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NO. 92724-3

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SUPREME COURT OF THE STATE OF WASHINGTON

In re the Detention of:

RICHARD HATFIELD,

Petitioner.

**REPLY TO PETITIONER'S ANSWER TO STATE'S MOTION TO
DISMISS APPEAL AS MOOT**

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I. INTRODUCTION

Richard Hatfield died in February of this year. This Court should dismiss his appeal as moot because it does not present a question of significance to the public, will not serve as a basis for an “authoritative determination for the future guidance of public officers,” and is unlikely to recur. The deceased’s Petition for Review raises only what amount to issues of evidentiary sufficiency specific to his own case. In the absence of a substitution of parties pursuant to RAP 3.2, dismissal is appropriate.

II. ARGUMENT

A. **Hatfield’s Case Does Not “Present A Significant Constitutional Question Of A Public Nature.”**

Hatfield argues that this case is not moot because it “presents a significant constitutional question of a public nature.” Answer at 3. This case, however, presents no such issue, and Hatfield’s attempt to transform an argument grounded in the sufficiency of the evidence into one of constitutional magnitude fails.

Hatfield argues that the trial court’s “basis” for his commitment was “expressly contingent upon Hatfield’s psychosis being treated correctly,” and that, because “all evidence presented at trial showed that Hatfield’s psychosis was not being treated correctly at all.” Answer at 1. This premise, however—that his commitment was somehow “contingent” upon his recovery from psychosis—is simply incorrect. The trial court’s findings and conclusions are clear and unambiguous, and are not “contingent” upon remission or resolution

of his psychosis.

The trial court found that Hatfield's "mental abnormality *is current*, although the symptoms of the mental abnormality *may* be being masked *in some manner* by Respondent's psychotic symptoms." Ex. A, CP at 156, Finding of Fact No. 10 (emphasis added). "There was no evidence presented," the court went on, "that the presence of psychosis wipes out an individual's sexual proclivities." *Id.*, CP at 157, Finding of Fact No. 13. "The totality of the evidence, both substantive and expert, supports the conclusion that the Respondent *is* more likely than not to commit a predatory act of sexual violence if not confined in a secure facility." *Id.*, Finding of Fact. No. 14 (emphasis added).

The trial court's Conclusions of Law were equally clear:

5. Beyond a reasonable doubt, Respondent has a mental abnormality as defined by RCW 71.09.020(8).
6. Beyond a reasonable doubt, Respondent currently suffers from that mental abnormality.
7. Beyond a reasonable doubt, Respondent's mental abnormality causes him serious difficulty controlling his sexually violent behavior.
8. Beyond a reasonable doubt, Respondent is likely to engage in predatory acts of sexual violence unless he is confined in a secure facility.
9. The State has proven, beyond a reasonable doubt, that Respondent is a sexually violent predator as that term is defined in RCW 71.09.020(18)

Ex. A, CP at 158.

There is nothing “contingent” about any of these Findings or Conclusions, and there was nothing in the trial court’s order suggesting that its decision, or its “basis for committing Hatfield,” was expressly or implicitly “contingent on Hatfield’s psychosis being treated correctly.” Answer at 1. Moreover, while certain of the language in the trial court’s order is perhaps inartful, Hatfield’s central argument is nonsensical. Had the trial court in fact believed that commitment could only be imposed upon remission of his psychosis, it would not have entered an order committing him.

Nor, finally, would such a “contingency” have transformed what is, at its core, a sufficiency argument, into an issue of constitutional proportions. Hatfield’s argument is essentially that there is insufficient evidence to show that, in his decompensated state, he could be said to meet criteria for commitment. Although he couches his challenge in the language of due process, this is not a constitutional issue of public interest; it is an issue of evidentiary sufficiency.

B. There Is No Need For An “Authoritative Determination” In This Case.

Hatfield next argues that “an authoritative determination on Hatfield’s substantive due process claim” is needed. Answer at 4. First, as argued above, there is no legitimate due process claim presented by the facts of Hatfield’s case.

Second, the sex predator statute has repeatedly been found to comport with substantive due process. *In re the Personal Restraint of Andre Young*, 122 Wn.2d 1, 25-42, 857 P.2d 989 (1993); *Kansas v. Hendricks*, 521 U.S. 346, 358 117 S. Ct. 2072, 138 L. Ed. 2d 501 (1997); *In re the Detention of Thorell*, 149 Wn.2d 724, 742, 72 P.3d 708 (2003); *In re McCuiston*, 174 Wn.2d 369, 384, 275 P.3d 1092 (2012). Hatfield attempts to argue that alleged conditions of his pre-commitment confinement invalidate his commitment, but it is well established that inadequate conditions of confinement cannot invalidate an otherwise lawful commitment order. *See In re Detention of Turay*, 139 Wn.2d 379, 404, 986 P.2d 790 (1999). Moreover, such a challenge would be premature: A person committed under RCW 71.09 “may not challenge the actual conditions of their confinement, or the quality of the treatment at the DSHS facility until they have been found to be an SVP and committed under the provisions of RCW 71.09.” *Id.*, citing *In re Detention McClatchey*, 133 Wn.2d 1, 5, 940 P.2d 646 (1997). Hatfield misrepresents this Court’s opinion in *McClatchey* as “indicat[ing] a substantive due process claim in this context remains open for consideration in a case containing an adequate evidentiary record[.]” Answer at 4. While the *McClatchey* Court clearly stated that the *Young* Court “left the door open for a challenge to the statute as applied to the facts in an individual case,” the Court went on to hold that, “***unless and until [McClatchey] is found to be a sexually violent predator***, and committed under the provisions of RCW 71.09, the constitutionality of the statute as applied to

the facts of his case *cannot be determined.*” *Id.*, 133 Wn. 2d at 5. (Emphasis added). Any challenge to the conditions of his confinement would have to have been brought after commitment, and not before.

Nor does Hatfield’s citation to *Detention of D.W. v. DSHS*, 181 Wn.2d 201, 332 P.3d 423 (2015) help him. Answer at 4-5. *D.W.* arose within the context of Pierce County’s practice of temporarily placing persons detained pursuant to RCW 71.05 in facilities that were not certified evaluation and treatment facilities. 181 Wn.2d at 206. While the *D.W.* Court reviewed constitutional principles relating to detention and treatment of the mentally ill and noted that the Involuntary Treatment Act “embraces these principles,” the case was decided on the basis of statutory and regulatory language specific to RCW 71.05. *Id.* at 210. The case had nothing to do with RCW 71.09 or the Special Commitment Center, and does not affect the analysis in this case. *Id.*, 181 Wn.2d at 206.

C. This Issue Is Unlikely To Recur

Likewise, Hatfield’s argument that a due process violation in the context of RCW 71.09 “will almost certainly recur” lacks merit. Answer at 5. While it may be true that others will attempt to raise such an issue, this issue has long since been resolved, and there is nothing “faulty” (Answer at 5) about the Court of Appeals’ reasoning to the effect that Hatfield’s claim fails. Moreover, by Hatfield’s own formulation, it is precisely the unique features of this case—specifically, the combination of a psychotic disorder and somewhat

inartful language by the trial court-- that give rise to the alleged constitutional issue. This combination of factors is unlikely to recur and, even if it did, the argument would have no more merit than does Hatfield's claim.

D. RAP 3.2 Requires Substitution Of Parties Upon The Death Of A Party

Pursuant to RAP 3.2, the appellate court will substitute parties to a review "when it appears that a party is deceased..." The rule requires that that a party with knowledge of the death of a party, "shall promptly move for substitution of parties." No such motion has been made. As such, no party has been substituted for the deceased and no determination of continued indigency justifying continued pursuit of this appeal at public expense has been made. *See State v. Devlin*, 164 Wn. App. 516, 267 P.3d 369 (2011). This case should be dismissed.

III. CONCLUSION

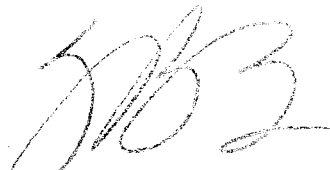
In his brief before the Court of Appeals, Hatfield proposed that the court "reverse the trial court and remand for proceedings that adequately address Hatfield's mental health condition." Brief of Appellant at 40, page attached as Ex. B.¹ Hatfield is deceased, and this Court can no longer order the remedy he proposed. No party has been substituted to pursue this appeal, nor has any determination of continuing indigency been made. Hatfield's

¹ That request for relief has changed somewhat with his current Petition, in which he now asks the Court to "grant review ...and consider the merits of Hatfield's substantive due process claim."

arguments were factually tied to the particulars of his case and of his personal medical condition. There is no realistic possibility that those claims would result in holdings of sufficient importance to justify continuing expenditure of public funds on this appeal. This case should be dismissed as moot.

RESPECTFULLY SUBMITTED this 18 day of March, 2016.

ROBERT W. FERGUSON
Attorney General



SARAH SAPPINGTON, WSBA #14514
Senior Counsel
OID #91094

EXHIBIT A

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MAY 16 2014

Scott G. Weber, Clerk, Clark Co.

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**STATE OF WASHINGTON
CLARK COUNTY SUPERIOR COURT**

In re the Detention of:

NO. 12-2-00708-3

RICHARD HATFIELD,

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
RE: SVP BENCH TRIAL

Respondent.

This matter came before the Honorable Robert Lewis on April 7, 9, 10, 11, and 14, 2014 for trial. The Petitioner, State of Washington, was represented by Assistant Attorney General Jeremy Bartels. The respondent, Richard Hatfield, by and through Guardian *Ad Litem* Peter McDonald, waived his physical presence at trial. Mr. Hatfield was represented by his attorneys, Christine Sanders and Rachel Forde. The court reviewed the pleadings, heard the testimony of witnesses, reviewed the exhibits and other material submitted, heard the arguments of counsel and was in all things duly advised. The court having issued an oral opinion on April 14, 2014, now hereby enters the following Findings of Fact and Conclusions of Law, which incorporate by reference the Court's oral ruling:

FINDINGS OF FACT

The following facts have been found by the court beyond a reasonable doubt:

1. Respondent, Richard Hatfield was born on April 13, 1951.

1 2. Respondent was convicted of Child Molestation in the First Degree, Clark
2 County Superior Court Cause No. 98-1-00375-8.

3 3. Respondent was convicted of Attempted Lewd and Lascivious Conduct with a
4 Minor Under the age of 14, Fresno County Superior Court, California, Case No. 280438-3.

5 4. Henry Richards, Ph.D. testified on behalf of the State. Brian Abbott, Ph.D. and
6 Fabian Saleh, M.D. testified on behalf of Respondent and testified regarding their evaluations
7 of the Respondent.

8 5. The experts' evaluations were based on reviewing Respondent's criminal
9 history, including investigation and court files, as well as his social, incarceration, and
10 treatment records, and interviews with, and observations of, the Respondent. This is the type
11 of information and documentation that is generally relied upon by mental health experts in
12 evaluating sexually violent predator (SVP) cases.

13 6. Respondent has a mental abnormality which is a congenital or acquired
14 condition affecting the emotional or volitional capacity which predisposes the Respondent to
15 the commission of criminal sexual acts in a degree constituting such person a menace to the
16 health and safety of others. Respondent has a pedophilic disorder. The disorder is a chronic
17 and lifelong condition. The condition is based on Respondent's desire to be sexually active
18 with children under the age of 13.

19 7. Despite Respondent's protestations that he is primarily interested in persons
20 with adult sexual characteristics, the evidence of both his reported and unreported offenses
21 indicates that Respondent's primary sexual interest is with male children under the age of 13.
22 His preference for sexual activity for males under the age of 13 is long-standing.

23 8. For years, the Respondent has not only had an interest for sexual activity with
24 males under the age of 13, he has acted on that interest. The Respondent, when in the
25 community, acts on his sexual urges toward children, or whom Respondent assumes to be
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1 children. Respondent propositions those children to engage in sexual activity. Respondent
2 attempts to engage in sexual activity with those children and in some cases has had sexual
3 activity with those children.

4 9. Respondent has admitted to committing a number of sexual acts with children
5 and has been convicted of reported criminal acts with children.

6 10. Respondent's mental abnormality is current, although the symptoms of the
7 mental abnormality may be being masked in some manner by Respondent's psychotic
8 symptoms.

9 11. Dr. Richards testified that, in addition to Pedophilic Disorder, the Respondent
10 suffers from a number of other mental conditions that affect his ability to control his
11 Pedophilic Disorder. These conditions include, but are not limited to, Bipolar Disorder,
12 Personality Disorders, and Alcohol Dependency. Although none of the additional diagnosed
13 mental conditions would, individually, constitute a Mental Abnormality, they are part of the
14 Respondent's current overall condition. These additional mental conditions create a situation
15 that make Respondent more likely to act on his pedophilic urges. This conclusion was
16 derived from all of the expert testimony given in this case.

17 12. Respondent's current psychotic symptoms, including those that make him
18 believe he is a different person, have not eradicated the Pedophilic Disorder. The psychotic
19 disorders that cause Respondent to believe he is a different person mask Respondent's
20 underlying mental abnormality. The evidence supports the conclusion that Respondent's
21 psychotic disorder, if treated correctly, would result in Respondent reverting to actual reality,
22 where he is Richard Hatfield. Richard Hatfield has a mental abnormality. In that sense the
23 underlying reality of Respondent's mental abnormality currently exists and is present in
24 Respondent, although the mental abnormality may be temporarily masked by the symptoms of
25 his psychotic disorder.
26

1 13. There was no evidence presented that the presence of psychosis wipes out an
2 individual's sexual proclivities. The evidence presented at trial indicated the presence of
3 psychosis, by itself, does not erase any other pre-existing mental conditions.

4 14. The totality of the evidence, both substantive and expert, supports the
5 conclusion that the Respondent is more likely that not to commit a predatory act of sexual
6 violence if not confined in a secure facility.

7 15. The actuarial evidence presented by the experts in this case is interesting, but is
8 not dispositive. The mathematical and statistical evidence of a group cannot simply be
9 translated to an individual's numerically determined risk. The assessment of the risk of an
10 individual to commit future predatory acts of sexual violence must be determined by the
11 examination of the totality of the evidence, facts, and circumstances regarding that individual.

12 16. There is substantial evidence that the Respondent needs treatment. There is
13 substantial evidence, both in the form of expert opinions and from the Respondent himself
14 that the Respondent would not engage in treatment if released. The fact that treatment may be
15 required by the Department of Corrections (DOC) is not enough to cause the Respondent to
16 engage in such treatment. Respondent indicated that he does not like taking medications that
17 reduce his sex drive and it frustrates him. Respondent recognized that his resulting sexual
18 inabilities were the result of the medications he was prescribed.

19 17. Based on all of the evidence presented, the Respondent's mental abnormality
20 makes him likely to engage in predatory acts of sexual violence if not confined in a secure
21 facility.

22 CONCLUSIONS OF LAW

23 1. The court has jurisdiction over the parties and the subject matter.
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1 2. Beyond a reasonable doubt, Respondent's conviction for Child Molestation in
2 the First Degree, Clark County Superior Court Cause No. 98-1-00375-8, is a crime of sexual
3 violence as defined by RCW 71.09.020(17).

4 3. Beyond a reasonable doubt, Respondent's conviction for Attempted Lewd and
5 Lascivious Conduct with a Minor Under the age of 14, Fresno County Superior Court,
6 California, Case No. 280438-3, is an analogous crime to Washington State's crime of
7 Attempted Child Molestation in the Second Degree and is a crime of sexual violence as
8 defined by RCW 71.09.020(17).

9 4. The court rejects and does not consider testimony regarding Ganser's
10 Syndrome or any condition that could be construed as Ganser's Syndrome. Mr. Hatfield is
11 actively psychotic in such a way that requires treatment.

12 5. Beyond a reasonable doubt, Respondent has a mental abnormality as defined
13 by RCW 71.09.020(8).

14 6. Beyond a reasonable doubt, Respondent currently suffers from that mental
15 abnormality.

16 7. Beyond a reasonable doubt, Respondent's mental abnormality causes him
17 serious difficulty controlling his sexually violent behavior.

18 8. Beyond a reasonable doubt, Respondent is likely to engage in predatory acts of
19 sexual violence unless he is confined in a secure facility.

20 9. The State has proven, beyond a reasonable doubt, that Respondent is a sexually
21 violent predator as that term is defined in RCW 71.09.020(18).

22 Based on the foregoing findings of fact and conclusions of law, the court hereby enters
23 the following:

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ORDER OF COMMITMENT

Respondent, Richard Hatfield, shall be committed to the Special Commitment Center in Steilacoom, Washington, to the custody of the Department of Social and Health Services, for control, care, and treatment until such time as his mental condition has so changed that the Respondent is safe to be conditionally released to a less restrictive alternative or unconditionally discharged.

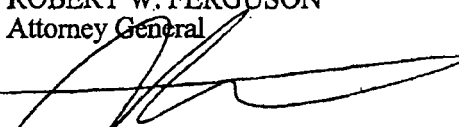
DATED this 16th day of May, 2014.

/s/ ROBERT A. LEWIS

THE HONORABLE ROBERT LEWIS
Judge of the Superior Court

Presented by:

ROBERT W. FERGUSON
Attorney General


JEREMY BARTELS, WSBA #36824
Assistant Attorney General
Attorney for Petitioner


CHRISTINE SANDERS, WSBA #24680
Attorney for Respondent

EXHIBIT B

NO. 46319-9-II

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

In re Detention of Richard Hatfield,

STATE OF WASHINGTON,

Respondent,

v.

RICHARD HATFIELD,

Appellant.

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

The Honorable Robert A. Lewis, Judge

BRIEF OF APPELLANT

KEVIN A. MARCH
Attorney for Appellant

NIELSEN, BROMAN & KOCH, PLLC
1908 E Madison Street
Seattle, WA 98122
(206) 623-2373

Wn.2d at 204, 211. This court should reverse and remand for proceedings that address Hatfield's entitlement to individualized treatment.

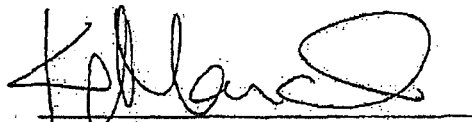
E. CONCLUSION

The absence of Hatfield's GAL violated a mandatory statute, case law, and due process. The absence requires reversal. Hatfield's civil commitment to the SCC, which is incapable of treating his current psychosis, violated Hatfield's substantive due process right to treatment that provides a realistic opportunity for improvement or cure. Hatfield asks this court to reverse the trial court and remand for proceedings that adequately address Hatfield's mental health condition.

DATED this 9th day of January, 2015.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC



KEVIN A. MARCH
WSBA No. 45397
Office ID No. 91051

Attorneys for Appellant

NO. 92724-3

WASHINGTON STATE SUPREME COURT

In re the Detention of:

RICHARD HATFIELD,

Appellant.

DECLARATION OF
SERVICE

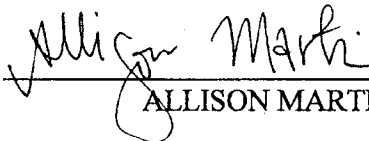
I, Allison martin, declare as follows:

On March 18, 2016, I served via electronic mail a true and correct copy of Reply to Petitioner's Answer to State's Motion to Dismiss Appeal as Moot and Declaration of Service, addressed as follows:

Kevin March
sloanej@nwattorney.net, marchk@nwattorney.net

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

DATED this 18 day of March, 2016, at Seattle, Washington.



ALLISON MARTIN

OFFICE RECEPTIONIST, CLERK

To: Martin, Allison (ATG)
Cc: Sappington, Sarah (ATG); Burbank, Brooke (ATG); marchk@nwattorney.net; sloanej@nwattorney.net
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Cc: Sappington, Sarah (ATG) <SarahS@ATG.WA.GOV>; Burbank, Brooke (ATG) <BrookeB@ATG.WA.GOV>; marchk@nwattorney.net; sloanej@nwattorney.net
Subject: In re Hatfield, 92724-3

Good afternoon,

Attached for filing, please find Reply to Petitioner's Answer to State's Motion to Dismiss Appeal as Moot and Declaration of Service.

Filed on behalf of:
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