

59975-5

59975-5

NO. 59975-5-I

2009 APR 28 PM 3:48

FILED
COURT OF APPEALS DIV. I
STATE OF WASHINGTON

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

IN RE PERSONAL RESTRAINT
PETITION OF

GARTH D. SNIVELY,

PETITIONER.

**STATE'S RESPONSE BRIEF RE:
CIVIL COMMITMENT ORDER**

ROBERT M. MCKENNA
Attorney General

MALCOLM ROSS
Assistant Attorney General
WSBA #22883
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 389-2011

I. ISSUE PRESENTED

Whether the order civilly committing Snively as a sexually violent predator must be vacated if his predicate convictions are vacated.

II. STATEMENT OF PROCEDURAL HISTORY

On April 23, 2003, the State filed a petition alleging that Garth Snively (Snively) is a sexually violent predator (SVP). A true and correct copy of the State's Petition is attached as Appendix A. Following a jury trial, Snively was committed as an SVP on July 17, 2006. A true and correct copy of the Order of Commitment is attached as Appendix B. Snively appealed, this Court affirmed and the Washington Supreme Court denied review. *In re Detention of Snively*, 142 Wn. App. 1007, 2007 WL 4296611 (No. 58574-6-I, Dec. 10, 2007) *review denied* 164 Wn.2d 1010 (2008).¹

III. RESPONSE

A. Civil Commitment Under RCW 71.09 Requires a Conviction for a Sexually Violent Offense

Snively challenges his convictions for Child Molestation First Degree and Indecent Liberties. If he is successful and all three of his

¹ This Court's unpublished opinion affirming Snively's civil commitment states that the "plea documents have not been included as part of the record on appeal." 2007 WL 4296611 at 4 n.4. Court staff later confirmed that the documents were in the record. Snively's guilty plea establishes that he admitted molesting a child after the 1992 amendments went into effect. See *Id.* at 4 (citing *In re Pers. Restraint of Crabtree*, 141 Wn.2d 577, 585, 9 P.3d 814 (2000)).

convictions are vacated, the order committing him as an SVP must also be vacated because he will no longer have a predicate offense.

A “sexually violent predator” is:

[A]ny person *who has been convicted of or charged with a crime of sexual violence* and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.

RCW 71.09.020(16). While the definition includes persons charged with, but not convicted of, a sexually violent offense (SVO), that provision pertains only to those who have no predicate conviction because they have been found incompetent or not guilty by reason of insanity. See RCW 71.09.030(3)-(4). In cases of incompetency the SVP proceeding is bifurcated and the State must first prove that the person committed the act with which they were charged. RCW 71.09.060(2). In all cases other than those involving incompetency or an insanity acquittal, the State must prove that the person has been convicted of an SVO.

The State’s SVP Petition alleged, and the State proved, that Snively was convicted of three SVOs. Appendix A at 1; *Snively*, 2007 WL 4296611 at 1. Any one of those convictions fulfills the requirement of a predicate offense. RCW 71.09.020(15). Should this Court grant Snively’s PRP and vacate all three convictions, a required element for

civil commitment would be eliminated and Snively's commitment order would not longer be valid. RCW 71.09.020(16).

IV. CONCLUSION

The State concedes that, should this Court vacate all three of Snively's SVO convictions, the July 17, 2006 Order of Commitment must also be vacated.

RESPECTFULLY SUBMITTED this 28th day of April, 2009.

ROBERT M. MCKENNA
Attorney General



MALCOLM ROSS, WSBA #22883
Assistant Attorney General
Attorneys for Petitioner State of Washington

APPENDIX A

RECEIVED

FILED APR 25 2003
CRIMINAL JUSTICE DIVISION
ATTORNEY GENERAL'S OFFICE

APR 23 2003

PAM L. DANIELS
COUNTY CLERK
SNOHOMISH CO. WASH.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**STATE OF WASHINGTON
SNOHOMISH COUNTY SUPERIOR COURT**

In re the Detention of:

GARTH D. SNIVELY,

NO 03 2 07258 1
PETITION

Respondent.

COMES NOW the Petitioner, State of Washington, by and through Christine O. Gregoire, Attorney General, and SARAH B. SAPPINGTON, Assistant Attorney General, and submits this petition seeking the involuntary civil commitment of the Respondent, GARTH D. SNIVELY, as a sexually violent predator pursuant to RCW 71.09 et seq. Specifically, the Petitioner alleges the Respondent is a sexually violent predator, as that term is defined in RCW 71.09.020(16), given the following:

1. Respondent has been convicted of the following sexually violent offense(s), as that term is defined in RCW 71.09.020(15):

a) On or about October 25, 1993, in Snohomish County, Washington, the Respondent was convicted of Child Molestation in the 1st Degree, 2 counts;

b). On or about December 21, 1993, in Snohomish County, Washington, the Respondent was convicted of Indecent Liberties against a Child Under the Age of 14.

////

ORIGINAL

APPENDIX B

Filed in Open Court

20

PAM L. DANIELS
COUNTY CLERK

By _____
Deputy Clerk

STATE OF WASHINGTON
SNOHOMISH COUNTY SUPERIOR COURT

In re the Detention of:

NO. 03-2-07258-1

GARTH SNIVELY,

ORDER OF COMMITMENT

Respondent.

Upon the verdict of the jury on July 17, 2006, that the Respondent, GARTH SNIVELY, is a sexually violent predator, pursuant to RCW 71.09.060, the Court hereby enters the following:

ORDER OF COMMITMENT

The Respondent, GARTH SNIVELY, shall be committed to the Special Commitment Center in Steilacoom, Washington, to the custody of the Department of Social and Health Services, for

...
///
///
///
///
///
///
///
///

1 control, care, and treatment until such time as the Respondent's mental abnormality and/or
2 personality disorder has so changed that the Respondent is safe to be conditionally released to a
3 less restrictive alternative or unconditionally discharged.

4 **IT IS SO ORDERED**

5 DATED this 17th day of July, 2006.

7 
8 THE HONORABLE RICHARD J. THORPE
9 Judge of the Superior Court

10 Presented by:

11 ROB MCKENNA
12 Attorney General

13 
14 MALCOLM ROSS, WSBA #22883
15 Assistant Attorney General
16 Attorney for Petitioner

17 Copy received; approved as to form:

18 
19 ROYCE FERGUSON, WSBA #5879
20 Attorney for Respondent
21