

NO. 70256-4-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

IN RE: THE DETENTION OF P.C.,

STATE OF WASHINGTON,

Respondent,

v.

P.C.,

Appellant.

FILED
201915 PM 4:12
E

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

APPELLANT'S REPLY BRIEF

DAVID L. DONNAN
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, WA 98101
(206) 587-2711

TABLE OF CONTENTS

A. ARGUMENT IN REPLY 1

 1. THE TRIAL COURT ERRED IN ADVISING P.C. HE
 COULD NOT REPRESENT HIMSELF 1

 2. THERE WAS INSUFFICIENT EVIDENCE OF
 SUBSTANTIAL LOSS OR DAMAGE TO THE
 PROPERTY OF OTHERS AS REQUIRED TO
 JUSTIFY INVOLUNTARY COMMITMENT 6

B. CONCLUSION 8

TABLE OF AUTHORITIES

United States Constitution

Fourteenth Amendment.....	6
---------------------------	---

Washington Constitution

Article I, section 3	6
----------------------------	---

United States Supreme Court

<u>Humphrey v. Cady</u> , 405 U.S. 504, 31 L.Ed.2d 394, 92 S.Ct. 1048 (1972).	6
--	---

<u>McKaskle v. Wiggins</u> , 465 U.S. 168, 104 S.Ct. 944, 79 L.Ed.2d 122 (1984)	5
--	---

<u>Neder v. United States</u> , 527 U.S. 1, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999)	5
--	---

<u>United States v. Gonzalez-Lopez</u> , 548 U.S. 140, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2006)	5
--	---

Washington Supreme Court

<u>State v. C.J.</u> , 148 Wn.2d 672, 63 P.3d 765 (2003).....	3
---	---

<u>State v. LaBelle</u> , 107 Wn.2d 196, 728 P.2d 138 (1986)	6
--	---

<u>State v. Madsen</u> , 168 Wn.2d 496, 229 P.3d 714 (2010)	2, 4
---	------

<u>State v. Michielli</u> , 132 Wn.2d 229, 937 P.2d 587 (1997)	3
--	---

<u>State v. Stenson</u> , 132 Wn.2d 668, 940 P.2d 1239 (1997)	3
---	---

Statutes

RCW 71.05.240..... 6
RCW 71.05.360..... 2

Washington Court of Appeals

In re Detention of J.S., 138 Wn.App. 882, 159 P.3d 435 (2007)..... 2
State v. Breedlove, 79 Wn.App. 101, 900 P.2d 586 (1995)..... 6
State v. Fritz, 21 Wn.App. 354, 585 P.2d 173 (1978)..... 3, 4, 5

-

A. ARGUMENT IN REPLY.

The trial court erred in advising P.C. he could not represent himself in his commitment hearing. Furthermore, the State deprived P.C. of his right to due process of law by involuntarily committing him without proving there was a likelihood of serious harm to others or their property.

1. THE TRIAL COURT ERRED IN ADVISING P.C.
HE COULD NOT REPRESENT HIMSELF

The trial court abused its discretion by advising P.C. he could not represent himself at his 14-day involuntary commitment hearing. RP 21. After hearing the testimony of his brother on direct examination during which P.C.'s attorney made no inquiries on cross examination, P.C. asked Judge Shapira if he could represent himself. Id.¹ Judge Schapira erroneously told P.C., however, that he could not represent himself in these proceedings. Id.

¹ P.C. specifically asked:

THE RESPONDENT: Can I remove him [defense counsel]? Can I represent myself?

THE COURT: Well, not at the current time.

P.C. had a statutory and constitutional right to represent himself in these commitment proceedings and there was nothing about the timing of this ongoing bench trial which precluded his doing so. RCW 71.05.360; In re Detention of J.S., 138 Wn.App. 882, 891, 159 P.3d 435 (2007).

The State argues that P.C. is not entitled to relief from this misadvisement because he failed to make an unequivocal request to proceed *pro se*. SRB 10. Judge Sharpira affirmatively misadvised P.C., however, regarding his right to represent himself, effectively precluding him from confirming his desire for the court. RP 21. When P.C. asks plainly, “Can I represent myself?”, Judge Shapira erroneously foreclosed his ability to make any more unequivocal request by telling him, “not at the current time.” RP 21.

It is agreed that the denial of a request to proceed *pro se* is reviewed for an abuse of discretion. State v. Madsen, 168 Wn.2d 496, 504, 229 P.3d 714 (2010). The trial court abuses its discretion when “its decision is manifestly unreasonable or is based on untenable reasons or grounds.” State v. C.J., 148 Wn.2d 672, 686,

RP 21.

63 P.3d 765 (2003); State v. Stenson, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997); State v. Michielli, 132 Wn.2d 229, 240, 937 P.2d 587 (1997). Judge Shapira's ruling that P.C. was barred from proceeding pro se was based on untenable grounds because the timing of his request did not preclude his exercise of the right.

Where a request to go pro se occurs during the trial,

Washington courts consider:

[1] the quality of counsel's representation of the defendant, [2] the defendant's prior proclivity to substitute counsel, [3] the reasons for the request, [4] the length and stage of the proceedings, and [5] the disruption or delay which might reasonably be expected to follow the granting of such a motion.

State v. Fritz, 21 Wn.App. 354, 363, 585 P.2d 173 (1978).

Washington law and practice clearly contemplate the ability to remove counsel and proceed pro se during the course of trial.

The criteria outlined in Fritz all weigh in favor of granting the request. (1) P.C. was reasonably concerned about the quality of his representation after there was no cross examination of the State's primary witness, his brother Alexander. (2) P.C. had no proclivity to

seek new counsel before this point in the proceedings, P.C. had not requested substitute counsel or self-representation.

P.C. did not have an opportunity to fully outline the reasons for his request, but the timing and circumstances illustrate its relationship to his lack of confidence in his appointed counsel. Given the relatively short length of the commitment hearing and the important testimony of Dr. Spence which followed, there was no reason not to permit P.C. to represent himself through the remainder of the proceeding. Finally, there would have been no disruption or delay since P.C. was familiar with the facts, had met with Dr. Spence and never requested any sort of continuance.

The discretion granted judges in this circumstance is not unbounded. Because all of the factors outlined in Fritz weighed in favor of the request to proceed pro se, the only reason Judge Schapira denied the request was the “time” and that was an untenable basis. This would be improper and such rejection of the right to self-representation requires reversal. Madsen, 168 Wn.2d at 503.

The improper denial of the right to self-representation is a structural error for which reversal is required. McKaskle v. Wiggins, 465 U.S. 168, 177 n.8, 104 S.Ct. 944, 79 L.Ed.2d 122 (1984).² More recently, the U.S. Supreme Court has noted that the denial of counsel of choice is a structural error. See United States v. Gonzalez-Lopez, 548 U.S. 140, 146, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2006). The denial of the right to self-representation represents exactly the same for of structural error where the defendant seeks to act as his own attorney.

In P.C.'s case, the trial court categorically advised he could not represent himself, however, in light to the constitutional and statutory rights to self-representation and factors developed in Fritz, the trial court acted on untenable grounds and for untenable reasons in telling P.C. he could not represent himself. This unreasonable denial of the right to proceed pro se requires reversal for a new

² Appellant mistakenly cited Justice Wiggins' dissent in State v. Paumier, 176 Wn.2d 29, 46, 288 P.3d 1126 (2012), rather than the underlying sources to which Justice Wiggins was referring for the proposition that the denial of the right to proceed pro se was a structural error. See id., citing Neder v. United States, 527 U.S. 1, 9, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999) (noting that denial of the right to self-representation is structural error).

hearing. State v. Breedlove, 79 Wn.App. 101, 111, 900 P.2d 586 (1995). P.C., therefore, requests reversal of his commitment order.

2. THERE WAS INSUFFICIENT EVIDENCE OF
SUBSTANTIAL LOSS OR DAMAGE TO THE
PROPERTY OF OTHERS AS REQUIRED TO
JUSTIFY INVOLUNTARY COMMITMENT

P.C. has the constitutional right to due process of law which bars his involuntary civil commitment unless the State proves every statutory requirement. U.S. Const. amend. 14; Const. art. I, section 3; State v. LaBelle, 107 Wn.2d 196, 201, 728 P.2d 138 (1986); Humphrey v. Cady, 405 U.S. 504, 509, 31 L.Ed.2d 394, 92 S.Ct. 1048 (1972). At a hearing on a 14-day commitment petition the court is required to find by a simple preponderance of the evidence that the person was gravely disabled or posed a substantial risk of harm to others. RCW 71.05.240(3).

Where the State seeks to commit a person based on an allegation there is a likelihood of harm to the property of others the statute requires proof of a “substantial risk that physical harm will be inflicted by the respondent upon the property of others, *as evidenced*

by behavior which has cause substantial loss or damage to the property of others.” RCW 71.05.020(25) (emphasis added); CP 10.

The only damage to the property of others was the screens or grilles which P.C. knocked out of a gate and a hole in the drywall of the stairwell. CP 32. No testimony was provided to establish the degree of damage or the relative value of any potential loss in order to satisfy the “substantial” threshold incorporated in the statute. Even using the dictionary definition offered by the State, nothing establishes the damage was “ample or considerable amount, quality, size, etc....” SRB at 17. The record seems to support the idea that the grilles could be put back and the drywall simply repaired. The definition P.C. offered was similarly unsatisfied because nothing established the amount, size or value of the loss or damage. The cost to repair drywall and reattached the screens simply fails to meet the “substantial loss or damage” required to justify involuntary commitment. The legislature set this standard and State failed to meet it on this record.

B. CONCLUSION.

For the foregoing reasons, P.C. respectfully requests this Court vacate the commitment order and remand the case to the superior court.

DATED this 16th day of ~~September~~ ^{December}, 2013.

Respectfully submitted,



DAVID L. DONNAN (WSBA 19271)
Washington Appellate Project (91052)
Attorneys for Appellant

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the **Court of Appeals – Division One** under **Case No. 70256-4**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

- respondent King County Prosecuting Attorney-Appellate Unit
[PAOAppellateUnitMail@kingcounty.gov]
- appellant
- Attorney for other party

MARIA ANA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

Date: December 16, 2013

RECEIVED
2013 DEC 16 12:15 PM