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SUPREME COURT OF THE STATE OF WASHINGTON

In re the Detention of Michael Sease,

Petitioner.

STATE'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

This appeal arises within the context of the post-commitment release procedures of the Sexually Violent Predator Act (SVPA). Sease argues that he is entitled to a new trial because the diagnosis assigned by the State's expert as part of his 2013 annual review is not identical to that assigned at the time of trial. This argument is foreclosed by this Court's recent decision in *In re Detention of Meirhofer*, 182 Wn.2d 632, 343 P.3d 731(2015). Where, as here, the current diagnosis—based on the same symptoms as those identified at trial—bears a “sufficient connection” to the diagnosis assigned at the time of trial, and where there is no showing of an underlying change of mental condition based on continuous participation in treatment, a new trial is not merited. This Court should deny review.

II. COUNTERSTATEMENT OF THE ISSUES

There is no basis for this Court's review pursuant to RAP 13.4. If this Court were to accept review, the following issues would be presented:

- A. **Did the State meet its prima facie burden pursuant to RCW 71.09 when it presented evidence that Sease continues to suffer from a personality disorder that makes him likely to engage in predatory acts of sexual violence if not confined?**
- B. **Where Sease, a repeat sex offender who has participated in only minimal treatment since his commitment in 2007, failed to present evidence of a substantial change in his mental condition as a result of continuing participation in treatment, and where his own expert was able to report only modest gains and limited progress in treatment, did the trial court properly deny Sease's request for a new trial?**

III. STATEMENT OF THE CASE

Michael R. Sease was convicted of first degree kidnapping on November 30, 1988, and of first degree rape on December 14, 1988. *In Re Detention of Sease*, 149 Wn. App. 66, 69, 201 P.3d 1078 (2009) *rev. denied* WSSC No. 83059-2 (2009). He was sentenced to 78 months and 240 months, respectively. *Id.* On March 31, 2005, shortly before Sease was scheduled to be released on his conviction for first degree rape, the State filed a petition alleging that Sease was an SVP. CP 1-2. Sease was committed by a unanimous jury in 2007, and his commitment was affirmed on appeal. *Sease*, 149 Wn. App. at 69. He has been detained at the Special Commitment Center (SCC) since that date, and his detention has been reviewed annually pursuant to RCW 71.09.070.¹

On September 20, 2013, Dr. Kirk Newring, Ph.D., a psychologist retained by the Special Commitment Center (SCC), issued his report examining Sease's current mental condition and concluding that he continued to meet criteria for commitment. CP 245-88. Sease submitted a report by his own expert and moved for an evidentiary hearing pursuant to RCW 71.09.090. *Id.* at 289-332. After a contested hearing, the trial court entered an order finding that the State had met its prima facie burden, that Sease had

¹ This appeal marks the fourth time in six years that Sease has petitioned for a new trial pursuant to RCW 71.09.090(2). Those requests have been denied by the trial court and, where he has sought review, review has been denied or, as here, the trial court's order affirmed.

failed to make a prima facie showing of change, and continuing Sease's commitment. *Id.* at 359-61. Sease sought discretionary review, which was granted.

The Court of Appeals affirmed the trial court. Rejecting Sease's argument that he no longer met commitment criteria because his diagnosis was no longer identical to that assigned by the States' expert at the time of trial, the court determined that the recently decided case of *Meirhofer* controlled. Slip Op. at *13. Applying *Meirhofer*, the court held that the State had presented prima facie evidence that Sease still fits the statutory definition based on his current diagnoses "because an evolving diagnosis based on the same symptoms does not mean his condition has changed." *Id.* at *14, citing *Meirhofer* at 643-46 (adopting *State v. Klein*, 156 Wn.2d 102, 124 P.3d 644 (2005)). The court also determined that Sease had not presented evidence that his condition had "so changed" that he no longer met commitment criteria. *Id.* at *17. "[T]he SVP statute and case law," the court held, "require the person's mental *condition* to change, not the person's *diagnosis*." *Id.* As such, the court continued, when determining whether Sease had established probable cause to believe his condition has "so changed," the court must look "at the underlying symptoms that have formed the basis for his commitment." *Id.* at *18. Those symptoms, the court concluded, "correlate closely with what the prior and subsequent reviewing doctors have continued to see." *Id.*

IV. ARGUMENT

A. **The Trial Court Properly Applied Well Established Case Law in Determining that the State Made a Prima Facie Case for Continued Confinement**

The statutory requirements for obtaining a new trial have withstood repeated challenge, most recently in *State v. McCuiston*, 174 Wn.2d 369, 275 P.3d 1092 (2012). A person committed as an SVP to the custody of the Department of Social and Health Services (“DSHS”) is entitled to annual review of his mental condition to determine whether he continues to meet the definition of an SVP. *Id.* at 379; RCW 71.09.070. The SVP may also submit his own expert evaluation to the court. RCW 71.09.070. At the show cause hearing following these submissions, the State must “present prima facie evidence that the committed person continues to meet the definition of a sexually violent predator...” RCW 71.09.090(2)(c).

As this Court has recognized, once the State has made its prima facie case, a new trial is granted only upon a showing of probable cause to believe that evidence exists, since the person’s last commitment trial, that: 1) there has been a “substantial” change in the respondent’s condition; and 2) the change results from a permanent physiological event such as a stroke or dementia rendering the respondent unable to reoffend, or from a “positive response to continuing participation in treatment.” RCW 71.09.090(4)(c); *McCuiston*, 174 Wn.2d at 380.

Sease's argument that he is entitled to a new trial based on a minor adjustment in diagnosis fails for at least two reasons: First, as a factual matter, Sease mischaracterizes Dr. Newring's report, which clearly sets forth facts sufficient to establish the State's prima facie case. Second, Washington precedent establishes that a diagnosis of mental illness need not be perfectly static to justify continued civil commitment.

Sease asserts that the State's experts "no longer diagnose Mr. Sease with either antisocial personality disorder or borderline personality disorder. Instead, the State's experts now opine that he suffers only from narcissistic personality disorder." Pet. at 3.² He further argues that this is "evidence of a change in condition[.]" *Id.* at 7. This argument is misleading because it ignores the fundamental similarity between the diagnoses assigned at the time of trial and those assigned by Dr. Newring, and because it suggests that the SCC psychologist assigned different diagnoses because he believed Sease has "changed." In fact, the only thing that has changed is the psychologist performing the evaluation. The "change" in diagnoses demonstrates only something that the courts have long recognized: That reasonable minds can differ on how to best conceptualize complex mental conditions. Dr. Newring's report contains all of the necessary components to establish the State's prima facie case.

² Sease also notes that Dr. Newring assigned diagnoses of alcohol dependence, cognitive disorder and borderline intellectual functioning. Pet. at 3.

1. Dr. Newring's report establishes the State's prima facie case

Dr. Newring, applying the diagnostic criteria in the American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision* ("DSM-IV-TR"), rendered diagnoses of Alcohol Dependence, In a Controlled Environment; Cognitive Disorder, NOS; a Rule-Out diagnosis of Paraphilia, Not Otherwise Specified, Nonconsent; Narcissistic Personality Disorder with Borderline, Antisocial, Sadistic and Paranoid features; and Borderline Intellectual Functioning. CP 256. "There is little doubt," he wrote, "that Mr. Sease presents with a significant overall pattern of personality dysfunction that has severely impacted his ability to function without substantial difficulties both in the community and within institutional settings." *Id.* at 257. Noting that Dr. Robert Saari, who submitted evaluations on behalf of the SCC in 2008 and 2009, also "asserted that Mr. Sease's overall pattern of personality dysfunction was essentially narcissistic although he had prominent borderline and antisocial features," Dr. Newring pointed to "specific indicators of personality disorder," including Sease's "acknowledged history of manipulation of others for personal gain, tenuous and chaotic interpersonal relationships, interpersonal entitlement, poor showing of empathy, verbal and physical behavior that appears intended to cause harm or hurt to others..., grandiose self-worth, and difficulty following rules." *Id.* He concluded that

Sease “continues to present with a mental condition(s) that seriously impairs his ability to control his sexually violent behavior.” *Id.* at 263.³

2. An adjustment in diagnosis does not entitle Sease to a new trial

Sease essentially argues that, because his personality disorder was once described as Narcissistic, Borderline, and Antisocial, but is *now* described as: Narcissistic with Borderline, Antisocial, and Sadistic *features*, he is entitled to a new trial. The Court of Appeals correctly rejected this argument, noting that neither the statute nor the Constitution requires that that continued confinement be predicated on the identical diagnosis rendered at the time of the initial commitment. A minor adjustment of diagnosis that simply reflects a slightly different conceptualization of the underlying pathology that drives an individual to offend in a sexually violent manner does not require a new trial.

Although psychologists have conceptualized Sease’s mental disorders in different ways over the years, the diagnostic picture has remained consistent. When he was seen at Western State Hospital after preparing to jump from the Narrows Bridge when he was 25, Sease was diagnosed with Adjustment Disorder with Mixed Emotions and Dependent Personality Traits. CP 268-69. In 1990, Department of Corrections (DOC) psychologist

³ Dr. Newring also conducted a risk assessment, concluding that Sease “continues to present with a mental condition(s) that seriously impairs his ability to control his sexually violent behavior” and is not appropriate for release to a less restrictive alternative.” CP at 263. Sease does not appear to contest this assessment.

Dr. Thomas Foley assessed Sease in response to his self-mutilating behaviors. *Id.* at 269. Dr. Foley assigned Sease diagnoses of Antisocial Personality Disorder⁴ and Borderline Personality Disorder.⁵ *Id.* Testing later

⁴ While updates to the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders ("the DSM") have been published since Sease's first known psychological evaluation, the definition of Antisocial Personality Disorder has remained largely unchanged. The DSM-IV-TR defines antisocial personality disorder as:

A) There is a pervasive pattern of disregard for and violation of the rights of others occurring since age 15 years, as indicated by three or more of the following:

1. failure to conform to social norms with respect to lawful behaviors as indicated by repeatedly performing acts that are grounds for arrest;
2. deception, as indicated by repeatedly lying, use of aliases, or conning others for personal profit or pleasure;
3. impulsivity or failure to plan ahead;
4. irritability and aggressiveness, as indicated by repeated physical fights or assaults;
5. reckless disregard for safety of self or others;
6. consistent irresponsibility, as indicated by repeated failure to sustain consistent work behavior or honor financial obligations;
7. lack of remorse, as indicated by being indifferent to or rationalizing having hurt, mistreated, or stolen from another;

B) The individual is at least age 18 years.

C) There is evidence of conduct disorder with onset before age 15 years.

D) The occurrence of antisocial behavior is not exclusively during the course of schizophrenia or a manic episode.

⁵ The DSM IV-TR defines Borderline Personality Disorder as:

A pervasive pattern of instability of interpersonal relationships, self-image, and affects, and marked impulsivity beginning by early adulthood and present in a variety of contexts, as indicated by five (or more) of the following:

- (1) frantic efforts to avoid real or imagined abandonment.
Note: Do not include suicidal or self-mutilating behavior covered in Criterion 5.
- (2) a pattern of unstable and intense interpersonal relationships characterized by alternating between extremes of idealization and devaluation
- (3) identity disturbance: markedly and persistently unstable self-image or sense of self
- (4) impulsivity in at least two areas that are potentially self-damaging (e.g., spending, sex, substance abuse, reckless driving, binge eating).
Note: Do not include suicidal or self-mutilating behavior covered in Criterion 5.

administered by Dr. Foley yielded scores similar to those of people who “often engage in a wide range of antisocial activities, including excessive alcohol use and sexual acting out. *Id.* at 271. Individuals with this profile, he noted, “are often described as being self-centered, narcissistic, egocentric, and selfish.” *Id.* at 272. They are insensitive to the needs and feelings of other people, often displaying “aggressive and/or assaultive behavior without any signs of guilt or empathy for others.” *Id.* In 1994, another DOC psychologist, Dr. Edward Goldenberg, was asked to assess Sease after another period of threats to self-mutilate and assigned diagnoses of Paraphilia Not Otherwise Specified,⁶ Alcohol Abuse, Antisocial Personality Disorder, Borderline Personality Disorder, and Mild Mental Retardation. *Id.*

Two years later, after an attempted suicide, DOC psychiatrist Dr. Edward Grosskopf noted Sease had been psychiatrically hospitalized at

(5) recurrent suicidal behavior, gestures, or threats, or self-mutilating behavior

(6) affective instability due to a marked reactivity of mood (e.g., intense episodic dysphoria, irritability, or anxiety usually lasting a few hours and only rarely more than a few days)

(7) chronic feelings of emptiness

(8) inappropriate, intense anger or difficulty controlling anger (e.g., frequent displays of temper, constant anger, recurrent physical fights)

(9) transient, stress-related paranoid ideation or severe dissociative symptoms

⁶ The DSM-IV-TR describes paraphilias as “recurrent, intense sexually arousing fantasies, sexual urges or behaviors generally involving (1) nonhuman objects, (2) the suffering or humiliation of oneself or one’s partner, or (3) children or other nonconsenting persons that occur over a period of 6 months,” which “cause clinically significant distress or impairment in social, occupational, or other important areas of functioning.” The term “not otherwise specified” encompasses less commonly encountered paraphilias and those not yet sufficiently described to merit inclusion in the DSM. DSM-IV-TR at 576; *see also In re Young*, 122 Wn.2d 1, 29, 857 P.2d 989 (1993)

DOC's Special Offender Center six times and attempted suicide or mutilated himself over 60 times. He diagnosed Sease with Alcohol Dependence and a Borderline Personality Disorder with antisocial features.⁷ CP 272. In 2002, DOC psychologist Dr. Savio Chan, noting that Sease showed no remorse or concern for his victims and denied any mental disorders, assigned a "rule out"⁸ diagnosis of Paraphilia Not Otherwise Specified ("NOS"). *Id.* at 270. In 2004, DOC psychologist Dr. Kerry Clark, when assigning a diagnosis of Personality Disorder NOS with narcissistic, antisocial and borderline features, noted the "complex mixture" of those components. *Id.* at 270-71. Finally, in 2005, Dr. Dennis Doren, who testified for the State at Sease's SVP trial, diagnosed Sease with Alcohol Dependence, Borderline Personality Disorder, Narcissistic Personality Disorder,⁹ and Antisocial Personality Disorder. *Id.* at 271.

⁷ The terms "features" or "traits" are used when an individual shows aspects of specified disorders, but does not meet the diagnostic criteria for the full diagnosis.

⁸ The phrase "rule out," although commonly used, does not appear in the DSM-IV-TR. It is typically used to identify an alternative diagnosis that is being actively considered, but for which sufficient data has not yet been obtained. House, Alvin E. *DSM-IV Diagnosis in the Schools*, Gilford Press, 2002, at 33.

⁹ The DSM-IV-TR defines Narcissistic Personality Disorder as:

A pervasive pattern of grandiosity (in fantasy or behavior), need for admiration, and lack of empathy, beginning by early adulthood and present in a variety of contexts, as indicated by five (or more) of the following:

- (1) has a grandiose sense of self-importance (e.g., exaggerates achievements and talents, expects to be recognized as superior without commensurate achievements)
- (2) is preoccupied with fantasies of unlimited success, power, brilliance, beauty, or ideal love
- (3) believes that he or she is "special" and unique and can only be understood by, or should associate with, other special or high-status people (or institutions)

Subsequent evaluators, including Dr. Newring, conceptualized Sease's mental disorder slightly differently than did Dr. Doren. In Sease's 2008 annual review, the first submitted by the SCC after Sease's 2007 commitment, Dr. Saari wrote that Sease's condition is "best conceptualized as a case of malignant narcissism at a borderline level of personality organization." CP 57. Sease's narcissistic personality disorder is characterized "by severe dysfunction at the level of morality and prosocial values." *Id.* at 58. Although Sease describes himself as a moral man, "his aggressive behavior and exploitation of other people indicates a serious pathology at the level of conscience[.]" *Id.* Sease, he wrote, is likely "to take pleasure in dominating other people." *Id.* This "callousness and lack of empathy" are apparent in his sex offending, in particular his most recent offense, involving "gratuitous violence by torturing [the victim] with the knife," and "taunting" her by saying he had given her AIDS. *Id.* His severe narcissism, he writes, involves defense mechanisms Sease employs to

(4) requires excessive admiration

(5) has a sense of entitlement, i.e., unreasonable expectations of especially favorable treatment or automatic compliance with his or her expectations

(6) is interpersonally exploitative, i.e., takes advantage of others to achieve his or her own ends

(7) lacks empathy: is unwilling to recognize or identify with the feelings and needs of others

(8) is often envious of others or believes that others are envious of him or her

(9) shows arrogant, haughty behaviors or attitudes

maintain a favorable self-image. *Id.* His sex offending, “can easily be understood in terms of omnipotent control, as he wished for gratification of sexual desire overrode any concern he may have had” about his victims. *Id.* at 58-59. Sease’s narcissistic personality disorder, Dr. Saari concluded, “is the primary mental disorder that places him at risk for future sexual violence.” *Id.* at 61. His use of aggressive self-assertion to regulate self-esteem, combined with his pattern of sexual offending, and poor impulse control, “is sufficient to predispose him to future predatory acts of sexual violence.” *Id.* In addition to meeting the diagnostic criteria for Narcissistic Personality Disorder, Sease, Dr. Saari opined, had a “complex array” of symptoms from two other disorders:

- Antisocial Personality Disorder: a) failure to conform to social norms with respect to lawful behaviors; b) some degree of deceitfulness; c) impulsivity; d) irritability and aggressiveness; e) lack of remorse.
- Borderline Personality Disorder: a) some degree of abandonment sensitivity and abandonment fears; b) recurrent suicidal behaviors, gestures, threats, and self-mutilating behaviors; c) affective instability; d) inappropriate, intense anger.

Id.

Subsequent SCC evaluators have agreed with Dr. Saari’s assessment, and continued to conceptualize Sease’s complex array of mental disorders in a similar fashion. CP 87 (2009 Annual Review (“AR”)); CP 138 (2010 AR); CP 166 (2011 AR); CP 202 (2012 AR). All of these reports were submitted to the trial court, the same judge who presided over Sease’s 2007 jury trial (*see*

CP 33-34) and were part of the pleadings considered by the trial court when entering its October 11, 2013 Order. CP 359. Likewise Dr. Newring, in his 2013 evaluation, made frequent reference to Dr. Saari's 2008 report, and assigned a diagnosis very similar to that assigned by Dr. Saari. *E.g.* CP 247; App. at 93, 100.

These reports make clear that nothing about Sease has "changed," nor do any of those reviewing his case believe that he no longer suffers from the conditions diagnosed at the time of trial. Indeed, the distinction between Dr. Doren's trial diagnosis and that of Dr. Saari and subsequent SCC evaluators is in fact a very small and technical one, hinging on the presence of evidence of the person's behavior prior to age 15.¹⁰ To order a new trial because two different professionals disagree on how to interpret information related to the subject's conduct before age 15 is absurd, and the trial court correctly rejected this argument.

B. The Court of Appeals Decision Is Consistent with this Court's Determination that Subsequent Diagnoses Are Not Required to Be Identical to that Assigned at the Time of Trial

As the Court of Appeals correctly noted, this Court's decision in *Meirhofer* soundly rejected the argument that all SVP evaluations must be identical to the evaluation submitted at the commitment trial. *Meirhofer*, 182

¹⁰ To diagnose an Antisocial Personality Disorder, there must be evidence of a "conduct disorder" prior to age 15. *See* n.4, *supra*. While Dr. Doren apparently found such evidence in the record, Dr. Saari did not and, in his 2008 report, wrote that Sease "would meet the full criteria for Antisocial Personality Disorder if he more clearly had symptoms of Conduct Disorder prior to the age of 15 years." CP 62, n.13.

Wn.2d 632. Meirhofer argued that, because the State's experts testified at the commitment trial that he suffered from pedophilia and then, at a subsequent annual review, found insufficient evidence for that diagnosis, the State had not met its burden. *Id.* at 644. After noting that this Court had affirmed commitments based on paraphilia NOS nonconsent and antisocial personality disorder, Meirhofer's remaining diagnoses, this court went on to observe that it has rejected a similar challenge in the context of an insanity acquittal in *Klein*. Due process, the Court noted, "requires that the nature of the commitment bear some reasonable relation to the purpose for which the individual is committed." *Id.* (citing *Klein*, 156 Wn.2d at 120-121). As such, there must be a "sufficient connection" between the original and the current diagnoses to justify continued commitment. *Id.* The "subjective and evolving nature of psychology," this Court wrote, "may lead to different diagnoses that are based on the very same symptoms, yet differ only in the name attached to it." *Id.*

The Court of Appeals found a "sufficient connection" "because an evolving diagnosis based on the same symptoms does not mean his condition has changed." *Sease*, Slip Op. at *14.

The diagnoses that formed the basis of Sease's commitment—borderline personality disorder, antisocial personality disorder, narcissistic personality disorder, and alcohol dependence—"bears [sic] a sufficient connection" to Dr. Newring's diagnoses of narcissistic personality disorder with borderline, antisocial, sadistic and paranoid features; cognitive disorder NOS rule-out paraphilia; cognitive disorder NOS; borderline

intellectual functioning; and alcohol dependence in a controlled environment.

Id. at *15. To hold otherwise, the court noted, “would allow semantics to put patients and the public at risk beyond that intended by the legislature.” *Id.* at *16 (citing *Klein*, 156 Wn.2d at 121).

C. Sease Failed to Establish Probable Cause of a Relevant Change in Mental or Physical Condition

Sease next argues that Dr. Abbott’s report demonstrated that Sease had so changed through treatment that a new trial was merited. This argument also fails. As amended in 2005, RCW 71.09.090 requires a specific showing to justify a new trial reopening an indefinite commitment. Although Dr. Abbott concluded that Sease had changed through treatment, and was no longer an SVP, the trial court was charged with examining those conclusory statements for an underlying factual basis. The trial court determined that, in reality, Sease’s minimal participation and resolutely unsuccessful foray into the treatment realm did not supply the requisite evidentiary basis for Dr. Abbott’s conclusions. Because Sease failed to make the requisite showing, the trial court properly denied his request for a new trial.

Sease argues that because he “offer[ed] the opinion of an expert who states [his] diagnosis has changed as a result of treatment,” he met his burden of producing probable cause for a new trial. The trial court properly looked behind this conclusory opinion and rejected Sease’s request for a new trial.

After over 20 years of denying that he has ever committed a sex offense or that he is a sex offender, Sease recently began to participate in treatment. His desultory progress is described in Dr. Newring's and Dr. Abbott's reports. CP 245-88; 308-312. Sease, Dr. Newring writes, was "generally described as 'baseline' or not showing much progress" in his Barriers to Discharge/Power to Change group. CP 254. He was described as "defensive," and "refused to discuss/explore his thoughts." *Id.* Although at some point in 2011 Sease asked to be assigned to a sex offender-specific therapy group, or "cohort" group, he "does not appear to have participated in this group during the current review period." *Id.* He continued to struggle with the label of "sex offender." *Id.* He was described as minimizing aspects of his offense history, indicating that sobriety was his main risk factor. *Id.* He declined to meet with senior clinical staff at the SCC. *Id.* He was expelled from his Barriers to Discharge/Power to Change group, re-admitted, and then again expelled. *Id.* at 255. Dr. Abbott reports many of the same problems. *Id.* at 308-12. In Dr. Newring's view, Sease's Personality Disorder and Cognitive Disorder "appear to be primary barriers to his progress in sexual offense behavior specific treatment," and are "preventing him from returning to sexual offense behavior specific treatment at this time." *Id.* at 262.

Sease's termination from treatment alone removes him from the treatment participation required by the statute. CP 255. Lacking evidence of treatment participation, Dr. Abbott focused on the "SCC therapeutic milieu."

CP 314-16. In essence, Sease argues that by simply residing at the SCC, he is participating in treatment and thereby entitled to a new trial under RCW 71.09.090(4). This position, however, is at odds with the language and intent of the statute, and renders moot the legislative intent in RCW 71.09.090(4), and the entire Sexually Violent Predator (“SVP”) Act. The Court of Appeals properly rejected this argument.

D. There Is No Conflict with the Unpublished Breedlove Opinion

Sease argues that review should be accepted because the court’s opinion “is in direct conflict” with the unpublished case of *In re Detention of Breedlove* (70750-7-I May 18, 2015). This argument fails for two reasons. A party may not cite as an authority an unpublished opinion of the Court of Appeals. GR 14.1(a); *Coley v. Peacehealth*, 177 Wn. App. 717, 722-23, 312 P.3d 989(2013). As such, it cannot create a conflict for purposes of this Court’s review and this Court should not consider this argument. Second, even if *Breedlove* were a published decision, nothing in *Breedlove* conflicts with the Court of Appeals’ decision in *Sease* or this Court’s decision in *Meirhofer*.

Sease attempts to create the appearance of a conflict between these two cases by mischaracterizing both. First, he incorrectly characterizes *Sease* as standing for the proposition that “a change in a person’s diagnosis cannot establish probable cause to believe their mental condition has changed[.]” Pet. at 5. He then asserts that *Breedlove* holds “that probable cause could only

exist where there is a change in diagnosis.” Pet. at 6. Neither case so holds. Rather, both stand for the proposition that it is the underlying mental disorder, not the name attached to the disorder, that is relevant in determining whether there is probable cause for a new trial.

In *Breedlove*, the State’s expert assigned a diagnosis of pedophilia. *Breedlove* at *7. Breedlove’s expert, Dr. Fisher, agreed, stating he had “little doubt” that Breedlove “continued[d] to show evidence of pedophilia.” *Id.* at 3. Dr. Fisher also reported that Breedlove “only participated in two brief periods of focused sex offender treatment.” *Id.* at 2. This evidence notwithstanding, Dr. Fisher asserted that Breedlove had “changed through treatment,” an assertion rejected by Division I, which held that Dr. Fisher’s opinion was “conclusory” and unsupported by evidence of that change. *Id.* at *8-9. *Breedlove* indicates that conclusory expert opinions, unsupported by evidence, combined with a collateral attack on the initial commitment, are insufficient to support a finding of probable cause for a new trial. As in *Sease*, the *Breedlove* Court determined that a change in the underlying mental disorder must be shown to demonstrate probable cause for a new trial. The two cases are not in conflict.

Sease next asserts that the Court of Appeals’ decision creates “a significant constitutional issue as it leaves no means by which a committed person can establish probable cause.” Pet. at 5. This argument, too, lacks merit. What both *Sease* and *Breedlove* make clear is that it is a change in the

actual, underlying mental condition—as opposed to the name assigned to that mental condition—that determines whether there is probable cause for a new trial. Where a respondent can demonstrate a “substantial change” in his or her underlying mental condition—as opposed to the name assigned to that mental condition—”brought about through positive response to continuing participating in treatment,” the courts can and will find probable cause for a new trial. RCW 71.09.090(4).

The debate here, as in *Meirhofer*, is one of form, not substance, and that case controls. As is apparent from the varying diagnoses that have been assigned over the years, reasonable professionals can and have differed as to precisely how best to characterize Sease’s pathology, one that involves brutal sexual attacks on women, an absence of empathy and indifference to the suffering of others, a sense of entitlement and willingness to exploit others to meet his own needs, resistance to supervision or authority, extreme interpersonal difficulties, and self-mutilation. All agree, however, that there is an interplay between his alcohol abuse, his cognitive impairment, and the various personality disorders—or personality-disordered traits—with which he has been diagnosed. The various diagnoses assigned over the years notwithstanding, nothing about the underlying facts of Sease’s sexual offending has changed. Rather, different evaluators simply disagree as to the way to most accurately capture the pathology that drives Sease’s offending. Thus, just as in *Klein*, “the subjective and evolving nature of psychology” has

led to “different diagnoses that are based on the very same symptoms, yet differ only in the name attached to it.” *Klein*, 156 Wn. 2d at 120-121.

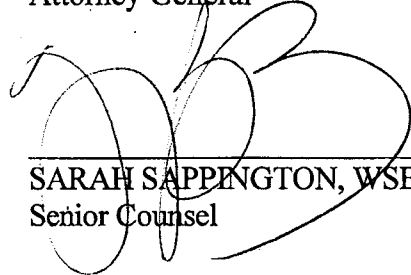
Even with a slightly adjusted diagnosis, there is no doubt that the nature of Sease’s commitment continues to bear a reasonable relation to the purpose for which he was committed. The original purpose of Sease’s commitment was to protect the public and offer treatment for his many mental disorders, conditions that, regardless of the order in which they are listed, clearly constitute a pathology that makes him likely to sexually offend. His continued commitment is based on the continued presence of a dangerous constellation of conditions. As such, the nature of his continued commitment does not violate the constitution.

V. CONCLUSION

For the aforementioned reasons, this Court should deny review

RESPECTFULLY SUBMITTED this 16th day of October, 2015.

ROBERT W. FERGUSON
Attorney General



SARAH SAPPINGTON, WSBA #14514
Senior Counsel

NO. 91992-5

WASHINGTON STATE SUPREME COURT

In re the Detention of:

MICHAEL SEASE,

Respondent.

DECLARATION OF
SERVICE

I, Allison Martin, declare as follows:

On October 6, 2015, I sent via electronic mail a true and correct copy of State's Answer to Petition for Review and Declaration of Service, addressed as follows:

Gregory C. Link
greg@washapp.org
wapofficemail@washapp.org

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 6th day of October, 2015, at Seattle, Washington.



ALLISON MARTIN

OFFICE RECEPTIONIST, CLERK

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Subject: In re Sease 91992-5

Good Afternoon,

Attached for filing in the above case, on behalf of AAG Sarah Sappington, WSBA #14514, OID #91094, please find State's Answer to Petition For Review and Declaration of Service. AAG Sappington can be reached at 206-389-2019.

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