 73008-8

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Division I
State of Washington

NO. 73008-8-I

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

ISAAC ZAMORA,

Appellant,

v.

STATE OF WASHINGTON/DEPARTMENT OF CORRECTIONS,

Respondents.

DOC BRIEF IN RESPONSE TO BRIEF OF APPELLANT / CROSS-RESPONDENT ZAMORA

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I. INTRODUCTION

The Washington State Department of Corrections (DOC) was not a party to the proceedings below, but appeals two aspects of the trial court's January 6, 2015 order as an aggrieved party under RAP 3.1. As explained in DOC's opening brief, DOC's appeal narrowly concerns the trial court's authority to direct how DOC is to administer Mr. Zamora's criminal sentences. Specifically, DOC contends the trial court erred when it imposed conditions on where and how DOC is to care for Mr. Zamora once he is transferred to DOC custody to serve his criminal sentences. Those conditions are void because DOC was not a party to the underlying proceedings, the trial court obtained no jurisdiction over DOC, and therefore the conditions directed to DOC are void. Second, the conditions are void because the law does not authorize a sentencing court to direct treatment and housing decisions concerning offenders committed to DOC custody.

In this brief, DOC responds to Mr. Zamora's opposition to DOC's appeal.[1] In his opening brief, Mr. Zamora fails to identify a legal basis for the trial court's order imposing conditions on DOC. DOC was not a party below; the mere participation of DOC doctors as witnesses at the request

[1] Counsel for DOC understands that the Department of Social and Health Services, petitioner below, will be responding separately to Mr. Zamora's appeal, which challenges the other aspects of the trial court's order.

of the Department of Social and Health Services (DSHS) does not change that fact. Moreover, RCW 10.77 does not authorize the hybrid criminal / civil commitment the trial court ordered, where the court releases a defendant to serve his criminal sentence, but asserts authority (purportedly under RCW 10.77) to direct how DOC must administer the sentence. Accordingly, DOC respectfully requests reversal to vacate the conditions in Section IV, paragraph 2, of the trial court's January 6, 2015 order. CP 11-12.

II. ARGUMENT

A. The Conditions Imposed On DOC Are Void Because DOC Was Not A Party To The Proceeding, And Participation By DOC Doctors As Witnesses For DSHS Did Not Make DOC A Party

It is fundamental that a judgment binds only those individuals or entities who are parties to the case. *City of Seattle v. Fontanilla*, 128 Wn.2d 492, 502, 909 P.2d 1294 (1996) (recognizing the "general rule that 'one is not bound by a judgment *in personam* in a litigation in which he is not designated a party or to which he has not been made a party by service of process.'"). DOC was not a party to the underlying proceedings. The proceedings, initiated under RCW 10.77.200, involved the Skagit County Prosecutor's Office, representing the State, Mr. Zamora, the defendant, and the Department of Social and Health Services, the state agency with

custody of Mr. Zamora and authority to petition for his release and transfer to DOC. *See* RCW 10.77.200(2), (3). Because DOC was not a party, the trial court lacked jurisdiction to impose conditions on DOC when it granted DSHS's motion to release Mr. Zamora pursuant to statute. *See State v. G.A.H.*, 133 Wn. App. 567, 137 P.3d 66 (2006) (in a juvenile criminal proceeding the superior court had no jurisdiction over DSHS to order DSHS to place the juvenile in foster care). The spur-of-the-moment conditions the trial court imposed on DOC are therefore reversible as void.

Mr. Zamora's efforts to distinguish this case from *State v. G.A.H.* fail. The similarities between the two cases are compelling. Both involve criminal proceedings in which the trial court ordered a nonparty state agency to do something. In *G.A.H.*, the court in a juvenile criminal prosecution ordered the defendant released to DSHS, a nonparty, for foster care placement. *Id.* at 570-71. However, because "DSHS was not a party to G.A.H.'s juvenile offender proceeding…, the court did not have personal jurisdiction over DSHS." *Id.* at 576. Contrary to Mr. Zamora's characterization of the *G.A.H.* holding, it was the trial court's lack of jurisdiction over DSHS that rendered the trial court's foster care placement order void. *Id*. The same flaw renders the trial court's order here void. DOC was not a party to the underlying proceeding. The trial court thus lacked personal jurisdiction over DOC and could not direct how

DOC should care for Mr. Zamora once he begins serving his criminal sentences.

Mr. Zamora argues the Court may dispense with the formality of personal jurisdiction simply because DOC employees testified at the underlying hearing and the Attorney General's Office (AGO) participated as counsel during the hearing (albeit for another agency – DSHS). Zamora Brief at 40-41. However, jurisdiction requires a more substantial foundation than Mr. Zamora suggests. DSHS, not DOC, initiated the underlying release proceeding pursuant to RCW 10.77.200(2). That statute defines the parties to the proceeding. RCW 10.77.200 includes no authority to join DOC as a party, nor does the statute define a role for DOC in release proceedings such that DOC could be made a party. RCW 10.77.200 also defines the process required to initiate the action – service of the petition on the designated parties (court, prosecutor, and defendant). RCW 10.77.200(2), (3). Because DOC is not a party to release proceedings under RCW 10.77.200, there was no service of process on DOC.

Without authority to support his position, Mr. Zamora claims the participation of DOC employees as witnesses at the September 2014 hearing somehow made DOC a party. If his argument is that DOC waived its objection to personal jurisdiction when several of its health care

professionals appeared at the request of the petitioner and testified about Mr. Zamora's condition, that argument fails for two reasons. First, as already explained, DOC is not a party to release proceedings under RCW 10.77.200; it cannot consent to jurisdiction that was never obtained.

Second, the participation of DOC health care providers as witnesses is insufficient to support a finding that DOC consented to the court's jurisdiction. *See Grange Ins. Ass'n. v. State of Washington*, 110 Wn.2d 752, 765, 757 P.2d 933 (1988) (party may waive lack of personal jurisdiction defense by appearing and seeking affirmative relief); *In re Marriage of Parks*, 48 Wn. App. 166, 171, 737 P.2d 1316 (1987) (spouse who participated and sought affirmative relief in dissolution proceeding could not later object to the court's personal jurisdiction over him). DOC health care providers testified as fact witnesses at the request of DSHS, not DOC, on an issue central to DSHS's burden of proof – that Mr. Zamora could be managed within a correctional facility. Neither DOC nor the witnesses sought any relief. Therefore, both logic and authority contradicts Mr. Zamora's argument that the DOC doctors' testimony for DSHS subjected DOC to the trial court's jurisdiction.[2]

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[2] Mr. Zamora also argues that participation by the AGO in the proceedings below gave the trial court jurisdiction over DOC because the Attorney General, by law, represents all state agencies and officials. While it is true that the AGO is legal counsel for all state agencies and officials, there is no authority to support the claim that the AGO

B. The Sentencing Review Remedy In RCW 9.94A.585 Does Not Apply to DOC's Appeal Of The Trial Court's Post-Sentencing Release Order Under RCW 10.77

Finally, Mr. Zamora criticizes DOC for not seeking review under RCW 9.94A.585(7), and for not making reasonable efforts to resolve the dispute over the trial court's order before pursuing this appeal. RCW 9.94A.585(7) authorizes DOC to petition the Court of Appeals for review of legal errors in "a sentence committing an offender to the custody or jurisdiction of the department." The statute "is designed to alleviate the dilemma previously facing DOC: enforcing what it considers to be an unlawful sentence, or ignoring the sentence imposed by the trial court." *In re Hilborn*, 63 Wn. App. 102, 105, 816 P.2d 1247 (1991) (citing *In re Chatman*, 59 Wn. App. 258, 264, 796 P.2d 755 (1990)). Courts have granted relief to DOC under RCW 9.94A.585(7) when a clear legal error exists on the face of a judgment and sentence. *E.g., In re Davis*, 67 Wn. App. 1, 834 P.2d 92 (1992) (community placement erroneously not included in J&S); *In re Bercier*, 178 Wn. App. 147, 151, 313 P.3d 491 (2013) (J&S erroneously prohibited defendant from receiving credit against DOSA confinement term for time served in community custody).

This Court need not decide whether the post-sentence review process set forth in RCW 9.94A.585(7) applies in this case. The error is

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representation of one agency in a matter gives the court jurisdiction over another agency that is not a proper party and/or has not been made a party.

not in the judgment and sentence, but rather in a post-sentence release order under RCW 10.77.200. RCW 9.94A.585(7) is not an exclusive remedy that prevents this Court from correcting the trial court's erroneous application of RCW 10.77.200. And, DOC is appropriately before this Court as an aggrieved party under RAP 3.1. Mr. Zamora's reliance on RCW 9.94A.585(7) is therefore misplaced.

However, even if RCW 9.94A.585(7) were to apply, DOC effectively met the statute's requirements by making reasonable efforts to resolve the dispute over the challenged order at the superior court level (DOC filed an amicus brief with the superior court before entry of the order) and by seeking review within 90 days of entry of the order. CP 1-5, 11-12.

C. There Is No Statutory Basis For The Trial Court To Assert Jurisdiction Over The Administration Of Mr. Zamora's Criminal Sentence

As explained in DOC's opening brief, a sentencing court lacks authority to direct treatment and housing decisions concerning an offender committed to DOC custody. Brief of DOC at 8-10. Once a court enters a final judgment and sentence of imprisonment, authority and jurisdiction over the defendant passes to DOC and DOC is responsible for executing the judgment and sentence. *In re Cage*, 181 Wn. App. 588, 594, 326 P.3d 805 (2014) ("The courts have long recognized this division of power *and*

the transfer of the jurisdiction over a finally convicted felon from the judicial to the executive branch of government." (citing *January v. Porter*, 75 Wn.2d 768, 773-74, 453 P.2d 876 (1969) (emphasis in original)). This transfer of jurisdiction from the judiciary to DOC is codified in Washington law. RCW 72.02.210 (DOC determines facility placement); RCW 72.02.240 (same); and RCW 72.01.050 (DOC secretary has "full power" to manage correctional institutions). Consistent with these statutes, the Washington Supreme Court has held that, "[f]or felons sentenced to more than 1 year, trial courts have no discretion to select the place of confinement." *State v. Bernhard*, 108 Wn.2d 527, 544, 741 P.2d 1 (1987).

The trial court's order directing treatment and housing decisions for Mr. Zamora while in DOC custody is contrary to the law. Mr. Zamora conceded as much in open court before the order was entered. CP 25-26. Nevertheless, he now contends that RCW 10.77.200 authorizes the court to "set threshold conditions" on the release and transfer of a civilly committed person from DSHS to DOC custody. Specifically, Mr. Zamora argues: "RCW 10.77.200(4) provides that when the court considers a petition to release a person, it may place a person on 'conditional release' if there is a reasonable likelihood that the person's mental disease or defect may become more active and render the person dangerous to others." Zamora Brief at 38.

The authority Mr. Zamora alleges to exist is notably missing from the statute. By way of review, RCW 10.77.200 defines the procedure for civilly committed or conditionally released persons to apply for release. The statute also permits the DSHS secretary to apply for the release of a patient who has not petitioned for release. RCW 10.77.200(2). The operative section in this case, RCW 10.77.200(3), sets forth the release standard for a person like Mr. Zamora who is to be transferred to a correctional institution upon release to serve a sentence for a class A felony. Under subsection (3), the petitioner must show that the person's

> mental disease or defect is manageable within a state correctional institution or facility, but must not be required to prove that the person does not present either a substantial danger to other persons, or a substantial likelihood of committing criminal acts jeopardizing public safety or security, if released.

RCW 10.77.200(3). In other words, the statute provides that, for someone who will be releasing to prison, he need not be asymptomatic or safe to be released to the community, as long as his mental illness is manageable in a correctional institution.

Contrary to Mr. Zamora's argument, nothing in subsection (3) or elsewhere in RCW 10.77.200 authorizes what the trial court did in this matter – create a hybrid criminal / civil commitment, where the court releases the defendant to serve his criminal sentence, but asserts authority

under RCW 10.77 to direct how DOC is required to administer the sentence. The subsection Mr. Zamora relies on, RCW 10.77.200(4), does not authorize that result. Rather, it recognizes that in some cases, where a person's mental illness is in remission but may once again become symptomatic and render the person dangerous, it may be appropriate for the court to deny release, or to place the person on conditional release. RCW 10.77.200(4). But a "conditional release" under RCW 10.77 is not a power to condition the transfer to DOC. Rather, it is limited by statute to a "modification *of a court-ordered commitment*, which may be revoked upon violation of any of its terms." RCW 10.77.010(3) (emphasis added).

The limited meaning of conditional release in RCW 10.77 is critical. A person conditionally released remains civilly committed, but is released to the community subject to court-imposed conditions, the violation of which can lead to revocation. *See* RCW 10.77.150; *see also* RCW 10.77.152 (limiting conditional releases to residences outside the committed person's county of origin). The trial court here plainly did not conditionally release Mr. Zamora under RCW 10.77. Therefore, his arguments relying on that authority lack merit. Mr. Zamora is being released to prison, not conditionally released for further civil commitment into the community. And, to prove this difference, this Court need only

observe that the conditions imposed in the order are on DOC, not Mr. Zamora.

Next, Mr. Zamora argues that the conditions imposed on DOC "are a legitimate exercise of the discretion accorded to the court under RCW 10.77.200(3)." Zamora Brief at 40. However, there is no language in the statute that even arguably grants the trial court such discretion. The court's role under the statute is to apply the release standard, which in this case required the court to determine whether Mr. Zamora's mental health condition is manageable within a correctional institution. Allowing courts to direct where and how DOC cares for offenders committed to its custody would be a substantial departure from existing law. If the Legislature intended to give courts that authority with respect to persons released to DOC custody under RCW 10.77.200(3), the Legislature would have expressed that intent in the statute. Because it did not do so, the Court should decline Mr. Zamora's invitation to read that authority as if it were implied by the statute. *See Kilian v. Atkinson*, 147 Wn.2d 16, 21, 50 P.3d 638 (2002) ("Courts may not read into a statute matters that are not in it and may not create legislation under the guise of interpreting a statute.").

DOC respects that courts have a role in ensuring adequate care for prisoners. However, that role typically arises in the context of a civil rights action, and depends upon a proper showing that extraordinary relief is

warranted. *See McNabb v. Dept. of Corrections*, 163 Wn.2d 393, 406-07, 180 P.3d 1257 (2008) (denying request to enjoin DOC force-feeding policy, noting deference courts give prison officials in carrying out their mandate to provide medical services to inmates). In contrast, a trial court's role under RCW 10.77.200(3) is to apply the release standard. Here, the trial court determined that Mr. Zamora's mental health condition was manageable in a correctional institution, based on uncontroverted expert testimony that Mr. Zamora has done well during more than 20 months at the Special Offender Unit (a facility designed for offenders with mental illness). *See* DOC Brief at 4-6. Having made that finding, the court's authority was limited to ordering Mr. Zamora's release from civil commitment and transfer to DOC custody to serve his prison sentences. The court exceeded its authority and erred when it directed how and where DOC should care for Mr. Zamora during his incarceration.

III. CONCLUSION

When setting the release standard for persons civilly committed as criminally insane under RCW 10.77, the Legislature appropriately distinguished between those who release directly to the community, and those who, like Mr. Zamora, release to a state correctional facility. To release someone to the community, the court must find the person no longer is a substantial danger to others because of his mental illness. To

release someone to prison, the focus is not whether the person is dangerous to the community, but rather whether his mental illness can be managed within a correctional facility.

In this case, the evidence conclusively established that Mr. Zamora's mental illness can be managed effectively in prison because, according to all experts, it had been for nearly two years at the time of the hearing. Accordingly, the trial court properly granted DSHS's petition to release Mr. Zamora from civil commitment and transfer his custody to DOC to serve his criminal sentences. But the court exceeded its authority and erred when it imposed conditions on how DOC should care for Mr. Zamora during his incarceration. The law entrusts the administration of criminal sentences to DOC, subject to constitutional and statutory

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mandates concerning the health and safety of prisoners. DOC respectfully requests that this Court reverse Section IV, paragraph 2, of the trial court's January 6, 2015 order.

RESPECTFULLY SUBMITTED this 1st day of April, 2016.

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CERTIFICATE OF SERVICE

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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

EXECUTED this 1st day of April, 2016, at Olympia, WA.

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