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THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II

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**STATE OF WASHINGTON,**

Respondent,

vs.

**ALISHA WILSON,**

Appellant.

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Appeal from the Superior Court of Washington for Lewis County

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**Respondent's Brief**

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## I. ISSUES

- A. Can Wilson raise, for the first time on appeal, the trial court's alleged violation of pretrial release proceedings?
- B. Is the issue regarding pretrial release conditions moot?

## II. STATEMENT OF THE CASE

Michael Cairns is a journeyman drywaller and painter who was working in Centralia, Washington on two duplexes that were on the same block in February 2017. 1RP 21.<sup>1</sup> On February 12, 2017 Mr. Cairns left the worksite around 5:00 p.m. in good working order. 1RP 22-23. There were new doors, handles, and locks installed in all four units. 1RP 22. Inside the duplex's units tools and equipment were left inside; a diesel heater, extension cords, lights, stilts, and plug-ins. 1RP 22-23. When Mr. Cairns arrived at work around 7:00 a.m. on February 13<sup>th</sup>, he found all the doors at the duplex had been kicked in and everything had been stolen out of the units. 1RP 22-24. Mr. Cairns called and reported the burglary and theft to the police.

*Id.*

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<sup>1</sup> The verbatim report of proceedings consists of multiple volumes, all separately paginated, the State will therefore use the same citations as Wilson for conformity purposes. The volume containing 2/15, 2/23/, 3/9, 3/16, 3/23, 3/30, 5/18, and 6/12/17 as 1RP. The volume containing 4/13, 5/11, 6/29, and 7/13/17 as 2RP. The volume containing 5/25/17 as 3RP.

On February 14<sup>th</sup>, Mr. Cairns received a text message from a friend of his named John, who does flooring. 1RP 25-26. John sent Mr. Cairns a photo of stilts and asked Mr. Cairns if they were his. 1RP 26. The photo was from a website that said “let it go.” 1RP 26. Mr. Cairns knew the stilts were his because he had owned them for a number of years and had modified the stilts. 1RP 26-27. The stilts were for sale on the letgo app, which is an internet app for people who want to sell and buy items via the computer. 1RP 27.

John informed Mr. Cairns he had contacted the seller and set up a meeting at Fuller’s in Centralia at 10:15 p.m. 1RP 28. Mr. Cairns and John waited at Fuller’s until the seller arrived. 1RP 28-29. A truck pulled up and two people got out. 1RP 29. A tall man and Wilson. 1RP 29-30. John and Mr. Cairns asked about the stilts, and the man said they were nice ones. 1RP 30. John asked if there was anything else for sale and the man said they had some lights. *Id.* That was when Wilson said, “Dad wants \$40 a piece for them.” 1RP 30. The lights belonged to Mr. Cairns and were taken from the duplex. 1RP 31-32. Mr. Cairns, John, Wilson, and the man continued to discuss items until law enforcement eventually arrived. 1RP 35.

Centralia Police Officer Smerer had received information about the stolen property observed on the letgo app. 1RP 73. Officer

Smerer and Sergeant Shannon arrived at Fuller's when Mr. Cairns and John were speaking to Wilson and the man at the tail-end of the truck. 1RP 51, 75. Sergeant Shannon spoke to Wilson, who told Sergeant Shannon she entered into an agreement with her boyfriend to sell property that Wilson knew was stolen. 1RP 52. Wilson explained she was going to receive \$10 for her cooperation in selling the items. *Id.* Wilson knew the items were stolen and used the letgo app to advertise the items for sale. 1RP 53.

Wilson was charged with Trafficking in Stolen Property in the First Degree. CP 1-2. At Wilson's preliminary appearance the State requested \$5,000 unsecured bail and standard release conditions. 1RP 6. Wilson's counsel agreed to the State's request and the trial court entered conditions of release, releasing Wilson without having to pay a surety bond. 1RP 6; CP 7. Wilson's information was amended to remove her co-defendant. CP 24-25.

Wilson elected to have her case tried to the bench. *See* 1RP. Wilson testified on her own behalf. 1RP 82-105. Wilson denied knowing the items were stolen before the police showed up at Fuller's. 1RP 91. Wilson also denied speaking to John or Mr. Cairns. 1RP 91, 102.

The trial court ultimately found Wilson guilty of Trafficking in Stolen Property in the First Degree. 1RP 125; CP 42-44. Wilson was sentenced to 30 days in jail and given a First Time Offender sentence with the option of electronic home monitoring. CP 45-52. An order staying Wilson's sentence was entered on June 12, 2017. CP 60-61. Wilson timely appeals her conviction. CP 53.

The State will supplement the facts as necessary throughout its argument below.

### **III. ARGUMENT**

#### **A. WILSON CANNOT RAISE, FOR THE FIRST TIME ON APPEAL, THE TRIAL COURT'S ALLEGED VIOLATION OF COURT RULES AND CONSTITUTIONAL RIGHTS DURING THE PRETRIAL RELEASE PROCEEDINGS, AS IT IS NOT A MANIFEST CONSTITUTIONAL ERROR.**

For the first time on appeal, Wilson argues the trial court violated the court rule and her constitutional rights during the pretrial release proceedings when it set her pretrial conditions of release. Brief of Appellant 7-17. Wilson does not cite RAP 2.5(a) anywhere in her briefing or explain how this is a manifest constitutional error. This Court should decline to review the matter.

##### **1. Standard Of Review.**

A claim of a manifest constitutional error is reviewed de novo. *State v. Edwards*, 169 Wn. App. 561, 566, 280 P.3d 1152 (2012).

“A trial court abuses its discretion only when its decision is manifestly unreasonable or is based on untenable reasons or grounds.” *State v. C.J.*, 148 Wn.2d 672, 686, 63 P.3d 765 (2003), *citing State v. Stenson*, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997). This Court will find a trial court abused its discretion “only when no reasonable judge would have reached the same conclusion.” *State v. Rodriguez*, 146 Wn.2d 260, 269, 45 P.3d 541 (2002) (internal quotations and citation omitted).

**2. Wilson Did Not Argue Below That The Trial Court Improperly Imposed Pretrial Release Conditions In Violation Of Her Constitutional Rights And The Court Rule, Therefore, Wilson Must Demonstrate That The Error Is A Manifest Constitutional Error.**

Wilson did not raise any objections to any of her pretrial release conditions during any of her pretrial hearings. See 1RP 5-15; 2RP. An appellate court generally will not consider an issue that a party raises for the first time on appeal. RAP 2.5(a); *State v. O'Hara*, 167 Wn.2d 91, 97-98, 217 P.3d 756 (2009); *State v. McFarland*, 127 Wn.2d 322, 333-34, 899 P.2d 1251 (1995). The origins of this rule come from the principle that it is the obligation of trial counsel to seek a remedy for errors as they arise. *O'Hara*, 167 Wn.2d at 98. The exception to this rule is “when the claimed error is a manifest error affecting a constitutional right.” *Id.*, *citing* RAP 2.5(a). There is a two-

part test in determining whether the assigned error may be raised for the first time on appeal, “an appellant must demonstrate (1) the error is manifest, and (2) the error is truly of constitutional dimension.” *Id.* (*citations omitted*).

The reviewing court analyzes the alleged error and does not assume it is of constitutional magnitude. *Id.* The alleged error must be assessed to make a determination of whether a constitutional interest is implicated. *Id.* If an alleged error is found to be of constitutional magnitude the reviewing court must then determine whether the alleged error is manifest. *Id.* at 99; *McFarland*, 127 Wn.2d at 333.

An error is manifest if the appellant can show actual prejudice. *O'Hara*, 167 Wn.2d at 99. The appellant must show that the alleged error had an identifiable and practical consequence in the trial. *Id.* There must be a sufficient record for the reviewing court to determine the merits of the alleged error. *Id.* (*citations omitted*). No prejudice is shown if the necessary facts to adjudicate the alleged error are not part of the record on appeal. *McFarland*, 127 Wn.2d at 333. Without prejudice the error is not manifest. *Id.*

**a. The alleged error is not of constitutional magnitude.**

The State acknowledges the Washington State Constitution mandates a criminal defendant has a right, except in capital cases, to be bailable by sufficient sureties. Const. art. I, § 20. Therefore, a person who is wrongly denied bail would have a constitutional claim. That is not the case here. The question here is whether the trial court failed to properly follow the Criminal Court Rules, CrR 3.2, when setting Wilson's pretrial release conditions. See Brief of Appellant 7-17. Wilson argues her due process was violated, but fails to make a clear argument as to how that occurred when her counsel agreed to the State's recommendation, never raised the issue of her pretrial conditions again during the three-month pendency from first appearance until the bench trial, and she remained out of custody the entire time. See 1RP; 2RP; CP 7.

Therefore, the alleged error, improperly imposing pretrial conditions of release without following CrR 3.2, is not an error of constitutional magnitude. If, this Court finds the error is of constitutional magnitude, Wilson must still show the error is manifest. *State v. Knutz*, 161 Wn. App. 395, 406-07, 253 P.3d 437 (2011).

**b. The alleged error is not manifest because no error occurred, the conditions were agreed, and the record is not sufficient to determine the merits of the alleged error, therefore, Wilson was not prejudiced.**

Arguendo, if the alleged error is of constitutional magnitude, Wilson cannot meet the necessary burden of showing her alleged error, improperly imposing pretrial release conditions, prejudiced her. An error is manifest if a defendant can show actual prejudice. *State v. Gordon*, 172 Wn.2d 671, 676, 260 P.3d 884 (2011). Actual prejudice requires a defendant to make a “plausible showing... that the asserted error had practical and identifiable consequences in the trial of the case.” *O’Hara*, 167 Wn.2d at 99 (internal citations and quotations omitted).

The record in this matter is sparse. 1RP 5-6. Yet, Wilson still manages to improperly state the facts in her “relevant facts” portion of her briefing. Brief of Appellant 8. The State will take a moment to clarify what occurred at the preliminary appearance. Contrary to Wilson’s assertion, the judge did not establish that the prosecutor had spoken to Wilson about the charges, as that is not the deputy prosecutor’s job. 1RP 5; Brief of Appellant 8.

The deputy prosecutor called the case, announcing that Wilson was present, in custody, for a preliminary appearance on new

criminal charges, represented by Ms. Tiller. 1RP 5. The judge then prompted Ms. Tiller, who informed the judge she had spoken with Wilson, who understood her rights, the charges, and was requesting counsel. *Id.* The judge verified this information with Wilson. *Id.* The judge then appointed Mr. Enbody to represent Wilson. *Id.*

The judge next stated she would hear from the deputy prosecutor regarding release conditions. 1RP 6. The deputy prosecutor requested \$5,000 unsecured bail and standard release conditions. *Id.* Ms. Tiller, who was representing Wilson and had spoken before, stated she had not heard what the deputy prosecutor had said, and the judge repeated the unsecured bail request to Ms. Tiller. *Id.* Ms. Tiller then stated, "Agreed." *Id.*

The parties agreed to the release conditions, unsecured bail, Wilson was released from custody, and the matter was never readdressed. First, the record is not sufficient to litigate whether the trial court erred, as the State was not asked to provide further context for its request, because Wilson agreed to the terms of the State's request. Second, the asserted error has no practicable or identifiable consequence in the trial on the case. Wilson has not shown in her briefing what the identifiable consequence was for her to have unsecured signature bond. Wilson was released from custody,

where she remained for the entirety of her case, even securing a stay of her sentence. CP 58.

Wilson cannot show actual prejudice on this record. Wilson did not provide a sufficient record for review. If this Court finds the record sufficient, Wilson's has shown no practicable or identifiable consequence from the trial court's pretrial conditions of release order. This Court should find there was not a manifest constitutional error that can be raised for the first time on appeal. Wilson's conviction should be affirmed and a mandate should be issued so the stay of sentence can be lifted.

**B. WILSON'S PRETRIAL RELEASE CONDITIONS ISSUE IS MOOT AND THE COURT SHOULD DECLINE WILSON'S INVITATION TO RENDER AN ADVISORY OPINION.**

An issue on appeal is moot if the reviewing court can no longer provide the party effective relief. *State v. Harris*, 148 Wn. App. 22, 26, 197 P.3d 1206 (2006), citing *State v. Ross*, 152 Wn.2d 220, 228, 95 P.3d 1225 (2004). An issue that is moot will not be considered unless "it involves matters of continuing and substantial public interest." *In re Eaton*, 110 Wn.2d 892, 895, 757 P.3d 961 (1988).

In *Harris* the court found Harris's appellate claim regarding the calculation of his offender score moot because Harris had served all of his incarceration time and was not sentenced to serve community

custody. *Harris*, 148 Wn. App. at 26. Harris would have had cause for relief if he would have had some form of community custody that would terminate earlier if he had been sentenced under the appropriate offender score. *Id.* at 27. There was no relief that could be offered to Harris because the remedy for an excessive sentence is resentencing. *Id.* at 26-27.

Here, Wilson acknowledges her issue regarding the trial court's imposition of pretrial release conditions is moot but invites the court to address it regardless. Brief of Appellant 15-17. The State acknowledges the courts have addressed issues that are moot but a "matter of continuing and substantial public interest." *State v. Hunley*, 175 Wn.2d 901, 907, 287 P.3d 584 (2012). Wilson complains the superior court in THIS case refused to apply CrR 3.2. Brief of Appellant 15. Then Wilson makes the broad sweeping assumption that this is a continuing issue and of substantial interest. *Id.* A trial court who did not go through all of the steps of CrR 3.2 because the parties agreed to release conditions hardly is proof of a matter of continuing and substantial public interest. This Court does not give advisory opinions, which in essence is what Wilson is requesting this Court render. *Commonwealth Ins. v. Grays Harbor Cty.*, 120 Wn. App. 232, 245, 84 P.3d 304 (2004).

The trial court's determination of Wilson's pretrial conditions of release is moot. This Court should decline Wilson's invitation to issue an opinion that would have no bearing on Wilson's case. Wilson agreed to her conditions of release, the Court should affirm her conviction, and issue a Mandate.

#### **IV. CONCLUSION**

Wilson did not properly preserve the issue regarding her pretrial release conditions, and Wilson fails to show this Court it is a manifest constitutional error, therefore she is precluded from raising it for the first time on appeal. Further, the issue regarding the trial courts imposition of pretrial release conditions is moot and should not be addressed, as there is no relief available for Wilson. The Court should affirm the conviction and issue a Mandate so the stay of sentence can be lifted.

RESPECTFULLY submitted this 23<sup>rd</sup> day of April, 2018.

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