No. 45512-9-II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

In re the Detention of:

MICHAEL SEASE,

Petitioner.

ON DISCRETIONARY REVIEW FROM THE SUPERIOR COURT
OF THE STATE OF WASHINGTON FOR PIERCE COUNTY

PETITIONER'S REPLY

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A. ARGUMENT

While it is not apparent from the rambling and disjointed response which the State offers, this case presents a simple question. Where psychiatric experts, including every expert retained by the State, can longer diagnose a person as suffering either of the two disorders upon which the jury determined to commit the person, has the person's "condition changed?" The trial court answered the question in the negative. That is both probable and obvious error which warrants discretionary review by this Court.

Importantly, the State does not dispute that Mr. Sease's diagnosis has changed. Instead, the State makes the fantastic claim that in assessing whether someone's mental condition has changed their diagnosis is immaterial. Response at 3. This is a truly remarkable claim for application of a statute which is grounded in the treatment of mental conditions. If the diagnosis is immaterial, why the does the state's experts bother to offer any diagnosis at all? If the diagnosis is immaterial, why then did Legislature require that to establish a "personality disorder" the State must offer evidence of a license psychiatrist or psychologist? RCW 71.09.020(9). If a change in diagnosis does not equate to a change in condition the later term is

devoid of meaning. Plainly a person's diagnosis is quite material to his condition and a change in that diagnosis is very material to the question of whether his condition has changed.

One could describe both a broken finger and a broken toe as "fractured bones" yet it would be nonsensical to say they are not separate conditions. It would be absurd to contend that once the broken finger healed only to be followed by a broken toe that the person's condition had not changed. Yet that is the depth to which the State's argument sinks.

The Supreme Court has concluded the duration of commitment is "tailored to the nature and duration of **the** mental illness . . . ." *In re the Detention of Young*, 122 Wn.2d 1, 39, 857 P.2d 989 (1993) (emphasis added). Here, "the" mental illness has been resolved as a result of treatment and thus further commitment is only permissible upon a new trial.

Hoping to avoid the result demanded by due process, the State instead claims "[t]he present case is on all fours with the *Klein* case." Response at 6 (citing *State v, Klein*, 156 Wn,2d 103, 119-20, 124 P.3d 644 (2005)) The State's hyperbole aside, *Klein* is not on all fours with

this case and as discussed at length in Mr. Sease's motion is at best only superficially related.

RCW 10.77.200, the statute at issue in *Klein*, requires the committed persons to prove by a preponderance of the evidence that they no longer suffer from "a mental disease or defect" which made them a danger to others or substantially likely to commit criminal acts. *Klein* found it significant that the statute used the indefinite term "a mental disease or defect" instead of "the mental disease or defect." 156 Wn.2d. at 119. RCW 71.09.090 does not employ the indefinite article upon which *Klein* relied.

In addition, under the insanity statutes, once a person is acquitted based upon insanity, their insanity is presumed to continue until they prove otherwise. *State v. Platt*, 143 Wn.2d 242, 250, 19 P.3d 412 (2001). There is no similar presumption or burden of proof under RCW 71.09. Indeed, the State and not the committed person has the initial obligation of producing prime facie evidence justifying continued confinement. *See In re the Detention of Petersen*, 145 Wn.2d 789, 796, 42 P.3d 952 (2002) (State bears the burden of proof at the show cause hearing).

Unlike RCW10.77.200, RCW 71.09.090 does not permit continued confinement based on any mental disease or defect. Instead, consistent with due process the scope and duration of commitment is limited to the duration of the mental illness which led to commitment in the first place. *Young* 122 Wn.2d at 39. *Klein* does not address the issue presented here nor dictate the conclusion. Instead, due process mandates that the State release a committed person "when the basis for holding him or her in the psychiatric facility disappears." *State v. Sommerville*, 86 Wn. App. 700, 710, 937 P.2d 1317 (1997)

It is clear, the evidence established Mr. Sease's condition has changed. It is equally clear evidence presented established that change was a result of treatment. In the face of that, the State resorts to miscasting Mr. Sease's argument as contending that his mere confinement at SCC constitutes treatment. Response at 9. But Mr. Sease has never made such an argument. Instead, he points to the evaluations provided by the State's own expert which details the specific treatment he has participated in. Dr. Abbot's report details the Mr. Sease's participation in a variety of treatment while confined. Appendix 64-68. This has included individual therapy 64-65, as well as

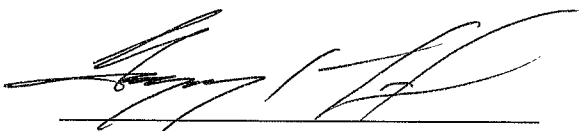
group therapy. Appendix 67-68. It is not clear what argument the State is addressing but it is not the argument Mr. Sease has made.

The State failed to present prima facie evidence that the Mr. Sease continues to meet the requirements for commitment. Alternatively, Mr. Sease presented probable cause to believe his condition has changed. Under RCW 71.09.090(2)(c) a new trial is warranted.

B. CONCLUSION

For the reasons above, and those addressed previously, this Court should grant review under RAP 2.3.

Respectfully submitted this 5th day of February, 2014.



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