

NO. 70256-4-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

IN RE THE DETENTION OF P.C.

STATE OF WASHINGTON,

v.

P.C.,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE CAROL A. SCHAPIRA

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. DID THE TRIAL COURT PROPERLY DENY P.C.'S "REQUEST" TO GO PRO SE BECAUSE P.C. DID NOT MAKE AN UNEQUIVOCAL REQUEST AND DID SO AFTER THE TRIAL HAD ALREADY BEGUN?
2. DID THE TRIAL COURT PROPERLY FIND THAT THE STATE MET ITS BURDEN OF PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT P.C. PRESENTED A SUBSTANTIAL RISK OF HARM TO THE PROPERTY OF OTHERS DUE TO HIS MENTAL DISORDER?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

Appellant P.C. was committed for up to 14 days of inpatient treatment at Fairfax Hospital by Superior Court Judge Carol Schapira on April 2, 2013 following a Probable cause hearing. The State (Respondent) presented two witnesses: (1) Alex Chang, brother of the Appellant, and (2) Dr. Corre Spence, Psy.D on behalf of Fairfax Hospital. P.C. also testified at the hearing.

The State alleged that P.C. suffered from a mental disorder, and that because of that mental disorder, he both presented a substantial risk of harm to the property of others (RCW 71.05.020(25)(a)(iii)) and was gravely disabled under RCW 71.05.020(17)(b).

Following a hearing on the merits, the Court found by the proper standard, a preponderance of the evidence, that the Appellant had a mental disorder and as a result, he presented a substantial risk of harm to the property of others. Judge Schapira did not grant the petition with regard to the grave disability allegation. P.C. subsequently appealed his commitment to Fairfax Hospital on April 22, 2013.

2. SUBSTANTIVE FACTS

The majority of the evidence concerning the symptoms of P.C.'s mental disorder and his destruction of property that did not belong to him came from the testimony of his brother, Alex Chang.

Alex testified that he was P.C.'s older brother and that P.C. had moved in with him approximately a month prior to the hearing. RP 6. Because of this, Alex saw P.C. every day. RP 7. Alex described the drastic deterioration in P.C.'s behavior from his normal level of functioning throughout the month of March 2013. RP 7-20. Alex noticed P.C. had been much more energetic than usual and was not sleeping much. RP 7-9.

Beyond that, P.C. had driven to Portland and then called Alex saying unordinary things like that he was seeing things and turning water into wine. RP 9. P.C. then impulsively drove all night

back to Seattle, apparently abandoning all of his belongings in Portland, including his wallet and his phone. RP 11. Before doing so, he reportedly flashed his genitalia to his friend in Portland. RP 12.

P.C. continued to deteriorate throughout the month. Alex observed him up all night on Wednesday, March 17, 2013, banging around in his room and yelling at the wall. RP 13. He was banging pocket knives against the table and complaining that the CIA was monitoring him. RP 13-14. By 4:30 AM on March 28, 2013, P.C. had smashed a chair to pieces, thrown CDs and a CD rack outside his balcony and continued to perseverate about being monitored by the CIA. RP 14.

Alex then observed P.C. storm out of the apartment down the hall without pants or shoes, insisting that he was going to "confront the CIA." RP 14. Soon thereafter, when Alex found him, P.C. was surrounded by police officers who had observed him trying to climb into a nearby fire truck. RP 15. Alex observed P.C. rush over to a tall garage gate, climb over it, run around, and then jump back over. RP 15. By now, Alex had called their mother for help. RP 15. The police ultimately released P.C. to Alex's custody after Alex attempted to explain the situation to them. RP 15.

P.C. continued acting out as Alex escorted him back to the apartment. Several times, he attempted to get into random moving cars driving by. RP 16. He also punched three grills off of the apartment's metal parking garage gate and punched a random truck. RP 16-17.

Once back in the apartment, Alex observed P.C. showering with the door and curtain open, naked and yelling at the ceiling about the CIA while throwing his shampoo bottle. RP 17.

Still upset, upon leaving the apartment to go downstairs to his mother's car, P.C. slammed the door into the wall, ripping a "huge" hole in the drywall. RP 18. Around this time, Alex observed that Patrick's knuckles were bleeding. RP 18. P.C. smeared that blood on his face and hat as if to simulate "war paint." RP 18.

While in his mother's car on the way to the hospital, P.C.'s disruptive behavior continued as he insisted turning the car music all the way up, refused to put on his seatbelt, and danced around, screaming and spitting from the back seat. RP 19. He attempted to chew a cigar like chewing tobacco. RP 19.

After arriving at the Overlake Emergency Room, he became aggressive, picking up a wheelchair and throwing it, and then doing

the same with a coffee table before storming off and punching the sliding doors, causing the hospital staff to call the police. RP 19-20.

Alex testified that the behaviors he observed throughout March were out of character for P.C. and that P.C. had neither taken medications nor seen a counselor. RP 20. Alex did not believe he would be able to keep P.C. safe if he left the hospital that day. RP 20.

Following the State's direct examination of Alex, defense counsel chose not to ask any questions of him. Only after that did P.C., for the first time since his detention, inquire into the pro se process:

THE RESPONDENT: Can I remove him? Can I represent myself?

THE COURT: Well, not at the current time. If you have a question you wanted him to ask, why don't you talk to the attorney and maybe he'll ask it for you.

THE RESPONDENT: Okay. Well, I'm going to go to the bathroom first.

RP 21.

Following that exchange, P.C. never again raised the issue and the State called Dr. Corre Spence, PsyD. to testify.

Dr. Spence testified that in her opinion, P.C. was presenting with what appeared to be bipolar disorder NOS ("not otherwise

specified”), cannabis dependence, and hallucinogen dependence. RP 25. Because of those mental impairments, she believed he presented a substantial risk of harm to the property of others and was also gravely disabled. RP 25.

Dr. Spence identified P.C.’s mental disorder symptoms as grandiosity, euphoric mood, a decreased need for sleep, increased energy, and paranoid ideation. RP 26. She described, in particular, the paranoid ideation exhibited by P.C. who told her that he believed that people, including his family, were out to get him and that he was put into the hospital by his family to prevent him from getting into the army. RP 26. She introduced several chart notes from P.C.’s stay at Fairfax evidencing his issues there including his grandiosity, mania, and lack of need for sleep. RP 26-29.

She testified that P.C. presented a substantial risk of harm to the property of others based upon his behavior prior to coming into the hospital – punching cars and walls, and his behavior at the E.R. RP 30.

She further testified that P.C. was also gravely disabled due to his continued active psychosis and this resulted in impulsive behaviors that placed his health and safety at risk. RP 30.

On cross examination, Dr. Spence also explained why P.C.'s marijuana use did not affect her opinion that his behaviors were attributable to his mental disorder. RP 32-38.

P.C. also testified. He surmised many options, but provided no concrete plans as to what he would do if released. RP 44-45. He also testified that he personally believed his uncharacteristic behaviors were attributable to his marijuana use and stress caused by his friends. RP 46-49. However, he also conceded that the mental health medications he was receiving at Fairfax were likely working to help improve his behaviors. RP 49-50. On cross examination, P.C. admitted to breaking things that did not belong to him. RP 52.

Ultimately, Judge Schapira found the evidence credible that P.C. had a mental disorder and as a result, presented a substantial risk of harm to the property of others. She denied the finding as to grave disability because she did not believe the State had adequately proven that his health and safety needs were in jeopardy. RP 64. She found that a less restrictive order was not available at that time and thus inpatient treatment was the proper remedy for P.C. RP 65.

C. **ARGUMENT**

1. **THE TRIAL COURT PROPERLY DENIED P.C.'S REQUEST TO REPRESENT HIMSELF PRO SE. THE REQUEST WAS NOT UNEQUIVOCAL.**

Washington Courts have previously held that a person's constitutional right to represent his or herself in the criminal context also applies with equal force to civil commitment cases. *In re: J.S.*, 138 Wn. App. 882, 891 (Div. 2, 2007). Thus, while pro se cases specifically within the ITA ("Involuntary Treatment Act") context are few, there is more than sufficient guidance in the criminal context for the Court to apply to the case at bar.

On the one hand, both the U.S. Supreme Court as well as Washington courts have recognized that every defendant in a criminal case has an independent constitutional right to represent himself without the assistance of legal counsel. *State v. Fritz*, 21 Wn. App. 354, 358 (Div. 1, 1978). This is true even if it is to the defendant's own detriment. *Id.* at 359.

On the other hand, Washington Courts have already recognized that one's right to represent him or herself pro se is not absolute. *State v. Vermillion*, 112 Wn. App. 844, 851 (Div. 1, 2002). For example, the court bears no affirmative duty to inform a defendant that he has the right; the defendant must personally ask

to exercise the right. *Id.* Only after the defendant raises the issue does the court assume responsibility. *Id.* See also: *State v. Garcia*, 92 Wn.2d 647, 654-55 (1979).

Beyond that, in order to exercise the right, defendant's request "must be unequivocal, knowingly and intelligently made, and must be timely." *Id.* at 851. The right may not be exercised for the purpose of delaying the trial or obstructing justice. *Id.*

One of the key cases discussing the issue of a pro se party is *In re: Turay*, 139 Wn.2d 379 (1999). In *Turay*, the Washington Supreme Court explained the initial threshold question, which is particularly significant in the case at bar – whether or not the request to go pro se was unequivocal or not:

If Turay desired to represent himself, his request to do so must have been unequivocal¹ in the context of the record as a whole.

Id. at 396.

The *Turay* Court went on to explain that "in addition, the United States Supreme Court requires that courts indulge in every reasonable presumption **against a defendant's waiver of his or her right to counsel.**" *Id.* (emphasis added); See also: *In re: J.S.*, 138 Wn. App. 882, 891 (Div. 2, 2007). Even when a request is

¹ As explained in *In re: J.S.*, 138 Wn. App. 882, 892 (Div. 2, 2007), "An unequivocal request is one that is clear and lacks ambiguity."

unequivocal, a defendant may still waive the right of self representation by subsequent words or conduct. *State v. Vermillion*, 112 Wn. App. 844, 851 (Div. 1, 2002). For example, when a defendant's request to proceed pro se is actually an expression of frustration with a trial's delay, rather than a true desire to proceed without an attorney, the request is equivocal. *State v. Modica*, 136 Wn. App. 434, 442 (Div. 1, 2006). Additionally, a defendant's desire not to be represented by a particular court-appointed counsel does not by itself constitute an unequivocal request by the defendant for self-representation. *State v. DeWeese*, 117 Wn.2d 369, 377 (1991); *State v. Garcia*, 92 Wn.2d 647, 655 (1979).

The case law goes on to lay out the inquiry that the trial court should engage in once the unequivocal request has been made. See: *In re: J.S.*, 138 Wn. App. 882, 895 (Div. 2, 2007) (discussing the two step inquiry of (1) competency and (2) knowing, voluntary, and intelligent waiver). However, in the case at bar, the court need not even reach that inquiry. The record is unambiguous in the fact that P.C. at no time made an unequivocal request to proceed pro se. The entirety of the exchange between P.C. and Judge Schapira was as follows:

THE RESPONDENT: Can I remove him? Can I represent myself?

THE COURT: Well, not at the current time. If you have a question you wanted him to ask, why don't you talk to the attorney and maybe he'll ask it for you.

THE RESPONDENT: Okay. Well, I'm going to go to the bathroom first.

(RP 21).

P.C. never requested to go pro se. He merely inquired if it was a possibility given that the hearing was already substantially underway. Judge Schapira informed him that an alternative would be to consult with his attorney about potential questions to ask. P.C.'s only response was to say "okay." He never asked to go pro se again. That was the extent of the pro se issue. Particularly in light of the foregoing case law, indicating that the Court is to draw all inferences against P.C. going pro se, there is no reasonable argument that P.C. wanted to go pro se such that any further inquiry was necessary.

Because a request for pro se status is a waiver of a constitutional right to counsel, appellate courts have regularly and properly reviewed denials of requests for pro se status under an abuse of discretion standard. *State v. Madsen*, 168 Wn.2d 496, 504 (2010). Discretion is abused if a decision is manifestly

unreasonable or rests upon facts unsupported in the record or was reached by applying the wrong legal standard. *Id.* No such issues exist in this case and the “request” (if P.C.’s inquiry can be categorized as that) was properly denied.

2. P.C.’S MID HEARING INQUIRY REGARDING HIS PRO SE STATUS WAS NOT TIMELY AND THE TRIAL COURT WAS WITHIN ITS DISCRETION TO DENY THE REQUEST.

Washington Courts have also recognized that the timing of a pro se request affects the trial court’s ability to exercise its discretion in granting or denying the request. The demand must be timely made. *State v. Fritz*, 21 Wn. App. 354, 360 (Div. 1, 1978). To be timely, the demand for self-representation should be made a reasonable time before trial. *Id.* at 361. The *Fritz* court was able to divide the potential timing of the pro se request into three categories:

...(a) if made well before the trial or hearing and unaccompanied by a motion for continuance, the right of self-representation exists as a matter of law; (b) if made as the trial or hearing is about to commence, or shortly before, the existence of the right depends on the facts of the particular case with a measure of discretion reposing in the trial court in the matter; and (c) if made during the trial or hearing, the right to proceed pro se rests largely in the informed discretion of the trial court. The right to proceed pro se cannot be used as a means of unjustifiably delaying a

scheduled trial or hearing or to obstruct the orderly administration of justice.

Id. at 361.

The *Breedlove* court applied and further analyzed the *Fritz* holding, explaining:

We interpret *Fritz* and other Washington cases to mean that if the request is made shortly before trial, at the beginning of trial, or mid-trial, the trial court must exercise its discretion by balancing the important interests implicated by the decision: the defendant's interest in self-representation and society's interest in the orderly administration of justice. Because these meaningful interests maybe in direct competition, their value has an inverse relationship during the course of the proceedings: before trial the defendant's interest in self-representation is paramount but as the trial gets closer and once it begins, the interest in the orderly administration of justice becomes weightier.

State v. Breedlove, 79 Wn. App. 101, 107 (Div. 2, 1995). See also: *State v. DeWeese*, 117 Wn.2d 369, 377 (1991).

In the case at bar, even presuming P.C.'s request was somehow unequivocal, it was still made in an untimely manner – the first inquiry made by P.C. was made mid hearing after the State had already presented 50% of its case.

As explained in *Fritz*, this puts P.C.'s hypothetical request squarely in the third category of time frames set forth above and thus gave Judge Schapira the most amount of discretion to deny

the request. In light of these circumstances, even if this Court finds the pro se request was legitimate, there was certainly no abuse of discretion by Judge Schapira in denying the request in furtherance of the administration of justice. By contrast, see: *Vermillion*, 112 Wn. App. 844 (Div. 1, 2002) (5 requests made beginning 6 days before jury selection); *Breedlove*, 79 Wn. App. 101 (Div. 2, 1995) (multiple pro se motions filed before trial); *Fritz*, 21 Wn. App. 354 (Div. 1, 1978) (request made morning of trial after requesting several continuances previously); *DeWeese*, 117 Wn.2d 369 (1991) (request made morning of trial); *Garcia*, 92 Wn.2d 647 (1979) (request made morning of trial); *Madsen*, 94 Wn.2d 496 (2010) (three requests made at different dates prior to jury selection); *Turay*, 139 Wn.2d 379 (1999) (multiple “equivocal” requests at various dates prior to trial).

3. WASHINGTON LAW HAS NOT HELD THAT IMPROPER DENIAL OF A PRO SE REQUEST IS A STRUCTURAL ERROR.

Appellant cites *State v. Paumier*, 176 Wn.2d 29 (2012) and asserts that the improper denial of the right to self-representation constitutes “structural error” for which reversal is required. A closer reading of *Paumier* reveals that the “structural error” in that case addressed by the court pertained to a violation of the right to a

public trial. The Supreme Court specifically declined to rule upon the self-representation claim. Appellant's other citation on this issue, *U.S. v. Gonzalez-Lopez*, 548 U.S. 140 (2006) seems to discuss "counsel of choice" rather than pro se as the issue, and thus is equally inapplicable.

4. THE TRIAL COURT PROPERLY FOUND THAT P.C. PRESENTED A SUBSTANTIAL RISK OF HARM TO THE PROPERTY OF OTHERS BY A PREPONDERANCE OF THE EVIDENCE STANDARD. THE TRIAL COURT'S DECISION SHOULD BE AFFIRMED.

The balance of P.C.'s argument is a challenge to the sufficiency of the evidence presented at the hearing. Following the testimony of Alex Chang, Dr. Spence, and P.C. himself, Judge Schapira found the evidence sufficient to find that P.C. had a mental disorder, and that as a result, he presented a substantial risk of harm to the property of others. She did not find that the State has proven that P.C. was gravely disabled. The burden of proof at P.C.'s Probable cause hearing was low – a preponderance of the evidence standard. RCW 71.05.240(3).

In challenges to Involuntary Treatment Act (ITA) cases, such as this, Washington courts have already held that, "when a trial court has weighed the evidence, appellate review is limited to

whether substantial evidence supports the findings and, if so, whether the findings in turn support the trial court's conclusions of law and judgment." *In re: A.S.*, 91 Wn. App. 146, 162 (Div. 1, 1998). "Substantial evidence' is evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premise." *Id.* The party challenging a finding of fact bears the burden of demonstrating the finding is not supported by substantial evidence." *Id.*

Thus, it is P.C.'s burden here to prove that Judge Schapira lacked substantial evidence to reach the findings of fact and conclusions of law that she did. It does not appear from P.C.'s brief that there is any dispute that P.C. damaged the property of others or that it was due to a mental disorder. Rather, the issue challenged is whether the damage should be considered "substantial." In making his argument, P.C. minimizes the amount of effort it takes to damage a metal gate, apartment drywall, and hospital equipment.

The statute does not define what constitutes "substantial." RCW 71.05.020(25)(a)(iii). It merely states that the evidence must show "A substantial risk that physical harm will be inflicted by a person upon the property of others, as evidenced by behavior

which has caused substantial loss or damage to the property of others." *Id.*

There does not appear to be any existing Washington case law that defines what "substantial" damage means in this particular context. However, respectfully, it is certainly not what the Appellant insists under *Hegewald v. Neal*, 20 Wn. App. 517 (Div. 2, 1978). That case involves partitioning an unusual tract of land, causing a \$100,000.00 pecuniary loss if it were divided in the manner urged. That case could not be further factually removed from an ITA case.

Even accepting the dictionary definition of "substantial" as cited by P.C. it is unreasonable to require "large in amount, size or number" to "\$100,000.00." Another dictionary defines "substantial" as merely "of ample or considerable amount, quantity, size, etc..."² Under either definition, it is evident that it requires the trier of fact to decide for his or herself what is considered "large" or "ample."

Ultimately, this Court must decide if Judge Schapira had substantial evidence, such that her decision was one that would have been reached by a "fair minded person" under the standard set forth in *A.S.* Again, there does not appear to be any dispute that P.C. caused the damage or that it was due to his mental

² <http://dictionary.reference.com/browse/substantial?s=t>

disorder. Instead, he requests this court find that it is too insignificant to matter. The State requests this Court find that the evidence has met the requisite threshold and that Judge Schapira's decision be affirmed.

D. CONCLUSION

For the foregoing reasons, the State requests that the Court deny the Appellant's appeal on all issues raised above and affirm the trial court's rulings.

DATED this 15th day of November, 2013.

RESPECTFULLY submitted,

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Prosecuting Attorney

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to David L. Donnan , the attorney for the appellant, at Washington Appellate Project, 1511 Third Avenue, Suite 701, Seattle, WA 98122, containing a copy of the BRIEF OF RESPONDENT, in In re the Detention of P.C., State of Washington, Respondent v. P.C. Appellant, Cause No. 70256-4 -I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 15th day of November, 2013


Name Marsha Luiz
Done in Seattle, Washington