

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

NO. 44314-7-II

FROM CLALLAM COUNTY SUPERIOR COURT

NO. 09-1-00311-3

STATE OF WASHINGTON,

Respondent,

vs.

MARGIE L. DERENOFF,

Appellant.

BRIEF OF RESPONDENT

Lewis M. Schrawyer, WSBA # 12202
Deputy Prosecuting Attorney
Clallam County Courthouse
223 East Fourth Street, Suite 11
Port Angeles, WA 98362-3015
(360) 417-2297 or 417-2296
lschrawyer@co.clallam.wa.us
Attorney for Respondent

TABLE OF CONTENTS

TABLE OF CONTENTS.....i

TABLE OF AUTHORITIES.....ii

COUNTERSTATEMENT OF THE ISSUES.....1

STATEMENT OF THE CASE.....2

ARGUMENT.....8

Requiring the State to ensure a person who has
decompensated is competent before a hearing
on his or her failure to abide by release conditions
would vitiate court review of an apprehension
involving a person who should be in treatment rather
than in a jail.....8

The trial court relied upon extensive information gained
from its own experience and from competent testimony
from Mr. Brown. The court’s reliance on the Western
State Hospital report was merely to confirm the
court’s courtroom and record observations.....19

CONCLUSION.....25

CERTIFICATE OF DELIVERY.....26

TABLE OF AUTHORITIES

FEDERAL DECISIONS

<i>Addington v. Texas</i> , 441 U.S. 418, 99 S.Ct. 1804, 60 L.Ed.2d 323 (1979).....	9, 14
<i>Hickey v. Morris</i> , 722 F.2d 543 (9th Cir. 1983).....	14
<i>Jones v. United States</i> , 463 U.S. 354, 103 S.Ct. 3043 (1983).....	10
<i>Matthews v. Eldridge</i> , 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).....	9, 14, 20, 22
<i>Williams v. Wallis</i> , 734 F.2d 1434 (11th Cir. 1984).....	14

WASHINGTON DECISIONS

<i>In re the Detention of Morgan</i> , 161 Wn.App. 66, 253 P.3d 394 (2011) review granted, 177 Wn.2d 1001, 300 P.3d 415 (2013).....	4, 9, 14
<i>State v. Bao Dinh Dang</i> , 168 Wn.App. 480, 280 P.3d 1118 (2012), rev. granted, 175 Wn.2d 1023 (2012).....	17
<i>State v. Dahl</i> , 139 Wn.2d 678, 990 P.2d 396 (1999).....	20, 23
<i>State v. Hill</i> , 123 Wn.2d 614, 870 P.2d 313 (1994).....	18, 21
<i>State v. Hovig</i> , 149 Wn.App. 1, 202 P.3d 318 (2009).....	18, 21
<i>State v. Keller</i> , 98 Wn.2d 725, 657 P.2d 1384 (1983).....	13
<i>State v. Ransleben</i> , 135 Wn.App. 535, 144 P.3d 397	

(2006), *cert. den.*, 161 Wn.2d 1021,
172 P.3d 360 (2007).....13

State v. Reid, 144 Wn.2d 621, 30 P.3d 465 (2001).....9

STATUTES

RCW 10.77.....9, 10

RCW 10.77.040.....10

RCW 10.77.060.....10

RCW 10.77.080.....10

RCW 10.77.110.....11

RCW 10.77.190.....12

RCW 10.77.240.....12

COUNTERSTATEMENT OF THE ISSUES

ISSUE ONE

When an individual is found not guilty by reason of insanity and then placed on conditions to ensure he or she maintains the competency he or she obtained prior to trial or plea, and when the individual then fails to abide by the conditional release order and decompensates, is the trial court required to ensure the individual is competent before hearing a petition for order revoking release?

ISSUE TWO

When a trial court with significant experience with an individual, both when the individual is competent and when the individual has decompensated, and the court's experience is clearly the same as the testimony from the state's witness and a report from a treatment provider, does the trial court err when it admits and relies on the report, especially in light of the individual's continued incarceration?

STATEMENT OF THE CASE

A jury found Margie Derenoff not guilty by reason of insanity on October 5, 2010 (Appendix A). Answering special interrogatories, the jury concluded that Ms. Derenoff was a substantial danger to other persons and presented a substantial likelihood of committing acts jeopardizing public safety, but determined it is not in the best interests of Ms. Derenoff and others that she be detained in a mental hospital (Appendix B). Ms. Derenoff was therefore given a conditional release that required her to come to court twice a month, cooperate with the Department of Corrections (DOC) and Peninsula Community Mental Health, and follow a prescribed treatment plan (Appendix C).

From October 21, 2010, to July 2012, Ms. Derenoff substantially abided by the conditions (RP 80-81). On September 28, 2012, the State filed a petition for an order revoking Margie Derenoff's conditional release because she was allegedly not complying with the requirements of her

conditional release (CP 56, with Department of Corrections Notice of Violation attached). During hearings at which she was not present on August 31, 2012 (RP 3) and September 7, 2012 (RP 7), the trial court was advised that she had been treated and was back in the community (RP 3, 7). By September 24, 2012, however, she was in custody (RP 11) on the State's petition. A public defender was appointed to assist her (RP 12) but the defender argued that Ms. Derenoff was not competent to proceed, so he intended to seek commitment to Western State Hospital (RP 14, 19, 27). The court instead ordered an evaluation by Doctor Trowbridge (RP 20). She refused to see Doctor Trowbridge (RP 28), so the public defender then filed a motion to have Ms. Derenoff recommitted to Western State Hospital (CP 52-3). Western State Hospital initially refused to treat Ms. Derenoff, stating the hospital had no authority to complete a competency evaluation on Ms. Derenoff (RP 25). The public defender argued he and Ms. Derenoff could not proceed because she is clearly incompetent,

unable to understand the proceedings against her, or assist him in defending her (RP 27). On her behalf, he moved to dismiss the State's petition because Western State Hospital was refusing to recommit her so she could return to competency (RP 29, 33, 41, 44). On November 16, 2012, the trial court ruled that the hearing on the State's petition would proceed because the trial court believed the court can proceed without Ms. Derenoff being competent (RP 56). The court referred to *In re the Detention of Morgan*, 161 Wn.App. 66, 253 P.3d 394 (2011), pointing out that requiring the State to prove the individual is competent "frankly, would preclude the statutes from being followed at all, if, in fact, the individual had to be competent to have a hearing." (RP 56-7).

Eventually, Western State Hospital conducted an evaluation (CP 23). Based upon history, observations and testing, Dr. Hendrickson determined that "Ms. Derenoff presents an *imminent* risk of danger to others, and that she is unable to provide for her basic needs of health and safety"

unless she became “stabilized on prescribed psychotropic medication and remain compliant with her medication regime,...” (CP 28-9) (emphasis in original).

A hearing was held on December 19, 2012 (RP 67). The State pointed out that its petition alleged that Ms. Derenoff refused to comply with her conditional release order (RP 67) but that the public defender sought a competency evaluation (RP 68). With the competency evaluation, the State then proceeded either to show noncompliance or danger to self or others. Gerald Brown, the Department of Corrections Community Corrections Officer assigned to supervise Ms. Derenoff’s release conditions, testified in court about three violations (RP 78). He testified she failed to report to him on September 12, 2012, in violation of a condition of release (RP 80). He also testified she did not report to him on September 19, 2012 (RP 82). He also testified Ms. Derenoff refused to speak to DOC or Peninsula Mental Health personnel on three occasions; he was present at all three violations (RP 80).

The State moved to admit Dr. Hendrickson's report (RP 69); the defense objected because it wanted to cross-examine Dr. Hendrickson (RP 71-2). Counsel continued to argue the hearing could not be held because Ms. Derenoff was not competent (RP 73).

The trial court refused to dismiss the petition, stating that requiring Ms. Derenoff to be competent for the hearing was:

“very circular. If that were the case then we could send her back for restoration and then once she is restored then she'd be back on conditional release, then when she decompensated again then we'd be back here again and she would not be competent and we'd send her -- I mean, it can't work that way.” (RP 75).

The trial court then admitted Dr. Hendrickson's report, stating the court is very familiar with the staff and processes, and the reports, at Western State Hospital (RP 76). The court held that the reports contain indicia of reliability and the court has come to rely upon the opinions of the experts in these kinds of situations (RP 76). The court also held that is very expensive and logistically challenging to get Dr. Hendrickson or another

treating physician to court; while there would be some cross examination, it would be of minimal benefit to the court in these circumstances. (RP 77).

The court noted last that delaying the hearing to obtain live testimony “would...mean Ms. Derenoff remains in jail and that is not something I want to see happen” (RP 77). To obtain live testimony, the hearing would be delayed until after the first of the year, “during which time she would continue to languish in a correction facility rather than a treatment facility” (RP 77).

After receiving testimony from Mr. Brown and Ms. Derenoff, the court indicated its knowledge about Ms. Derenoff’s history with the court (RP 100). He had observed her on the criminal calendar and on the special reports calendar, when she is well and when she appears to be off her medications (RP 100). What the court observed confirmed both the testimony of Mr. Brown and the report from Western State Hospital (RP 100). The court then determined that Ms. Derenoff is a danger, especially “about her ability to provide for

her own needs and safety, not just her risk to have a negative impact on other people or to commit further crimes” (RP 101). Findings and conclusions were entered (CP 17). This appeal followed.

ARGUMENT

ISSUE ONE

When an individual is found not guilty by reason of insanity and then placed on conditions to ensure he or she maintains the competency he or she obtained prior to trial or plea, and when the individual then fails to abide by the conditional release order and decompensates, is the trial court required to ensure the individual is competent before hearing a petition for order revoking release?

RESPONSE

Requiring the State to ensure a person who has decompensated is competent before a hearing on his or her failure to abide by release conditions would vitiate court review of an apprehension involving a person who should be in treatment rather than in a jail.

I. *Standard of Review*: Questions of law, including the guaranty of constitutional due process, are reviewed *de novo*. *State v. Morgan, supra*, at 77, 253 P.3d 394 (2011), citing to *Addington v. Texas*, 441 U.S. 418, 425, 99 S.Ct. 1804, 60

L.Ed.2d 323 (1979) (significant deprivation of liberty requires due process) and *Matthews v. Eldridge*, 424 U.S. 319, 334, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976) (test to determine necessary due process).

II. *Analysis*: A proceeding under RCW 10.77 is civil. RCW 10.77 “provides for the civil commitment of insanity acquittees.” *State v. Reid*, 144 Wn.2d 621, 627, 30 P.3d 465 (2001). The *criminal* proceeding ends with acquittal and the resulting commitment is *civil* in nature. Civil commitment following an insanity acquittal is to treat the individual's mental illness and protect him and society from his known dangerousness. *Jones v. United States*, 463 U.S. 354, 370, 103 S.Ct. 3043 (1983).

Under RCW 10.77.060, a competency evaluation is only required when a defendant pleads not guilty by reason of insanity, not after the defendant is acquitted by reason of insanity. The evaluation requires a report on the defendant's competency and insanity under RCW 10.77.060 (3). The report

is to be used as an evidentiary basis in the criminal trial or motion for acquittal if insanity is claimed as a defense. This is shown by the procedure outlined in RCW 10.77.040 when the issue of insanity is submitted to the jury and in RCW 10.77.080 when a defendant moves for acquittal on grounds of insanity. In both instances, the defendant is still facing criminal charges.

RCW 10.77 *et.seq.* establishes the process by which Ms. Derenoff was treated after the jury acquitted her. The jury concluded that she should not be detained in a mental health hospital for the duration of her sentence, so RCW 10.77.110 established the trial court's authority to set conditions for her return to public life:

If a defendant is acquitted of a crime by reason of insanity, and it is found that he or she is not a substantial danger to other persons, and does not present a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions, the court shall direct the defendant's release. If it is found that such defendant is a substantial danger to other persons, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or

other persons or institutions, the court shall order his or her hospitalization, or any appropriate alternative treatment less restrictive than detention in a state mental hospital, pursuant to the terms of this chapter.

RCW 10.77.110 (emphasis added). If, however, the petitioner cannot or will not follow the release conditions, there is a process in place to both restrict the movement of the person and to bring the matter quickly to the trial court's attention:

If the prosecuting attorney, the secretary of social and health services, the secretary of corrections, or the court, after examining the report filed with them pursuant to RCW 10.77.160, or based on other information received by them, reasonably believes that a *conditionally released person* is failing to adhere to the terms and conditions of his or her conditional release the court or secretary of social and health services or the secretary of corrections may order that the conditionally released person be apprehended and taken into custody. The court shall be notified of the apprehension before the close of the next judicial day. The court shall schedule a hearing within thirty days to determine whether or not the person's conditional release should be modified or revoked. Both the prosecuting attorney and the *conditionally released person* shall have the right to request an immediate *mental examination* of the conditionally released person. . . .

RCW 10.77.190 (2) (emphasis added).

The statutory scheme sets forth the procedure that is required *after* a defendant is acquitted. None of the procedures require a competency evaluation. It is somewhat noteworthy that the statutory framework ceases the use of the term “defendant” after the procedures during the criminal proceedings are completed with RCW 10.77.110 (entitled “Acquittal of crime”). From that point on, except for the “violent act presumption” under RCW 10.77.240, there is not a single use of the word “defendant.” Rather, the statute refers to “committed person,” “developmentally disabled,” and “conditionally released person.” Thus, the competency requirements of the statute only apply to defendants facing criminal charges.

These two statutes establish a legislative intent to extend control over those acquitted because of insanity and for whom the jury or court determines should not be detained in a mental health institution. The individual is released on conditions and then may be incarcerated for a brief time to determine why he

or she is not abiding by the release conditions. The statutory scheme does not say-- nor does it envision--the person must be competent when he or she appears in court. *See, e.g., State v. Ransleben*, 135 Wn.App. 535, 540, 144 P.3d 397 (2006), *cert. den.*, 161 Wn.2d 1021, 172 P.3d 360 (2007) (statutory scheme cannot be interpreted to manifest a legislative intent to guarantee the right to be competent).

Because the purpose of RCW Ch. 10.77 is to protect the public, the statute must be construed to reflect that intent. *State v. Keller*, 98 Wn.2d 725, 657 P.2d 1384 (1983). As criminally insane persons have demonstrated dangerousness by committing an act that would be a crime absent an insanity defense, they are a special category of persons presenting a danger because of their mental disease or defect and may be constitutionally subject to more certain and stringent controls than ordinary civil committees. *Hickey v. Morris*, 722 F.2d 543 (9th Cir. 1983); *Williams v. Wallis*, 734 F.2d 1434 (11th Cir. 1984).

At the same time, the facts of this case present a significant loss of liberty at whatever due process is necessary because RCW 10.77.190 (2) and (3) permit the arrest and incarceration of any person conditionally released from confinement. *In re Detention of Morgan*, 161 Wn. App. 66, 80, 253 P.3d 394, 402 (2011), *review granted*, 177 Wn.2d 1001, 300 P.3d 415 (2013) acknowledged the individual's incarceration deprives the person of significant liberty interests, citing to *Addington, supra*, 441 U.S. a5 425, 99 S.Ct. 1804. Employing the *Matthews v. Eldridge* test, the *Morgan* decision focused on Mr. Morgan's interest in regaining his freedom at the earliest possible moment. The same reasoning applies to Ms. Derenoff's situation.

Ms. Derenoff was held approximately ninety days because her counsel, vigorously defending her right to be competent at the hearing, demanded that she be evaluated before the revocation or modification hearing. Moreover, had the trial court agreed that live testimony was necessary, Ms.

Derenoff would have been held in a county jail more than 120 days. Had the State been able to proceed as quickly as it was able to, on the limited petition it filed, Ms. Derenoff would have been in treatment and out of jail in less than thirty days.

It is therefore clear attempting to ensure competency before a hearing such as this deprives the person of significant liberty interests without due process. To arrest someone and send them directly to treatment without a court hearing is anathema to the liberty interests of the incarcerated person. Each person, whether competent or not, deserves a hearing before being treated in an institution. Ms. Derenoff's liberty interests would not be protected by first sending her to Western State to help her become competent before deciding whether she violated her release conditions.

Ms. Derenoff was entitled to counsel for all proceedings under chapter 10.77, including the present hearing. The revocation procedure itself requires that the defendant be appointed counsel and that a hearing be held on the matter.

Additionally, she had a right to have a mental examination prior to the hearing so that the court may be informed of her current mental condition before making any decision to revoke or modify conditions. Ms. Derenoff's attorney requested such an examination, but his purpose was to prove she was not competent. In any event, she was entitled to a mental examination and received one. If conditional release is revoked, then the review process for continued civil commitment falls back into place. Thus, there are ample procedures and safeguards already included under RCW 10.77 to prevent erroneous deprivation.

The risk of erroneous deprivation of a personal interest through existing procedures was minimal, given the State's limited petition. The trial court had both its personal observations and the testimony of a DOC worker who had two years experience monitoring her. Nothing in the petition or in the court hearings indicated that the State was requesting that Ms. Derenoff serve a significant period of time because a jury

had determined she should not be detained in a state mental hospital. Had the State sought revocation longer than necessary to rehabilitate Ms. Derenoff, there is nothing in the record showing that either trial judges would have permitted it.

Similar to *State v. Bao Dinh Dang*, 168 Wn.App. 480, 280 P.3d 1118 (2012), *rev. granted*, 175 Wn.2d 1023 (2012), this hearing was to revoke Ms. Derenoff's release because she was in violation of the conditions entered when she was found not guilty by reason of insanity. Gerald Brown, the Department of Corrections Community Corrections Officer assigned to supervise Ms. Derenoff's release conditions, testified in court about three violations (RP 78-82). This competent testimony was sufficient to permit the reviewing court to determine Ms. Derenoff was not in compliance with her conditions of release (RP 100). Mr. Brown also added significant information about how, over the past two years, he had observed Ms. Derenoff when she was on her medication and how he knew she had quit taking it (RP 82-84). In addition, the reviewing court recounted

its experience observing Ms. Derenoff in criminal court and on a special docket held the second and fourth Fridays each month for the same two years (RP 100). The testimony fully supported the State's Petition for Order Revoking Conditional Release (CP 56). Moreover, the unchallenged finding of fact, one through five (CP 17) are sufficient to support a revocation of Ms. Derenoff's conditional release. Ms. Derenoff has not taken exception to any of the findings, so they are verities on appeal. *State v. Hill*, 123 Wn.2d 614, 641, 870 P.2d 313 (1994). Review is limited to whether the unchallenged findings of fact support the trial court's conclusion of law. *State v. Hovig*, 149 Wn.App. 1, 8, 202 P.3d 318 (2009).

Finding one through five and number eight support the State's petition and conclusion of law one. Conclusion of law one reads: "Ms. Derenoff failed to adhere to the requirements of her conditional release." Mr. Brown's testimony fully supports the findings; the findings support the conclusion; the conclusion supports returning Ms. Derenoff to treatment.

Clearly, the process established by the legislature provides more than minimal due process. On the one hand, the State proved Ms. Derenoff was not in compliance with her release conditions. On the other hand, Ms. Derenoff was entitled to a new evaluation to prove she did adhere to the terms and conditions of her release or whether she presents a threat to public safety. Ms. Derenoff received due process.

ISSUE TWO

When a trial court with significant experience with an individual, both when the individual is competent and when the individual has decompensated, and the court's experience is clearly the same as the testimony from the state's witness and a report from a treatment provider, does the trial court err when it admits and relies on the report, especially in light of the individual's continued incarceration?

RESPONSE

The trial court relied upon extensive information gained from its own experience and from competent testimony from Mr. Brown. The court's reliance on the Western State Hospital report was merely to confirm the court's courtroom and record observations.

I. Standard of Review: Whether the trial court reviewed accurate and reliable information in lieu of live testimony to

establish good cause for the sentence revocation. *State v. Dahl*, 139 Wn.2d 678, 990 P.2d 396 (1999).

II. Analysis: The third *Matthews* factor, the increased governmental burden cause by additional procedures, is only partially applicable here. The cost of bringing medical personnel from Western State Hospital is not significant. Far more important, though, was the delay caused by a live hearing and whether the delay was necessary to provide the trial court with accurate and reliable information upon which to base its decision. The delay would have caused greater loss to Ms. Derenoff and would not have made the trial court's decision any more accurate.

Ms. Derenoff assigned error to conclusion of law 2: "Ms. Derenoff presents a threat to public safety and to her own safety due to her current mental condition." She did not, however, assign error to the two findings that support the conclusion:

"6. The Court's observations confirm what was

reported in Dr. Ray Hendrickson's mental examination of Ms. Derenoff at Western State Hospital.

7. Ms. Derenoff's mental health has decomposed to the point where there is great concern that she is unable to take care of her own needs and safety as well."

They are verities on appeal. *State v. Hill, supra*. Review is limited to whether the unchallenged findings of fact support the trial court's conclusion of law. *State v. Hovig, supra*. The two findings clearly support the trial court's conclusion of law.

It is not correct to argue that the reviewing court relied exclusively on Dr. Frederickson's report to determine Ms. Derenoff was a danger to herself or others. The trial court also had significant information from Mr. Brown, a person familiar with Ms. Derenoff for more than two years. In addition, the trial court had seen Ms. Derenoff in both criminal proceedings and on a docket held twice a month to review her compliance. The trial court's decision was fully informed, even without live testimony.

The first and second *Matthews* factors apply more directly to the issue raised in *Dahl*: Ms. Derenoff's interest in being out of jail after an accurate determination about whether she was in violation of her release conditions or whether she was a danger to herself or others. Although the trial court read and applied the report from Western State, the trial court stated "what I have observed is confirmed by the report of Dr. Hendrickson and is also expanded upon by the testimony of Mr. Brown." (RP 100). There is no support for the argument that the trial court did not possess accurate information before making its decision.

Moreover, if the trial court erred by relying on the report of Dr. Hendrickson and determining that Ms. Derenoff was a danger to herself or others, the error is harmless. The State's evidence, based upon its petition, is sufficient to support the trial court's decision. It was Ms. Derenoff's counsel who sought a competency evaluation to determine the least restrictive alternative to returning Ms. Derenoff to Western State Hospital.

When Ms. Derenoff refused to meet with Dr. Trowbridge (RP 28), her attorney succeeded in having her evaluated by a doctor at Western State Hospital (CP 49). Because a doctor at Western State Hospital would have no information about whether she had complied with release conditions, the evaluation was unnecessary to the State's case (CP 56). The testimony addressed a second basis for revocation in RCW 10.77.190 (3) and (4), "whether the person presents a threat to public safety." RCW 10.77.090 (4).¹

The trial court did not err when it concluded that live testimony would not assist the court in making an accurate determination. If the conclusion was incorrect, however, it is harmless. Erroneous revocation rulings are reviewed to determine whether the trial court's error impacted the revocation decision. *State v. Dahl, supra*, at 688, 990 P.2d 396. The State does not concede there was error, but, if there was, it

¹ Ms. Derenoff argued at page 5 of her brief that her conditional release order required that the trial court find *both* that she failed to comply with release conditions *and* posed a danger to self or others. This issue of a dual state burden was not raised below.

had no impact because the trial court had competent, sufficient evidence to revoke Ms. Derenoff's conditional release because she was in violation of her release conditions. Counsel requested an evaluation to determine, among other things, "[a]n opinion as to whether the Defendant is a substantial danger to other persons, or presents a substantial likelihood of committing felonious acts jeopardizing public safety or security unless kept under further control by the Court or other persons or institutions;..." (CP 47). The trial court simply accepted the views expressed in the evaluation because they conformed with the trial court's experience.

CONCLUSION

The trial court correctly reasoned that requiring an acquittee to be competent prior to a RCW 10.77.190 hearing created a circle that vitiated the legislative process. It would lead, as it did in this case, to lengthy delay, in contradiction to the language in RCW 10.77.190(4), which envisions that a person receive prompt treatment. In addition, requiring that a

person be competent before hearing would mean a person faces a significant loss of liberty without any process. The individual would receive an evaluation and treatment before a court determined whether the person is in violation of release conditions or presents a threat to public safety. That is simply unacceptable.

In this case, the State followed the process and the evidence was sufficient to support both the trial court's conclusions. This court should affirm the trial court's decision.

Respectfully submitted this

DEBORAH KELLY, Prosecutor

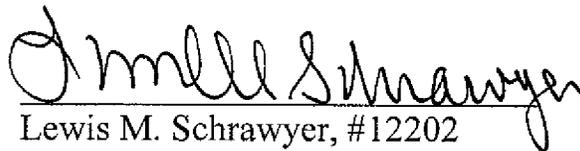
Lewis M. Schrawyer, #12202
Deputy Prosecuting Attorney
Clallam County

person be competent before hearing would mean a person faces a significant loss of liberty without any process. The individual would receive an evaluation and treatment before a court determined whether the person is in violation of release conditions or presents a threat to public safety. That is simply unacceptable.

In this case, the State followed the process and the evidence was sufficient to support both the trial court's conclusions. This court should affirm the trial court's decision.

Respectfully submitted this ¹⁷Xth day of July, 2013

DEBORAH KELLY, Prosecutor

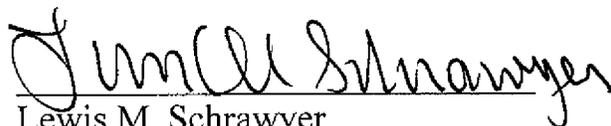


Lewis M. Schrawyer, #12202
Deputy Prosecuting Attorney
Clallam County

CERTIFICATE OF DELIVERY

Lewis M. Schrawyer, under penalty of perjury under the laws of the State of Washington, does hereby swear or affirm that a copy of this document was forwarded electronically or mailed to liseellnerlaw@comcast.com on July 17, 2013.

DEBORAH KELLY, Prosecutor


Lewis M. Schrawyer

APPENDIX A

SCANNED-H

FILED
CLALLAM CO CLERK
2010 OCT -5 P 4:17
BARBARA CHRISTENSEN

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLALLAM

STATE OF WASHINGTON,
Plaintiff,

vs.

MARGIE LEE DERENOFF,
Defendant.

NO. 09-1-00311-3

VERDICT FORM

We, the jury, find the Defendant, MARGIE LEE DERENOFF,

Not Guilty By Reason of Insanity of the crime of ASSAULT IN
(write in "not guilty," "not guilty by reason of insanity" or "guilty")

THE THIRD DEGREE - LAW ENFORCEMENT OFFICER as charged.

DATED this 5 day of October, 2010.

Steph May
Presiding Juror

VERDICT FORM

APPENDIX B

SCANNED-2

FILED
CLALLAM CO CLERK
2010 OCT -5 P 4: 17
BARBARA CHRISTENSEN

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLALLAM

STATE OF WASHINGTON,
Plaintiff,

vs.

MARGIE LEE DERENOFF,
Defendant.

NO. 09-1-00311-3

SPECIAL VERDICT FORM

If you find the Defendant not guilty, then answer the following questions:

QUESTION 1: Did the Defendant MARGIE LEE DERENOFF commit the act charged?

ANSWER: yes (Write "yes" or "no")

(DIRECTION: If your answer to Question 1 is "no", answer no further questions.)

QUESTION 2: Do you find the Defendant not guilty because of insanity existing at the time of the act charged?

ANSWER: yes (Write "yes" or "no")

(DIRECTION: If your answer to Question (2) is "no", answer no further questions.)

SPECIAL VERDICT FORM

QUESTION 3: If your answer to Question 2 is "yes", is the defendant a substantial danger to other persons unless kept under further control by the court or other persons or institutions?

ANSWER: Yes (Write "yes" or "no")

QUESTION 4: If your answer to Question 2 is "yes", does the Defendant present a substantial likelihood of committing criminal acts jeopardizing public safety or security unless kept under further control by the court or other persons or institutions?

ANSWER: Yes (Write "yes" or "no")

QUESTION 5: If your answer to either Questions 3 or 4 is "yes", is it in the best interests of the Defendant and others that the Defendant be detained in a State mental hospital?

ANSWER: NO (Write "yes" or "no")

DATED this 05 day of October, 2010.

Stephen May
Presiding Juror

SPECIAL VERDICT FORM

APPENDIX C

SCANNED-3

FILED
CLALLAM COUNTY
OCT 21 2010
11:03 AM
BARBARA CHRISTENSEN, Clerk

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLALLAM

STATE OF WASHINGTON,

Plaintiff,

vs.

MARGIE DERENOFF

Defendant.

NO. 09-1-00311-3

ORDER OF CONDITIONAL
RELEASE/ORDER PERMITTING
RELEASE TO LESS RESTRICTIVE
ALTERNATIVE/ COMMUNITY
PROGRAM

THIS MATTER having come on regularly before the undersigned judge of the above-entitled court, the Defendant, Margie Derenoff, being represented by his/her attorney, Loren Oakley, and the State being represented by Deborah S. Kelly, Clallam County Prosecuting Attorney, and the Court, noting that previously a judgment of Acquittal was entered in this cause by this Court after jury verdict of October 5, 2010 finding the Defendant to be not guilty by reasons of insanity of the crime of Assault in the Third Degree. This Court, after considering the Western State Hospital report dated July 28, 2010, and report from Dr. Brett Trowbridge dated November 2, 2009, finds, in accordance with RCW 10.77.150, that the Defendant may be conditionally released, but that she is in need of control by the court or other persons or institutions and being otherwise fully informed, NOW, THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Defendant shall be conditionally released upon the following terms and conditions:

1. Defendant shall be supervised by the Washington State Department of Corrections (hereafter DOC) with additional conditions as specified hereafter for the statutory maximum of five years from this date. ✱
2. Defendant shall attend the Clallam County Superior Court Mental Health docket on *the 2nd and 4th Fridays of each month or as otherwise ordered.*
3. Reside at *112 N. Peabody, #2, Port Angeles* with DOC and Peninsula Community Mental Health staff approving the specific residence. Upon receiving prior approval, she may move to another residence or community supervised facility, the location of which will remain subject to the approval of the DOC and Peninsula Community Mental Health staff.
4. Must follow treatment plans and attend scheduled activities and therapy sessions as prescribed by Peninsula Community Mental Health staff or designee. ✱

1 - CONDITIONAL RELEASE ORDER

E-MAILED
Doc 10-21-10



**DOC/PCMH
FAXED**
10/21/10-rc

CLALLAM COUNTY
PROSECUTING ATTORNEY
Clallam County Courthouse
223 East Fourth Street, Suite 11
Port Angeles, Washington 98362-3015
(360) 417-2301 FAX 417-2469

DOC and

☆

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

AW

AW

AW

AW

AW

5. Progress will be monitored and recorded monthly by Peninsula Community Mental Health staff and a report submitted to the court every six months, or if there is a substantial change in the treatment plan or his/her condition.

6. Upon notification of an escape or disappearance, DOC and Peninsula Community Mental Health staff will notify the committing court's prosecuting attorney's office.

7. May leave the State of Washington for visits only with prior approval of DOC and the Peninsula Community Mental Health staff.

8. **EMERGENCY ARREST, DETENTION AND HOSPITALIZATION:**
According to R.C.W. 10.77.190 and W.A.C. 275-590-080, the Defendant may be returned to Western State Hospital or, if needed, DOC and/or the Peninsula Community Mental Health staff may order the local or county police to apprehend the Defendant and take him/her into custody for hospitalization and evaluation until a hearing can be scheduled to determine the facts if they reasonably believe that the Defendant is failing to adhere to the terms and conditions of conditional release, and because of that failure, may become a substantial danger to other persons, or presents a substantial likelihood of committing further felonious acts jeopardizing public safety and security. The court and the prosecuting attorney shall be notified before the close of the next judicial day of the apprehension.

9. Take medications as prescribed. Submit to taking blood samples to monitor medication compliance.

10. Mental illness will remain in the current state of remission and have no significant signs of decompensation *which affect his ability to comply with his Conditional release.*

11. Not possess any explosive devices or materials, nor any firearms or other weapons.

12. ~~Maintain good conduct in the community and~~ Not violate any laws or ordinances.

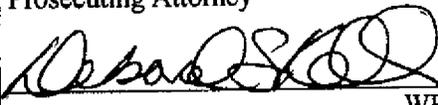
13. Not be involved in the use of unprescribed ~~drugs~~, controlled substances or alcoholic beverages, submit to random and scheduled urine drug screens, *upon reasonable suspicion.* ~~attend at least two AA/NA meetings weekly, and secure and maintain contact with Treatment Team approved AA/NA Sponsor.~~

14. *Execute waivers of confidentiality to allow Peninsula Community Mental Health to provide information to DOC relative to Defendant's treatment and compliance with mental health requirements.*

DONE IN OPEN COURT this 21 day of October, 2010.

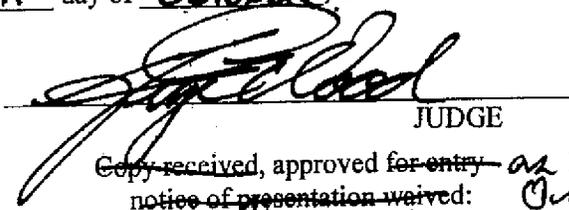
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Presented by:
DEBORAH S. KELLY
Prosecuting Attorney



(Deputy) Prosecuting Attorney

WBA # 8582

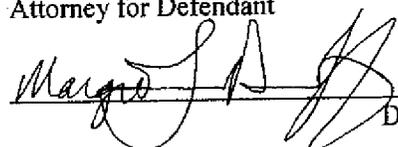

JUDGE

Copy received, approved for entry *as to Form*
notice of presentation waived: *Only*



Attorney for Defendant

WBA # 18579



Defendant

3 - CONDITIONAL RELEASE ORDER

CLALLAM COUNTY
PROSECUTING ATTORNEY
Clallam County Courthouse
223 East Fourth Street, Suite 11
Port Angeles, Washington 98362-3015
(360) 417-2301 FAX 417-2469

CLALLAM COUNTY PROSECUTOR

July 17, 2013 - 1:40 PM

Transmittal Letter

Document Uploaded: 443147-Respondent's Brief.pdf

Case Name: State v. Derenoff

Court of Appeals Case Number: 44314-7

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Lew M Schrawyer - Email: lschrawyer@co.clallam.wa.us

A copy of this document has been emailed to the following addresses:

liseellnerlaw@comcast.com
lschrawyer@co.clallam.wa.us