of additional grounds (SAG), Broussard also argues that, (1) his conviction for failure to register as a sex offender should be reversed because he no longer had a duty to register in 2013 and the registration requirement constitutes cruel and unusual punishment, (2) he is entitled to mental health treatment as an alternative to confinement, and (3) his sentence exceeded the statutory maximum.

We hold that Broussard has failed to demonstrate that the denial of a continuance prejudiced him or that the outcome of the trial would have been different had the continuance been granted. In addition, we hold that Broussard's SAG contentions have no merit. Accordingly, we affirm Broussard's conviction.

FACTS

In July 2013, Broussard was charged with felony failure to register as a sex offender. After questions about Broussard's competency were raised, the trial court ordered that Broussard undergo an evaluation to determine whether he was competent to stand trial. After reviewing the evaluation report, the trial court entered an order stating that Broussard was competent to understand the proceedings and to assist in his defense. Trial was set for December 30, 2013.

On December 12, the trial court granted Broussard's motion for a continuance to finalize preparation for a mental health defense. On January 23, 2014, the trial court granted a joint motion for another continuance because of scheduling conflicts, and the trial was set for February 11.

On the day of trial, Broussard's counsel told the presiding court that Dr. Mark Duris had conducted a mental health evaluation of Broussard. Defense counsel stated that Dr. Duris had informed him of the results, and they essentially were the same as an evaluation done in an earlier prosecution. Defense counsel did not state what Dr. Duris had told him, but Broussard was unhappy with both evaluations. The prosecutor represented that neither evaluation showed that Broussard's mental health issues rose to the legal standard of some type of defense.

Broussard's counsel stated that Dr. Duris had not yet prepared a written report, and therefore he was not ready to go to trial. However, after learning that Dr. Duris had the same opinions as a previous evaluator, the presiding court stated that it was sending the case to trial on that day. When the case was assigned to the trial court, Broussard renewed his motion for a continuance. The trial court denied the motion.

In a bench trial, Broussard presented a defense that his mental illness prevented him from knowingly failing to register because he did not understand what was real at the time. The trial court found Broussard guilty of failure to register as a sex offender. The trial court sentenced him to 43 months total confinement and 36 months community custody.

Broussard appeals his conviction and sentence.

ANALYSIS

A. DENIAL OF THE MOTION FOR A CONTINUANCE

Broussard argues that the trial court's denial of his motion for a continuance was an abuse of discretion because it denied him of his right to prepare and present evidence material to his defense – that his mental illness prevented him from “knowingly” failing to register.

Specifically, Broussard maintains that the trial court's denial of a continuance prevented him from obtaining Dr. Duris's written report concerning Broussard's mental health. We hold that the trial court did not abuse its discretion because the record does not show that Broussard was prejudiced by the denial of the continuance or that the outcome of the trial would likely have been different had the continuance been granted.

The decision to grant or deny a continuance rests within the sound discretion of the trial court. *State v. Downing*, 151 Wn.2d 265, 272, 87 P.3d 1169 (2004). We review a trial court's decision to grant or deny a continuance for an abuse of discretion. *Id.* We will not disturb the trial court's decision unless the appellant makes a clear showing that the trial court's discretion is manifestly unreasonable or exercised on untenable grounds. *Id.*

However, the failure to grant a continuance may violate due process and/or the right to compulsory process if the denial prevents the defendant from presenting a witness material to his defense. *Id.* at 274-75. Whether the denial of a continuance rises to the level of a constitutional violation requires a case by case inquiry. *Id.* at 275.

In exercising discretion to grant or deny a continuance in light of constitutional concerns, trial courts may consider many factors including surprise, diligence, redundancy, due process, and materiality. *Id.* at 273. Further, in order to establish an abuse of discretion for denial of a continuance, an appellant must show that he or she has been prejudiced or that the result of the trial likely would have been different had the continuance been granted. *State v. Deskins*, 180 Wn.2d 68, 82, 322 P.3d 780 (2014); *State v. Eller*, 84 Wn.2d 90, 95, 524 P.2d 242 (1974).

Here, Broussard cannot show that the failure to grant a continuance prejudiced him or that the trial outcome likely would have been different had the continuance been granted. Broussard's only argument is that the denial of a continuance prevented him from calling Dr. Duris as a witness to support his theory that he did not *knowingly* fail to register as a sex offender, which is a requirement under RCW 9A.44.132. However, Broussard gave no indication before either the presiding court or the trial court that Dr. Duris's testimony would have been helpful to his defense. Instead, Broussard was unhappy with Dr. Duris's opinion and Broussard did not object when the prosecutor indicated that Dr. Duris's report would not support Broussard's defense. Without some showing of what testimony Broussard expected from Dr. Duris, Broussard cannot meet his burden of establishing that the absence of Dr. Duris's testimony prejudiced him or that the trial outcome likely would have been different if the continuance had been granted.

In addition, the trial court's denial of a continuance did not preclude Broussard from presenting his mental health defense. Broussard did present evidence and argument that he did not knowingly fail to register. The trial court heard and considered Broussard's testimony, but ultimately concluded that he did knowingly fail to register.

We hold that the trial court did not abuse its discretion in denying Broussard's requests for a continuance.

B. DUTY TO REGISTER AS A SEX OFFENDER

Broussard asserts in his SAG that the requirement that he register as a sex offender based on his 1994 juvenile third degree rape conviction should have expired after 10 years. We treat this assertion as an argument that his conviction should be reversed because he no longer had a duty to register in 2013. He also argues that continuing to require registration after 10 years constitutes cruel and unusual punishment. We reject the first argument and decline to consider the second.

1. Length of Registration Requirement

In 1994, Broussard was convicted of third degree rape as a juvenile. This conviction required him to register as a sex offender. Former RCW 9A.44.130(1)(a) (1994); former RCW 9.94A.030(31)(a) (1994); former RCW 9A.44.060 (1979). Because third degree rape is a class C felony, RCW 9A.44.060(2) (1979), under former RCW 9A.44.140(c) (1991) Broussard had to spend 10 consecutive years in the community without being convicted of any new offenses before he became eligible for relief from the duty to register as a sex offender.

In 2001, less than 10 years after Broussard served his sentence for the third degree rape conviction, Broussard was convicted of third degree robbery in Oregon. After that conviction, he was convicted of multiple additional crimes between 2003 and 2012. Because Broussard has failed to spend 10 consecutive years in the community without being convicted of a new offense, he has yet to become eligible for relief from his duty to register as a sex offender.

We hold that Broussard still had a statutory duty to register as a sex offender in 2013.

2. Cruel and Unusual Punishment

The Eighth Amendment to the United States Constitution prohibits cruel and unusual punishment and article I, section 14 of the Washington Constitution prohibits cruel punishment. However, Broussard is not arguing that his sentence in *this* case is unconstitutional. He is challenging the effect of the sentence imposed in 1994. Because the 1994 sentence is not at issue in this appeal, we need not consider this argument.

C. MENTAL HEALTH TREATMENT AS AN ALTERNATIVE TO CONFINEMENT

Broussard argues in his SAG that based on his eligibility for federal disability for his mental health issues, we should take his disability into account and provide mental health treatment as an alternative to confinement. We treat this request as an argument that the trial court erred in not taking his disability into account during sentencing. We hold that Broussard was not eligible for mental health treatment as an alternative to confinement because he had prior convictions for a “sex offense.”

Mental health treatment as an alternative to confinement is available to certain offenders under the special sex offender sentencing alternative (SSOSA). RCW 9.94A.670. However, a sex offender is not eligible for a SSOSA if the offender has a prior conviction for a “sex offense”

as defined by RCW 9.94A.030(46), RCW 9.94A.670(2)(b). A “sex offense” includes a felony violation for failing to register if the person has been convicted of failing to register on at least one prior occasion. RCW 9.94A.030(46)(a)(v).

Here, Broussard had committed a “sex offense” within the meaning of RCW 9.94A.030(46)(a)(v) because he had two prior felony convictions for failing to register as a sex offender. Therefore, Broussard was not eligible for mental health treatment as an alternative to confinement under SSOSA.

D. STATUTORY MAXIMUM SENTENCE

Broussard asserts in his SAG that his sentence to 43 months incarceration and 36 months community supervision exceeds the statutory maximum sentence for his failing to register as a sex offender. However, Broussard confuses his standard sentencing range with the statutory maximum sentence. Although the high end of the standard sentencing range for his offense was 57 months, the statutory maximum sentence is 120 months. RCW 9A.44.132(1)(b); RCW 9A.20.021(1)(b).

Broussard was sentenced to a combined 79 months incarceration and community custody, well below the statutory maximum of 120 months. Therefore, we hold that Broussard’s sentence does not exceed the statutory maximum.

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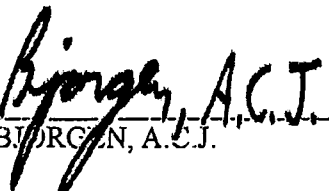
We affirm Broussard's conviction and sentence.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.




MAXA, J.

We concur:



BJORGEN, A.C.J.



SUTTON, J.