

70256-4

70256-4

NO. 70256-4-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

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IN RE: THE DETENTION OF P.C.,

STATE OF WASHINGTON,

Respondent,

v.

P.C.,

Appellant.

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

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APPELLANT'S OPENING BRIEF

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DAVID L. DONNAN  
Attorney for Appellant

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

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A. SUMMARY OF ARGUMENT.

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.

B. ASSIGNMENTS OF ERROR.

1. The trial court abused its discretion by advising P.C. he could not represent himself at his 14-day involuntary commitment hearing.

2. The State deprived P.C. of his right to due process of law by failing to prove every element necessary for involuntary civil commitment.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. P.C. had a statutory and constitutional right to represent himself at the 14-day commitment hearing. Where he was told by the trial court he could not represent himself and no further colloquy or examination was undertaken, did the judge err, requiring reversal

of the commitment order and vacation of the underlying findings of fact and conclusions of law?

2. Involuntary civil commitment under the “likelihood of harm to property” portion of the civil commitment statute requires the State to prove “behavior which has caused substantial loss or damage to property of another.” RCW 71.05.020(25). Here, the damage to the property of others was limited to a whole in the drywall of a stairwell State and some screens that were knocked out of a fence. Nothing further established the value of the loss or further explained the degree of damage. Did the State fail to prove P.C. posed a likelihood of serious harm to others or their property as evidence by behavior which case substantial loss or damage to the property of others?

D. STATEMENT OF THE CASE.

P.C. is a 23 year old man who went to Overlake High School in Redmond and then Lewis and Clark College in Portland where he graduated in May 2012 with a degree in International Affairs and a minor in Communications. RP 44-45, 50. After graduation he returned to this area and shared an apartment in Renton with his

older brother Alexander. RP 6-7.<sup>1</sup> Alexander noticed a change in P.C.'s behavior during March 2013, in which P.C. became:

a lot more energetic and a lot of his opinions on things changed. And they didn't always – a lot of time they would contradict each other. He would change his mind almost daily there for a little bit on things.

RP 7-8. P.C. was not sleeping very much and was staying up very late. RP 8.

Alexander described one particular instance where:

... he'd just come back from Vancouver. He had been hanging out with friends and he just – you know, very hyperactive, very, you know – he's, you know, very excited about, like, these guys he met (inaudible). He just kept going on, like, about epiphanies he had and how he wants to do this and that, you know, like he'd found his path in like sort of thing, which in – at the time I didn't see anything wrong, just – that's when it first – started to act a little off.

RP 8.

P.C. explained that in March 2013 he met with a close friend who was depressed and suicidal and “talked through his whole depression.” RP 47. The experience had a profound effect on P.C. as he explained,

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<sup>1</sup> Alexander C. is referred to by his first name for clarity. No disrespect intended.

[W]e went on a journey together and we learned a lot about ourselves and I think, in the end, he felt not suicidal. And in the end I felt good about myself, probably to the point of grandiosity as claimed....

...

And I also learned a lot about myself, too, you know.

...

I took as much from that lesson as he did.

RP 47-48.

At the same time P.C. explained that he was also meeting with another friend who he believe to be a drug addict, LSD was his drug of choice, who believed he was Jesus. RP 48-49. P.C. was trying to get him to stop using LSD and was trying to break his own marijuana dependence at the same time. RP 49.

It was in the midst of these three experiences P.C. had driven to Portland to pick up some of his things from their uncle's house and visit friends. RP 9. When he and Alexander spoke by phone that day P.C. said that "he didn't think things were quite right. He said there were -- he was seeing things in the corner of his eye, or -- there was something about water turning to wine and ... he's like, "I think I need some help." RP 9.

When P.C. returned to the Renton apartment the following morning he was “very energized, very excited, talking about how he had this deep meaningful conversation with his friend...” RP 10. When asked, P.C. explained that his friend had a depression and drug problem and P.C. was trying to help him. RP 11.<sup>2</sup>

P.C. believed the cumulative effect of working so closely with his two friends and his effort to quit marijuana triggered much of what followed because he was “mentally vulnerable ... going through those two episodes really bent [his] reality.” RP 49.

On March 27 the cumulative effect of these experiences came to a head. That night, Alexander returned from seeing a movie, played a video game with his brother and then went to bed. RP 13. Throughout the night Alexander kept hearing banging sounds. When he checked on P.C., he found him listening to music and banging a pocket knife against a table. RP 13. P.C. told Alexander “the CIA was monitoring him and that he could prove it to me because the playlist was being controlled by an outside source.” RP 14.

P.C. later explained,

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<sup>2</sup> Alexander also relayed that in the effort to help his friend, P.C. reportedly

Well, I honestly – I believed that someone had hacked into my computer. There were images that I was finding that were not my own -- ... -- and so I assumed some crazy things. And I thought I was being watched and so I put on a show.

RP 52.

About 4:30 a.m., Alexander again woke to loud banging noise and discovered P.C. had accidently broken a chair and thrown some CDs off the balcony. RP 14, 53. P.C. told him “the CIA was in this surveillance truck across the street and that he was going to go confront them...then he stormed off down the hall saying something about how he’s going to confront the CIA for monitoring him. RP 14. P.C. left apartment wearing only a football jersey, baseball cap, and his boxer shorts. RP 14.

When Alexander found P.C. outside he was surrounded by police who reported he had tried to climb in a fire truck that was there for an unrelated call. RP 15.<sup>3</sup> When Alexander explained to the officers that P.C. had been acting odd lately and he and his

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dropped his pants to illustrate he did not have a large ego. RP 12.

<sup>3</sup> P.C. was hopping around and spinning, “then ran over to a, like, six-, seven-foot gated – gate for the garage, jumped over it – you know, like, climbed up and climbed over it – ran around the secured parking for a little bit -- I’d say less than a minute – and then came and jumped back over.” RP 15.

mother planned to take P.C. to the hospital, the officers released him to Alexander's custody. RP 16.

As Alexander led P.C. back to their apartment P.C. tried a couple times to get into cars which had slowed as they drove by and at another point, P.C. punched a truck. RP 16-17. When they got to the parking garage gate, P.C. punched through three of the metal grilles which were knocked loose and fell to the ground. RP 16-17.

Once back in the apartment, P.C. continued to act out but ultimately, Alexander got him dressed and they left for the hospital. RP 17-18. When P.C. would not get in the elevator they took the stairwell, however, P.C. slammed a door into the wall creating a "huge hole in the drywall." RP 18.

When they arrived downstairs, their mother was there to drive them to the hospital. RP 18. In the car he refused to wear a seatbelt and instead danced around in the back seat with the music turned all the way up as they drove from Renton to Overlake Hospital in Bellevue. RP 18.

At the hospital P.C. was introducing himself to people so his mother asked him to sit in a chair and watch television while they

were waiting. RP 19. P.C. however picked up the wheelchair and threw it, then a coffee table or small stand before running out through the doorway and punching the sliding doors. At this point, hospital staff contacted the police and P.C. was formally detained. RP 20.

P.C. was initially detained for a 72-hour evaluation and treatment period on March 28, 2013, based on a referral from the emergency room social worker at Overlake Hospital. CP 1. A petition for 14-day involuntary treatment was filed alleging both that P.C. presented a likelihood of serious harm to other or their property and that he was gravely disabled within the meaning of RCW 71.05. CP 10-12.

A hearing on the petition was held before the Honorable Carol Schapira at which the court heard from P.C.'s brother Alexander and Dr. Corre Spence, a licensed clinical psychologist at Fairfax Hospital, as well as P.C. himself. 4/2/13RP 6-53.

Dr. Spence testified that she met with P.C. on the morning of the hearing, reviewed his chart and interviewed his family. RP 24. Dr. Spence concluded P.C. had a mental impairment she diagnosed

as bipolar disorder not otherwise specified, cannabis dependence and hallucinogen dependence. RP 25. Dr. Spence concluded these impairments have an adverse effect on his cognitive and volitional functions and that he presents a substantial risk of harm to the property of others as a result of that mental disorder. RP 25.<sup>4</sup>

Dr. Spence based her opinion regarding P.C. risk of harm to property on his earlier behavior of punching cars and walls, to the extent he harmed himself, and threw the wheelchair while waiting in the emergency room at Overlake. RP 30. She further opined that “if he were outside of the hospital that he would pose a risk of harm to the property of others or potentially harm to himself based on a loss of cognitive and volitional control.” RP 38.<sup>5</sup>

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<sup>4</sup> Dr. Spence also believed P.C. was showing a severe deterioration in his routine functioning, evidenced by repeated and escalating loss of cognitive and volitional control over his actions such that he could not meet his own health and safety needs if released. RP 25-26, 30. Judge Schapira ultimately rejected the grave disability basis for commitment. CP 17, 32.

<sup>5</sup> Dr. Spence noted that P.C.’s symptomology continued because he:

... continues to evidence quite a bit of paranoid ideation. He believes that, generally, most people are out to get him, specifically his family, his teachers. He also mentioned an incident with his best friend. He believes that essentially his parents put him into the hospital to prevent him from going into the army.

RP 26, 29. Dr. Spence also noted that while in the hospital, P.C. had difficulty maintaining appropriate body space with peers and staff members. RP 29-30.

Dr. Spence noted that P.C. had been taking antipsychotic medication since his hospitalization and characterized P.C.'s insight into his own need for treatment as "fair," but explained "he doesn't quite understand the acuity of his symptomatology and that he really requires more monitoring and stabilization...." RP 31, 36.<sup>6</sup>

P.C. asked the court to release him rather than ordering the 14-day commitment. RP 44. If so, he indicated he would immediately find a counselor and "get healthy...." RP 44. He would live with his brother or get a place of his own. RP 45. He had work opportunities lined up and was confident he would be able to care for himself. RP 45. P.C. acknowledged the medications seem to be helping and vowed to continue taking them as prescribed. RP 50.

Judge Schapira concluded P.C. was not gravely disabled. RP 64; CP 17, 32. The court did find that as a result of mental illness P.C. presented a substantial likelihood of serious harm to the property of others based on because of his recent actions. RP 64; CP 17. Supplemental Findings were entered noting:

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<sup>6</sup> Dr. Spence acknowledged that if someone suffers with a mental illness and uses marijuana and then discontinues using it, this could trigger a psychotic episode as P.C. thought. RP 36-37

The Court finds that respondent had severely deteriorated in his functioning as evidenced by the significant change in the Respondent's behavior over approximately a one month period, including paranoia, loss of sleep, impulsive behaviors, and the incidents on or about March 27, 2013. Those behaviors include the breaking of various objects, running outside with insufficient clothing, and Respondent's peculiar interactions with police officers.

CP 31-32. Furthermore,

The Court finds that as a result of Respondent's mental disorder, Respondent presents a substantial risk of harm to the property of others, as defined under RCW 71.05.020(25)(a)(iii). This is based upon the testimony of the State's witnesses, including the testimony of [Alexander], who described the various objects broken or damaged by Respondent on or about March 27, 2013. Including but not limited to the drywall in the apartment and the fence outside the apartment complex, neither of which was property owned by the Respondent. The Respondent also threw a wheelchair and a coffee table at the Emergency Room and punched the hospital door.\* {He threw various objects outside of his bedroom window, smashed a chair in his bedroom, and damaged a table in his bedroom. However, it is unclear whether these objects were owned by Respondent, his brother or both.} CAS

\* These objects did not belong to him or his family. CAS

CP 32.

P.C. appeals the court's error in misadvising him regarding the right to represent himself and the sufficiency of the findings and conclusions committing him for 14-days involuntary treatment. CP 24-30.

E. ARGUMENT.

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

a. The substantial liberty interests at stake and the statutory scheme provide for the right to self-representation in involuntary commitment proceedings. Involuntary commitment for mental disorders results in a “massive curtailment of liberty” which the State cannot accomplish without due process of law. 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). As a result, core elements of due process are all recognized in RCW 71.05.360, which details the rights of involuntarily detained persons.

The legislative scheme Washington, both implicitly and explicitly, recognizes the right of self-representation:

(11) Every person involuntarily detained shall immediately be informed of his or her right to a hearing to review the legality of his or her detention and of his or her right to counsel, by the professional person in charge of the facility providing evaluation and treatment, or his or her designee, and, when appropriate, by the court. *If the person so elects, the court shall immediately appoint an attorney to assist him or her.*

(12) *A person challenging his or her detention or his or her attorney shall have the right to designate and have the court appoint a reasonably available independent physician, psychiatric advanced registered nurse practitioner, or licensed mental health professional to examine the person detained, the results of which examination may be used in the proceeding. The person shall, if he or she is financially able, bear the cost of such expert examination, otherwise such expert examination shall be at public expense.*

RCW 71.05.360 (emphasis added); In re Detention of J.S., 138

Wn.App. 882, 891, 159 P.3d 435 (2007) (“This statutory language implies the corresponding right of such involuntary detainee to

proceed without counsel.”); see also In re Detention of Turay, 139

Wn.2d 379, 395-96, 986 P.2d 790 (1999) (right to self-representation at RCW 71.09 civil commitment proceedings).

The right to self-representation plainly extends to involuntary civil commitment proceedings under RCW 71.05. J.S., 138 Wn.App. at 891.

b. The trial court misadvised P.C. regarding his right to self-representation. Contrary to the clear holding of J.S., Judge Schapira told P.C. he could not represent himself in these proceedings. 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. inquired.

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

THE COURT: Well, not at the current time.

RP 21.

In fact, 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.

Although the trial court has some discretion to grant or deny a motion to proceed pro se, that discretion is exercised across a continuum that corresponds to the timeliness of the request. See e.g.

State v. Honton, 85 Wn.App. 415, 429, 932 P.2d 1276 (1997); State v. Fritz, 21 Wn.App. 354, 361, 585 P.2d 173 (1978). Where a request to go pro se occurs during the trial, Washington courts have previously held that the court should 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.

Fritz, 21 Wn.App. at 363.

In P.C.'s case each of these factors weighed in favor of self-representation. 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. Before this point in the proceedings, P.C. had not requested substitute counsel or self-representation. Although, in light of Judge Schapira's summary denial of P.C.'s request, he did not have an opportunity to further outline the reasons for his request. Given the relatively short length of the commitment hearing and the important testimony of Dr. Spence, 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.

A court may not deny a motion for self-representation on the grounds that the self-representation would be detrimental to the defendant's ability to present his case. State v. Madsen, 168 Wn.2d 496, 505, 229 P.3d 714 (2010). Because all of the factors outlined in Fritz weighed in favor of the request to proceed pro se, the only reason to believe Judge Schapira denied the request was an improper concern P.C.'s ability to present his own case. This would be improper and such rejection of the right to self-representation requires reversal. Madsen, 168 Wn.2d at 503.

c. Reversal and remand is the remedy for constitutional misadvisement regarding self-representation. The improper denial of the right to self-representation is a structural error for which reversal is required. See State v. Paumier, 176 Wn.2d 29, 46, 288 P.3d 1126 (2012); United States v. Gonzalez-Lopez, 548 U.S. 140, 146, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2006). 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 abused its discretion in failing to conduct an appropriate colloquy and telling P.C. he could not represent himself. Washington Fed'n of State Employees, Council 28 v. State, 99 Wn.2d 878, 887, 665 P.2d 1337 (1983) (discretion is abused if the decision is based on untenable grounds, or the decision is manifestly unreasonable or arbitrary).

This unjustified denial of the right to proceed pro se requires reversal for a new 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

a. Because of the substantial liberty interests at stake the State bears the burden of proving all necessary elements of civil commitment. As noted already, involuntary commitment cannot be imposed without due process of law. 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). In light of these substantial liberty interests, the State must prove its case by clear, cogent and convincing evidence at a hearing for 90-day commitment. In re McLaughlin, 100 Wn.2d 832, 843, 676 P.2d 444 (1984). At a hearing on a 14-day commitment petition, however, the court must only find by a simple preponderance of the evidence that the person is gravely disabled as a result of mental disorder. RCW 71.05.240(3).

b. Proof of substantial harm to the property of others required proof of substantial loss or damage to the property of others. Where the State seeks to involuntarily 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); CP 10. In P.C.’s case, however, 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 the loss in order to satisfy the “substantial” threshold incorporated in the statute. Although not further defined by statute, Washington courts have found “substantial pecuniary loss” exists where that loss is on the order of \$100,000. See Hegewald v. Neal, 20 Wn.App. 517, 582 P.2d 529, rev den 91 Wn.2d 1007 (1978). Substantial is defined as “large in amount, size or number,”<sup>7</sup> but nothing in this record establish the amount or size of the loss or damage. The cost to repair drywall and replacing the screens simply fails to meet the “substantial loss or damage” required to justify involuntary commitment.

This rigorous enforcement of this requirement is crucial because mental illness alone cannot form the basis for involuntary commitment. LaBelle, 107 Wn.2d at 207 (“Involuntary commitment on this basis alone is not supported by sufficiently compelling state interest to justify such a significant deprivation of liberty.”). “There is. . . no constitutional basis for confining . . . [mentally ill] persons involuntarily if they are dangerous to no one and can live safely in

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<sup>7</sup> <http://www.merriam-webster.com/dictionary/substantial> (last accessed Sept 16,

freedom.” O’Connor v. Donaldson, 422 U.S. 563, 575, 45 L.Ed.2d 396, 95 S.Ct. 2486 (1975); LaBelle, 107 Wn.2d at 207. Nor is it sufficient to show that care and treatment of an individual’s mental illness would be preferred or beneficial or even in his best interests. LaBelle, at 208. “To justify commitment, such care must be shown to be *essential* to an individual’s health or safety **and** the evidence should indicate the harmful consequences likely to follow if involuntary treatment is not ordered.” Id. (emphasis in original). The legislature set this standard and State failed to meet it on this record.

3. ALTHOUGH ARGUABLY MOOT, APPELLATE REVIEW IS APPROPRIATE BECAUSE THE FINDING HAS CONTINUING CONSEQUENCES.

A case is moot when the court can no longer provide meaningful relief. Sorenson v. City of Bellingham, 80 Wn.2d 547, 558, 496 P.2d 512 (1972). Although arguably moot because the 14-day commitment has since expired, an appellate court may nonetheless decide an issue warrants review where the following criteria are satisfied:

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2013).

(1) whether the issue is of a public or private nature; (2) whether an authoritative determination is desirable to provide future guidance to public officers; and (3) whether the issue is likely to recur. A court also considers whether the case before it properly and effectively addresses the issue.

State v. Veazie, 123 Wn.App. 392, 397, 98 P.3d 100 (2004).

As a result of the commitment order, P.C. lost his right to possess a firearm. RCW 9.41.040(2)(a)(ii). While a decision in P.C.'s favor will not restore the time he was involuntarily confined, if this Court reverses the commitment order, then any revocation of his right to bear arms that occurred as a result of this commitment order was improper, and any order revoking that right must be stricken. It is therefore still possible for this Court to afford P.C. meaningful relief, and this case is not moot.

P.C. noted the significance of his firearm rights, particularly as it related to his desire to potential join the armed forces when his recovery was complete. RP 44. For this reason, P.C. requests this Court should reach the questions presented herein regarding his request for self-representation and the sufficiency of proof in his involuntary commitment proceeding.

F. 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 16<sup>th</sup> day of September, 2013.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Donnan", written over a horizontal line.

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

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

IN RE THE DETENTION OF

P. C.,

APPELLANT.

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NO. 70256-4-I

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 16<sup>TH</sup> DAY OF SEPTEMBER, 2013, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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