

FILED  
JUN 08 2017  
WASHINGTON STATE  
SUPREME COURT

94619-1

Supreme Court No. (to be set)  
Court of Appeals No. 48771-3-II  
**IN THE SUPREME COURT**  
**OF THE STATE OF WASHINGTON**

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STATE OF WASHINGTON,  
Respondent,  
vs.

**Patrick Truxillo**  
Appellant/Petitioner

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Grays Harbor County Superior Court Cause No. 14-2-00874-7  
The Honorable Judge Mark McCauley

**PETITION FOR REVIEW**

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## **DECISION BELOW AND ISSUE PRESENTED**

Petitioner Patrick Truxillo asks this Court to review the Court of Appeals' Unpublished Opinion filed on May 2, 2017.<sup>1</sup> This case presents one issue:

Before customizing a remedial contempt sanction, a court must "expressly find" that [statutory] sanctions "would be ineffectual." Did the trial court improperly fashion a non-statutory remedial sanction without first expressly finding available statutory sanctions ineffectual?

## **STATEMENT OF THE CASE**

A court found Patrick Truxillo in contempt after he refused to participate in court-ordered polygraph testing. CP 401-403. At the contempt hearing, the state "ask[ed] that the entire matter be stayed, including the trial date," and made reference to *In re Det. of Young*, 163 Wn.2d 684, 185 P.3d 1180 (2008)). RP (2/11/16) 27.<sup>2</sup>

The court "adopt[ed] the state's recommendation." RP 2/11/16 35. The court did not expressly consider any of the available statutory sanctions. RP (2/11/16) pp. 3-44. Instead, the court struck Mr. Truxillo's trial date and stayed further proceedings. (2/11/16) pp. 32-44; CP 402-404.

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<sup>1</sup> A copy of each decision is attached. App. 436-456.

<sup>2</sup> Counsel for the state told the court that the *Young* court "held" that a stay was the appropriate sanction in that case. RP (2/11/16) 27.

In written findings, the court remarked that “The appropriate remedy for [Truxillo’s] disobedience of a lawful court order is remedial sanctions designed to coerce his compliance with the evaluation order.” CP 402.

The court did not find that striking the trial date and staying the trial would ensure compliance with the court’s order. CP 401-403. Nor did the court’s written findings reflect consideration of any other remedial sanctions, including those authorized by statute. CP 401-403.

Mr. Truxillo appealed, and the Court of Appeals affirmed. Opinion, pp. 1, 4.

### **ARGUMENT WHY REVIEW SHOULD BE ACCEPTED**

**THE SUPREME COURT SHOULD ACCEPT REVIEW AND HOLD THAT COURTS MAY NOT IMPOSE A REMEDIAL CONTEMPT SANCTION ABSENT ADEQUATE INDIVIDUALIZED FINDINGS. THIS CASE PRESENTS AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST THAT SHOULD BE DETERMINED BY THE SUPREME COURT. RAP 13.4(B)(4).**

RCW 7.21.030 governs remedial sanctions for contempt.

Following a finding of contempt, the court may imprison the contemnor, order a monetary forfeiture, or enter an order “designed to ensure compliance with a prior order.” RCW 7.21.030(2)(a)-(c). Before imposing “[a]ny other remedial sanction,” the court must “expressly find[

] that [the listed] sanctions would be ineffectual to terminate a continuing contempt of court.” RCW 7.21.030(2)(d).

The trial court did not make the express finding required by RCW 7.21.030(2)(d). Appropriate language might read like the finding adopted by the trial court in *Young*: “The court *has considered lesser coercive sanctions, but finds that they are unlikely to secure Mr. Young's compliance* with the court's order. *Young*, 163 Wn.2d at 688 (emphasis added).

Here, nothing in the record resembles such a finding. Accordingly, the contempt sanction cannot be sustained under RCW 7.21.030(2)(d).

Nor can the sanction be upheld under RCW 7.21.030(2)(c). That provision authorizes the court to enter “[a]n order designed to ensure compliance with a prior order.” RCW 7.21.030(2)(c). The court found that the “appropriate” sanction would be such an order, but did not find that an order striking the trial date or staying the trial would influence Mr. Truxillo to cooperate or otherwise “ensure compliance.” RCW 7.21.030(2)(c).

This, too, requires reversal of the order. Again, one need look no farther than *Young* to find appropriate language. The trial court in *Young* found that “[t]he remedial sanction *most reasonably calculated to result in*

*respondent's compliance* with this court's order... is to stay the proceedings until he purges his contempt.” *Id.* (emphasis added).

The court’s order in this case is devoid of any similar finding. Without such a finding, RCW 7.31.030(2)(c) cannot justify the specific order entered here.

*Young* does not compel a different result. The trial court in *Young* made findings sufficient to sustain the contempt sanctions imposed. *Id.* The appellant in *Young* did not challenge the trial courts findings. Instead, the *Young* appellant argued that “the trial court could not hold him in contempt” because of the restriction set forth in CR 37(b)(2). *Id.*, at 690. The Supreme Court disagreed, found that the civil rule did not apply to proceedings under Chapter 71.09 RCW, and held that RCW 7.21.030 governed. *Id.*, at 695.

Any statements the *Young* court made regarding the trial court’s findings were unnecessary to the court’s decision. They therefore amounted to no more than *dicta*. See *Gabelein v. Diking Dist. No. 1 of Island Cty. of State*, 182 Wn. App. 217, 239, 328 P.3d 1008 (2014) (defining *dicta*).

The *Young* court’s holding addressed only the applicability of CR 37(b)(2). Mr. Truxillo does not contend that CR 37(b)(2) applies. Nor does

he claim that authority other than RCW 7.21.030 governs. *Young* does not apply here.

In addition, the Supreme Court's apparent endorsement of the sanction imposed in *Young* cannot be blindly applied to all civil commitment cases. For example, a developmentally delayed patient or one found incompetent might not feel the coercive effect of a stay if she or he did not understand the proceedings. Chapter 71.09 RCW contemplates civil commitment of both populations. *See* RCW 71.09.025(1)(a)(iii); RCW 71.09.030(1)(c); RCW 71.09.060(2).

Individualized findings are essential. They are lacking here.

The Supreme Court should accept review, reverse the Court of Appeals, and remand the case for a new hearing.

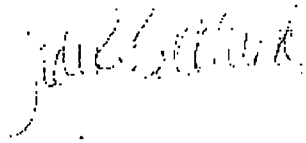


**CONCLUSION**

For the foregoing reasons, the Supreme Court should accept review. The Order on Contempt must be vacated and the case remanded for a new hearing.

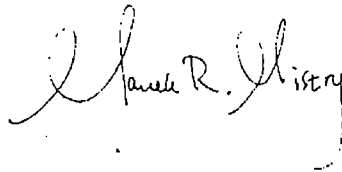
Respectfully submitted May 31, 2017.

**BACKLUND AND MISTRY**



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CERTIFICATE OF SERVICE

I certify that I mailed a copy of the Petition for Review,  
postage pre-paid, to:

Patrick Truxillo  
McNeil Island Special Commitment Ctr  
P.O. Box 88600  
Steilacoom, WA 98388

and I sent an electronic copy to

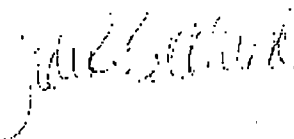
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through the Court's online filing system, with the permission of the  
recipient(s).

In addition, I electronically filed the original with the Court of  
Appeals.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE  
LAWS OF THE STATE OF WASHINGTON THAT THE  
FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on May 31, 2017.



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Jodi R. Backlund, WSBA No. 22917  
Attorney for the Appellant

**APPENDIX:**

**Court of Appeals Unpublished Opinion, filed on May 2, 2017.**

May 2, 2017

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**  
**DIVISION II**

In re the Detention of:

PATRICK BRYAN TRUXILLO,

Petitioner.

No. 48771-3-II

UNPUBLISHED OPINION

MELNICK, J. — Patrick Bryan Truxillo appeals the trial court’s remedial sanction of a stay of proceedings imposed after Truxillo refused to take a polygraph test. This test was ordered by the court following the State’s petition for civil commitment of Truxillo as a sexually violent predator (SVP) under chapter 71.09 RCW. Truxillo contends the trial court erred by imposing remedial sanctions under RCW 7.21.030(c) without first finding other statutory sanctions ineffectual. We affirm.

**FACTS**

Near the completion of Truxillo’s sentence for rape in the first degree, the State initiated proceedings to civilly commit him as an SVP. The trial court ordered Truxillo to complete a clinical interview and psychological testing by the State’s evaluator. During the clinical interview, Truxillo denied ever experiencing arousal to coercion, despite a history of sexual assault.

The State filed a motion to require penile plethysmograph and polygraph testing. The trial court reserved ruling on the penile plethysmograph testing but ordered Truxillo to submit to polygraph testing pursuant to RCW 71.09.050(1). Truxillo refused. The State moved to hold Truxillo in contempt. At the contempt hearing, the trial court heard argument that lesser coercive sanctions would fail, because Truxillo was indigent and already incarcerated. Specifically, the State cited *In re Detention of Young*, 163 Wn.2d 684, 185 P.3d 1180 (2008), arguing that the *Young* court “looked at other alternatives, sanctions, including whether a progressive fine would be appropriate . . . [Young] was indigent so it would not have been appropriate. I believe that is the same situation as in this case.” Report of Proceedings (RP) (Feb. 11, 2016) at 27. The State continued that another sanction would be imprisonment, “but since [Truxillo] is . . . confined at the [Special Commitment Center] that would also not coerce him in to [sic] complying with the court order.” RP (Feb. 11, 2016) at 27.

The trial court found Truxillo in contempt for intentional disobedience of the court’s order and “adopt[ed] the State’s recommendation” and, as a remedial sanction, stayed the proceedings pending Truxillo’s compliance. RP (Feb. 11, 2016) at 35. The trial court did not make an express finding that other sanctions would be ineffective. The court concluded, “The appropriate remedy for [Truxillo’s] disobedience of a lawful court order is remedial sanctions designed to coerce his compliance with the evaluation order.” Truxillo appeals.

## ANALYSIS

### I. EXPRESS FINDING OF FACT

Truxillo argues the trial court erred by staying Truxillo’s civil commitment proceedings without expressly finding that other sanctions would be ineffectual. We disagree.

We review sanctions for noncompliance with court orders for an abuse of discretion. *Young*, 163 Wn.2d at 694. Discretion is abused when it is manifestly unreasonable or exercised on untenable grounds. *Young*, 163 Wn.2d at 694. We focus on whether the trial court was required to make express written findings before imposing sanctions in this case.

Under RCW 7.21.030(1), a trial court can impose a “remedial sanction” on a person for contempt of court. A “[r]emedial sanction” is “a sanction imposed for the purpose of coercing performance when the contempt consists of the omission or refusal to perform an act that is yet in the person’s power to perform.” RCW 7.21.010(3). After a finding of contempt, the court may impose one or more of the following remedial sanctions:

- (a) Imprisonment if the contempt of court is of a type defined in RCW 7.21.010(1)
- (b) through (d). The imprisonment may extend only so long as it serves a coercive purpose.
- (b) A forfeiture not to exceed two thousand dollars for each day the contempt of court continues.
- (c) An order designed to ensure compliance with a prior order of the court.
- (d) Any other remedial sanction other than the sanctions specified in (a) through (c) of this subsection if the court expressly finds that those sanctions would be ineffectual to terminate a continuing contempt of court.

RCW 7.21.030(2).

Truxillo argues that his sanctions were imposed under subsection (d), which requires the court to first “expressly find[]” that the sanctions in subsections (a)-(c) “would be ineffectual to terminate a continuing contempt of court.” RCW 7.21.030(2)(d). Truxillo is incorrect.

*Young* expressly held that staying proceedings falls under RCW 7.21.030(2)(c). 163 Wn.2d at 694. In *Young*, the trial court stayed *Young*’s SVP civil commitment proceedings based on a finding of contempt for *Young*’s refusal to submit to a mental evaluation. 163 Wn.2d at 687.

The court held that “the remedial sanction of staying proceedings [is] authorized by RCW 7.21.030(2)(c).” *Young*, 163 Wn.2d at 694. RCW 7.21.030(2)(c) does not require express findings like RCW 7.21.030(2)(d). Thus, the trial court did not err in staying Truxillo’s proceedings without first expressly finding other remedies in RCW 7.21.030(2) would be ineffectual.

Even assuming the trial court’s sanctions fell under RCW 7.21.030(2)(d), any error regarding a lack of an express finding regarding other sanctions would be harmless. Where the trial court’s oral opinion and the hearing record are sufficiently comprehensive and clear that written facts would be a mere formality, the trial court’s failure to enter mandatory written findings is harmless. *Backlund v. Univ. of Wash.*, 137 Wn.2d 651, 656 n.1, 975 P.2d 950 (1999). Here, the State argued at the contempt hearing that a fine would be inappropriate because Truxillo was indigent; and imprisonment would be inappropriate because Truxillo was already confined. During its oral ruling, the court stated that it was adopting the State’s reasoning. This is sufficient to satisfy RCW 7.21.030(2)(d)’s requirement that the trial court find that other sanctions “would be ineffectual to terminate a continuing contempt of court.”

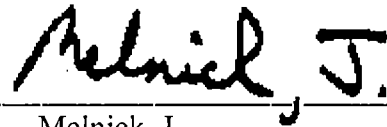
Given all, Truxillo fails to show trial court error. We, therefore, affirm the trial court’s imposed remedial sanctions.

## II. APPELLATE COSTS

Next, Truxillo opposes appellate costs asserting that he does not have the ability to pay. A commissioner of this court will consider whether to award appellate costs in due course under the newly revised provisions of RAP 14.2 if the State decides to file a cost bill and if Truxillo objects to that cost bill.

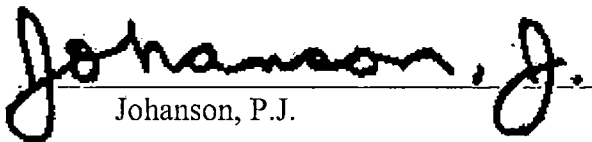
We affirm.

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.

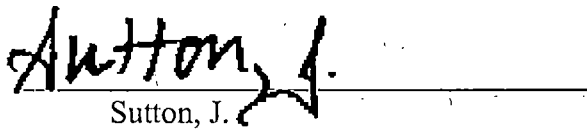


Melnick, J.

We concur:



Johanson, P.J.



Sutton, J.



**BACKLUND & MISTRY**

**May 31, 2017 - 12:06 PM**

**Transmittal Information**

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