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SUPREME COURT  
STATE OF WASHINGTON  
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No. 96727-0

SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

GAIL YVETTE COLEMAN,

Appellant-Petitioner.

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**ANSWER TO PETITION FOR REVIEW AND CROSS-PETITION**

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**A. IDENTITY OF RESPONDENT**

The State of Washington is the Respondent in this case.

**B. COURT OF APPEALS DECISION**

The Court of Appeals decision at issue is State v. Coleman, \_\_\_ Wn. App. 2d \_\_\_, 431 P.3d 514 (2018).

**C. ISSUES PRESENTED FOR REVIEW**

Gail Coleman is an insanity acquittee seeking unconditional release from supervision. The trial court concluded that Coleman required continued supervision by Western State Hospital and the court, given her chronic paranoid schizophrenia and the violence of the offense (attempted murder) as to which she was acquitted by reason of insanity. CP 101-10; RP 727.<sup>1</sup> The Court of Appeals properly held that the trial court's findings of facts supported its conclusion. State v. Coleman, 431 P.3d at 521-24. Details of the evidence supporting the challenged findings and the unchallenged findings that support the court's conclusion are included in the

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<sup>1</sup> The Report of Proceedings is in six volumes, consecutively paginated. It will be referred to with page numbers only.

Respondent's Brief in the Court of Appeals at pages 14-29, and in the opinion of the Court of Appeals. Coleman, 431 P.3d at 521-24.

If review is accepted, the State seeks cross-review of the Court of Appeals holding that the challenged trial court order was reviewable as a matter of right. RAP 13.4(d). Review of the decision below as requested by Coleman is unnecessary because the court's decision on the substantive issue is a fact-specific question of very limited import beyond this case – it presents no significant question of law and no issue of substantial public interest. However, if the Court grants review, the State seeks review of the appealability of the trial court's order pursuant to RAP 13.4(b), because that is a significant question of law – the proper interpretation of this Court's rule – and the Court of Appeals opinion has been published. The issue as to which cross-review should be granted is:

1. Is a trial court order denying unconditional release from supervision to an insanity acquittee reviewable as a matter of right under RAP 2.2(a) when the order is not a final judgment?

**D. STATEMENT OF THE CASE**

On October 22, 2004, defendant Gail Coleman shot a grocery store employee in the face. CP 2, 103. On October 27 she was charged with attempted murder in the second degree while armed with a firearm. CP 1; RCW 9A.28.020, RCW 9A.32.050, RCW 9.94A.510(3). Coleman moved for an acquittal by reason of insanity and a judgment of not guilty by reason of insanity (NGRI) as to that charge was entered on December 13, 2005. CP 128-30. On February 17, 2006, the trial court committed Coleman to Western State Hospital (WSH) for treatment. CP 131-34.

Coleman was released to the Community Program at WSH on April 11, 2008. CP 152-56. On October 23, 2009, Coleman was transitioned to a community-based conditional release, still under the supervision of WSH. CP 104. She received housing and mental health services through Downtown Emergency Services Center (DESC) and Program of Assertive Community Treatment (PACT), and received intensive case management through those agencies. CP 104. In November 2016, Coleman moved to the

Support, Advocacy, Growth and Employment (SAGE) program, which provides a lower level of case management services, including a housing voucher that allowed Coleman to continue to live in the same apartment. CP 104. PACT and SAGE are programs within DESC. CP 64-65.

On June 3, 2016, Coleman filed a petition for unconditional release from the supervision of WSH, pursuant to RCW 10.77.200. CP 104. After review on August 31, 2016, the WSH Risk Review Board unanimously voted to oppose that request. CP 106. The Risk Review Board considered that request again on December 8, 2016, and again unanimously voted to oppose it. CP 107.

Coleman's petition was then filed in Superior Court and the Honorable Susan Amini presided over a five-day evidentiary hearing. RP 1, 176, 371, 509, 622. The State presented a detailed review of the evidence at that hearing in its Respondent's Brief in the Court of Appeals at pages 3-7. The trial court denied the petition for unconditional release. CP 101-10; RP 727.



**E. ARGUMENT**

**1. THE TRIAL COURT ORDER DENYING FINAL DISCHARGE IS NOT APPEALABLE AS OF RIGHT.**

After Coleman filed a notice of appeal from the order denying her request for unconditional release, the Court of Appeals observed that the order appeared not to be reviewable as of right pursuant to RAP 2.2(a). The court commissioner ordered that the case proceed as an appeal, but directed the parties to brief the issue of appealability. The Court of Appeals considered the issue of appealability and erred in holding that the trial court order was reviewable as of right. Coleman, 431 P.3d at 518-21.

A party may appeal as of right only from the superior court decisions listed in RAP 2.2(a).<sup>2</sup> The order challenged in the case at bar, an order denying unconditional release, is not listed.

The Court of Appeals held that the order falls within RAP 2.2(a)(13), as a “final order made after judgment that affects a substantial right.” Coleman, 431 P.3d at 518. However, orders in cases involving civil commitment are not final orders for purposes

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<sup>2</sup> Additional provisions specifically addressing appeal as of right by the State in a criminal case (RAP 2.2(b)) and appeal after superior court review of a lower court decision (RAP 2.2(c)) are inapplicable here.

of this rule if the court's jurisdiction over the committed person continues. In re Det. of Peterson, 138 Wn.2d 70, 85-88, 980 P.2d 1204 (1999) (civil commitment of sexually violent predator); State v. Howland, 180 Wn. App. 196, 201-03, 321 P.3d 303 (2014) (petition for conditional release of insanity acquittee).

The court in Peterson analogized ongoing civil commitment to the ongoing dependency proceedings at issue in In re Dependency of Chubb, 112 Wn.2d 719, 773 P.2d 851 (1989). In Chubb this Court held that because dependency review hearings determine whether supervision is to continue, they are not equivalent to a finding of dependency, which would be appealable under RAP 2.2(a)(5). The court in Chubb held that the decision at each review hearing is not final, but awaits possible revision in the next hearing. Id. at 724-25.

The proceeding at issue here also is a decision as to whether supervision is to continue. Coleman's behavior on conditional release is regularly reviewed, as a WSH evaluator is required to submit a report semiannually to the court and the prosecuting attorney detailing whether Coleman is complying with the conditions of her release and detailing any change in her mental health or other significant change in circumstances. RCW

10.77.160; see, e.g., CP 159-70 (four semiannual reports), Ex. 65-69. The case also must be reviewed at least once every two years to determine whether conditional release should continue. RCW 10.77.180. Coleman may petition for unconditional release again at any time. RCW 10.77.200(5).

The Court of Appeals relied on the analysis of State v. Gossage, 138 Wn. App. 298, 156 P.3d 951 (2007), rev'd in part on other grounds, 165 Wn.2d 1 (2008), but that case is inapposite.<sup>3</sup> The court in Gossage held that an order denying a certificate of discharge, restoration of civil rights and relief from sex offender registration is a final order for purposes of RAP 2.2(a). Id. at 302. The court distinguished Peterson, supra, and Chubb, supra, because the trial court in Gossage did not have continuing jurisdiction over Gossage and did not have jurisdiction over violations of the conditions he sought to discharge. Id. at 302 & n.6. Gossage is inapposite because the trial court in this case does have continuing jurisdiction over Coleman; it can modify the conditions of her release at any time and is required to review her case regularly. RCW 10.77.180, 10.77.190.

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<sup>3</sup> The Supreme Court did not address the issue of appealability because the issue was not preserved. 165 Wn.2d at 6.

As the court noted in Peterson, “as a practical matter, for meritorious claims, the discretionary review screening should present no great obstacle to obtaining review by an appellate court under RAP 2.3(b).” Peterson, 138 Wn. 2d at 89. Because the order here was not a final order, the discretionary review standard should be applied.


**F. CONCLUSION**

The State respectfully asks that the petition for review be denied. However, if review is granted, the State seeks cross-review of the issue identified in Section C and E(1), supra.

DATED this 4th day of February, 2019.

Respectfully submitted,

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**KING COUNTY PROSECUTOR'S OFFICE - APPELLATE UNIT**

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**Comments:**

ANSWER TO PETITION FOR REVIEW AND CROSS-PETITION

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