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NO. 51246-7

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

In re the Detention of Brian Taylor-Rose:

STATE OF WASHINGTON,

Respondent,

v.

BRIAN TAYLOR-ROSE,

Appellant.

BRIEF OF RESPONDENT

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I. INTRODUCTION

In August 2015, Brian Taylor-Rose was committed as a sexually violent predator after a jury trial. In 2017, he petitioned for an unconditional release trial based on a February 2017 evaluation from his expert, Dr. Karen Franklin. In order to obtain a new trial, Taylor-Rose must present current evidence of a “substantial change” in his mental condition since the initial commitment trial due to a positive response to continuing participation in treatment. The trial court properly found that Dr. Franklin’s evaluation was an improper collateral attack on the initial commitment and that it failed to provide sufficient facts to support the conclusion that Taylor-Rose’s mental condition had substantially changed since trial due to treatment. The trial court properly concluded that Taylor-Rose failed to present prima facie evidence for a new trial. This Court should affirm the trial court’s order denying his petition for an unconditional release trial.

II. RESTATEMENT OF THE ISSUE

- A. Did the trial court properly conclude that Taylor-Rose failed to meet his burden for a new trial where Dr. Franklin collaterally attacked his diagnosis and failed to present sufficient facts to support the conclusion that his mental condition had substantially changed since trial due to treatment?

III. STATEMENT OF THE CASE

Brian Taylor-Rose has a history of sexually assaulting young boys and girls. *See* CP at 36-39, 43, 466. Records indicate a longstanding pattern of

arousal to young males. CP at 481. At age ten, he performed oral sex on his 18-month-old cousin. CP at 36, 39, 466. Since this time, he has reported having fantasies about sexual activity with young children. CP at 36, 39, 43, 466, 481.

Taylor-Rose's unadjudicated sexual offense history includes putting his mouth on a 5-year-old girl's vagina over her clothing at age eighteen and sexually touching a 12-year-old girl at age nineteen. CP at 39, 44, 466. In 1997, 19-year-old Taylor-Rose sexually assaulted a 13-year-old boy by groping his penis and buttocks and pled guilty to child molestation in the second degree. CP at 38-39, 116, 466. He subsequently admitted that he groomed the boy and masturbated to sexual fantasies about him for two months prior to offending. CP at 39. In a 1998 psychosexual evaluation, Taylor-Rose reported frequent fantasies of sexual contact with males ranging in age from newborn to peer-age. CP at 44.

After his release from prison, Taylor-Rose absconded from community custody and was arrested in the presence of a 15-year-old boy. CP at 40. He subsequently admitted that if the authorities had arrived thirty minutes later, he would have been having sex with the boy. CP at 41. In 2009, 30-year-old Taylor-Rose groomed and then sexually assaulted a 7-year-old boy by groping his penis. CP at 39, 120. He pled guilty to a reduced charge of child molestation in the third degree. *Id.* After this offense, Taylor-Rose admitted that he has "a serious problem with being sexually

aroused to minor children” and that he wants “to learn how to change this problem.” CP at 42.

He arrived at the Special Commitment Center (SCC) in 2012. CP at 122. In June 2014, he started sex offender treatment and participated for approximately one year before quitting. *See* CP at 124. In December 2014, he reported having a “wet dream” about raping a teenage boy and discussed his efforts to manage his sexual attraction to young boys with the treatment team. CP at 43. In August 2015, Taylor-Rose was committed as a sexually violent predator (SVP) and placed in the custody of the Department of Social and Health Services (DSHS) at the SCC for control, care, and treatment. CP at 34. He re-enrolled in treatment after trial. *See* CP at 124, 148. He has denied the majority of his reported deviant sexual fantasies and sexual offending history since his commitment trial. *See* CP at 133, 141, 475, 477, 484-86.

In August 2016, DSHS completed its first annual review of Taylor-Rose’s mental condition and concluded that he continues to meet criteria as an SVP. *See* CP at 464-94. The trial court entered an order continuing his commitment. CP 453-55. In September 2017, DSHS completed a second annual review and again concluded that he continued to meet SVP criteria. *See* CP at 31-70. In October 2017, Taylor-Rose noted a hearing for November 3, 2017 on his petition for

an unconditional release trial. CP at 405.¹ His petition was based on a February 2017 evaluation by his retained expert, Dr. Karen Franklin. *See* CP 85- 92, 102-56.² Dr. Franklin opined that Taylor-Rose never suffered from a pedophilia diagnosis. *See* CP at 141-42. She assessed his change through treatment in the final three pages of her 48-page report, which briefly addressed eight areas of treatment progress. *See* CP at 148-50. Dr. Franklin concluded that Taylor-Rose “so changed through sex-offender-specific treatment” that he no longer meets criteria as an SVP. CP at 150.

On November 3, 2017, the trial court held a show cause hearing to determine (1) whether the State met its burden of showing that Taylor-Rose continues to meet the definition of an SVP; and (2) whether Taylor-Rose met his burden for an unconditional release trial. *See* 11/3/17 RP at 5-8; *see also* CP at 16-24. The trial court concluded that the State met its burden and that Taylor-Rose failed to meet his burden for a new trial. CP at 16-24. The trial court found that Dr. Franklin’s evaluation constituted a collateral attack on the initial commitment and failed to provide sufficient evidence to support the conclusions reached. CP at 17. Taylor-Rose sought review of the trial court’s decision. CP at 4-15. A Commissioner granted review.

¹ He originally noted the hearing for November 17, 2017, but subsequently changed the hearing to November 3, 2017. CP at 405-06.

² Although Taylor-Rose filed his petition in May 2017, he did not request a hearing until November 2017. *See* CP at 85-92, 405-06.

IV. ARGUMENT

A. Statutory Framework of Annual Review Show Cause Hearings

A person committed as an SVP³ is committed to the custody of DSHS for control, care, and treatment in a secure facility until such time as his condition has so changed that he no longer meets the definition of an SVP or conditional release to a less restrictive alternative is appropriate. RCW 71.09.060(1).⁴ DSHS is required to conduct an annual evaluation of the person's mental condition to determine if he continues to meet SVP criteria. RCW 71.09.070. Unless the person waives his right to a hearing, the court must set a show cause hearing where the State bears the burden of presenting prima facie evidence that the person continues to meet criteria as an SVP. RCW 71.09.090(2).⁵

Once the State meets its prima facie burden, the court will grant a new trial only if the SVP presents current evidence from a licensed professional of a "substantial change" in condition "since the person's last commitment trial" such that he no longer meets the definition of an SVP. RCW 71.09.090(4). The SVP must present "current evidence" since trial of either: (1) a permanent

³ An SVP is a "person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility." RCW 71.09.020(18).

⁴ Taylor-Rose did not petition for conditional release; thus, the less restrictive alternative provisions of the statute are not otherwise addressed.

⁵ Taylor-Rose does not challenge that the State met its prima facie burden.

physiological change that renders him unable to commit a sexually violent act; or (2) a change in his mental condition “brought about through positive response to continuing participation in treatment.” RCW 71.09.090(4). The Legislature enacted this statute to address the “very long-term needs” of the SVP population for treatment and the “equally long-term needs of the community for protection from these offenders.” *State v. McCuiston*, 174 Wn.2d 369, 389-90, 275 P.3d 1092 (2012); see RCW 71.09.010. In determining whether an SVP has established that his condition has “so changed,” courts must look at the underlying symptoms that have formed the basis for commitment. *In re Det. of Sease*, 190 Wn. App. 29, 48, 357 P.3d 1088 (2015).

The standard of proof at an annual review show cause hearing is “probable cause.” *McCuiston*, 174 Wn.2d at 382. Probable cause exists if the proposition to be proven has been prima facie shown. *Det. of Petersen v. State*, 145 Wn.2d 789, 797, 42 P.3d 952 (2002). Under this standard, a court must assume the truth of the evidence presented and “may not weigh and measure asserted facts against potentially competing ones.” *McCuiston*, 174 Wn.2d at 382. “At the same time, the court can and must determine whether the asserted evidence, if believed, is *sufficient* to establish the proposition its proponent intends to prove.” *McCuiston*, 174 Wn.2d at 382 (emphasis in original). “In determining whether probable cause exists, the trial court is entitled to consider all

of the evidence, including evidence submitted by the State.” *Id.*; *see also In re Pers. Restraint of Meirhofer*, 182 Wn.2d 632, 638, 343 P.3d 731 (2015).

“Mere conclusory statements are insufficient to establish probable cause.” *In re Jacobson*, 120 Wn. App. 770, 780, 86 P.3d 1202 (2004). The trial court “must be permitted to look at the facts contained in the report to decide whether they support the expert’s conclusions.” *Id.* After making that determination, the court can decide whether the evidence, if believed, amounts to probable cause. *Id.* A trial court’s determination as to whether evidence establishes probable cause is subject to de novo review. *McCouston*, 174 Wn.2d at 382.

B. The Trial Court Properly Found that Taylor-Rose Failed to Meet His Burden to Obtain an Unconditional Release Trial

The trial court properly found that Taylor-Rose failed to meet his prima facie burden for an unconditional release trial. In order to meet his burden, Taylor-Rose must present sufficient facts to show a “substantial change” in his mental condition since his 2015 trial due to a “positive response to continuing participation in treatment.” RCW 71.09.090(4). The trial court correctly concluded that Taylor-Rose failed to meet this burden.

1. Dr. Franklin Failed to Identify Sufficient Facts to Show a Substantial Change in Taylor-Rose’s Mental Condition

The trial court properly found that Dr. Franklin failed to identify sufficient facts to support the conclusions reached. *See* CP at 17.

Taylor-Rose did not meet his burden of showing a “substantial change” in his mental condition due to treatment.

Mere conclusory statements are insufficient to meet Taylor-Rose’s burden for a new trial. *See Jacobson*, 120 Wn. App. at 780. The trial court must look at the facts in the evaluation and determine if they support the expert’s conclusion. *Id.* Dr. Franklin did not address Taylor-Rose’s “change through treatment” until page 46 of her 48-page evaluation. *See CP* at 148-50. In her three-page analysis, Dr. Franklin failed to provide any facts to support a substantial change in Taylor-Rose’s mental condition due to the positive effects of treatment.

Although Dr. Franklin ultimately concluded that Taylor-Rose has “so changed through sex-offender-specific treatment” that he no longer meets the definition of an SVP, she failed to articulate facts to show a “substantial change” in his condition. *See CP* at 150. Rather, Dr. Franklin merely indicated that Taylor-Rose has “actively participated” in treatment for the past three years and that he has reached the “action stage” of change, meaning that he “recognizes the need for change, has made a decision to take steps toward change, and is actively in the process of working to positively modify his behavior.” *CP* at 149. She also reported that Taylor-Rose is “highly engaged” in treatment and is “working to understand” the issues that contributed to his offending. *Id.*

Taylor-Rose must show a nexus between treatment and a change in mental condition such that the substantial change was *driven by* a positive response to the treatment. *See Meirhofer*, 182 Wn.2d at 646. Recognizing the “need” to change and making “a decision to take steps toward change” is a far cry from showing a “substantial change.” Taylor-Rose cannot meet his burden by merely claiming that he is actively participating in treatment and wants to change. Nor can he meet his burden by claiming that he is *working* on understanding the issues that caused him to offend. Dr. Franklin referred to these facts as being among “his most prominent areas of treatment progress,” yet they do not rise to the level of suggesting a “substantial change” in his condition. *See* CP at 149. On the contrary, these facts merely indicated that although he wants to change, he has not yet changed and still does not understand what caused him to commit sexual assaults. In fact, Taylor-Rose admitted that he does not know what led to his offending. CP at 69.

“In determining whether probable cause exists, the trial court is entitled to consider all of the evidence, including evidence submitted by the State.” *McCustion*, 174 Wn.2d at 382. The 2016 DSHS annual review evaluation indicates that Taylor-Rose is in the “early stages of treatment” and has not completed some of the most essential treatment assignments. CP at 482, 485-86. Similarly, the 2017 DSHS annual review indicates that Taylor-Rose is only in the “beginning stages” of treatment and is “*beginning* to make changes that will benefit his treatment progress.”

CP at 68-69 (emphasis added). According to this annual review, Taylor-Rose has not progressed in treatment far enough to identify his sexual offense cycle, risk factors related to re-offense, or adequate interventions to prevent re-offense. CP at 69. He has not been using treatment to address his sexual deviancy, sexual management struggles, or other areas of risk. CP at 68. Dr. Franklin's evaluation is consistent with these findings. *See* CP at 148-50.

Dr. Franklin reported that Taylor-Rose has completed *drafts* of three major treatment assignments: My Change, Good Life plan, and a sexual and life history autobiography. CP at 124. First, as draft versions, these assignments have not been completed. Second, the record shows that although he has started his autobiography, he has "not yet begun his sexual autobiography." CP at 69. Finally, Dr. Franklin's description of the "My Change" assignment shows that this assignment merely addresses what Taylor-Rose *wants* to learn in treatment, as opposed to reflecting any *actual* change in his condition. *See* CP at 124-25. Dr. Franklin's reliance on these treatment assignments do not support a conclusion that Taylor-Rose's mental condition has substantially changed due to the positive effects of treatment.

Taylor-Rose's reliance on *In re Det. of Ambers*, 160 Wn.2d 543, 158 P.3d 1144 (2007) is misplaced, as the facts here do not resemble those in *Ambers*. Ambers had been committed as an SVP for seven years before petitioning for unconditional release. *Id.* at 546. Ambers was in treatment for "quite a number of years" and made so much treatment progress that he was

granted a conditional release into the community. *See id.* at 546, n. 1, 558-59. Ambers' expert discussed how "beneficial" these years of treatment were and opined that Ambers' "condition has changed since his commitment" due to a positive response to continuing participation in treatment. *Id.* at 558-59. Unlike Ambers, Taylor-Rose "is far from ready to transition" to conditional release and had only participated in treatment for eighteen months when Dr. Franklin opined that he had "so changed." *See CP* at 489; *see also CP* at 102-50. Despite opining that he has changed, Dr. Franklin did not address how beneficial treatment had been for Taylor-Rose and did not link any change in his mental condition to the positive effects of treatment.

2. Dr. Franklin Failed to Show a Substantial Change in Condition Since Trial

In order to meet his burden for a new trial, Taylor-Rose must show not only that his mental condition substantially changed due to treatment, but also that this change occurred *after* his August 2015 trial. *See RCW 71.09.090(4)*. Probable cause exists to believe that a person's mental condition has substantially changed only when there is current evidence showing that the change occurred "since the person's last commitment trial" due to a positive response to treatment. *RCW 71.09.090(4)*. Dr. Franklin failed to address this statutory requirement and failed to identify changes in his mental condition that occurred since trial. *See CP* at 148-50.

Rather than addressing the proper timeframe for treatment-based change, Dr. Franklin improperly focused on Taylor-Rose's overall treatment participation, including treatment that occurred prior to trial. *See* CP at 148-50. Rather than identifying treatment-based changes that occurred after trial, Dr. Franklin discussed his treatment participation "for the past three years." CP at 148-49. Under the statute, this is insufficient to meet his burden for a new trial. Any treatment Taylor-Rose participated in prior to trial would have already been considered by the jury and factored into its conclusion that Taylor-Rose has a mental condition that makes him likely to reoffend.

The Legislature requires SVPs to show a treatment-based change in order to address the "very long term" needs of the SVP population for treatment. *McCuiston*, 174 Wn.2d at 389-90; *see* RCW 71.09.010. Taylor-Rose's last commitment trial occurred in August 2015, which was merely eighteen months prior to Dr. Franklin's evaluation. *See* CP at 34, 102. Dr. Franklin failed to articulate treatment-based changes that occurred since his trial. This is insufficient to meet his burden of showing a substantial change in his mental condition based on a positive response to treatment since the August 2015 trial.

3. Dr. Franklin’s Rejection of Taylor-Rose’s Pedophilia Diagnosis is a Collateral Attack on His Commitment

Dr. Franklin’s disagreement with Taylor-Rose’s pedophilia diagnosis was an improper collateral attack on his commitment and did not demonstrate the required change for a new trial. *See McCuiston*, 174 Wn.2d at 382. Once a fact-finder has determined that an individual meets the criteria for commitment as an SVP, the court accepts this conclusion as a verity in determining whether he is mentally ill and dangerous at a later date. *Id.* at 385. A trial court is not required to discredit the original verdict when presented with a contrary opinion. *Id.* at 383. Thus, Dr. Franklin’s disagreement with previous experts about Taylor-Rose’s mental condition was not grounds for relitigating a settled issue. *See id.*

A showing that Taylor-Rose no longer meets commitment criteria requires a showing of change. *See id.* at 385. Rather than articulating a change in his mental condition, Dr. Franklin collaterally attacked the basis for his commitment by opining that his pedophilia diagnosis is “weak” and unsupported. *See CP* at 142.⁶ She opined that a pedophilia diagnosis “should not rest upon a weak foundation of one or two instances of inappropriate touching, committed many years apart under conditions

⁶ Although Dr. Franklin did not collaterally attack the personality disorder diagnosis, she never opined that this had changed due to *treatment*. Rather, she diagnosed him with a personality disorder and opined that the symptoms gradually declined over time based on his *age*. *See CP* at 140, 145.

of intoxication, and strung together with uncorroborated hearsay based on unreliable self-report.” CP at 142. This collateral attack failed to demonstrate the type of treatment-based change required by the statute and instead focused on what Dr. Franklin believes are the flaws in assigning a pedophilia diagnosis.

Recognizing this as an improper collateral attack, the trial court noted that it presided over the initial commitment trial and observed the testimony of both sexual assault victims and that it did not consider those criminal convictions as “weak.” CP at 22-24. The trial court properly concluded that Dr. Franklin’s opinion was a collateral attack on the initial commitment, rather than showing meaningful facts regarding change due to treatment. *See* CP at 17, 24.

4. Dr. Franklin Relied on Facts About Taylor-Rose’s Behavior That Were Neither Accurate Nor Current

The information relied on by Dr. Franklin about Taylor-Rose’s behavior at the SCC was no longer current or accurate at the time of the show cause hearing. In order to obtain a new trial, Dr. Franklin must provide “current evidence” of a change in Taylor-Rose’s mental condition since trial. *See* RCW 71.09.090(4)(b).

The trial court may not weigh conflicting *opinions* of different evaluators at the show cause hearing. *In re Det. of Elmore*, 162 Wn.2d 27, 37, 168 P.3d 1285 (2007). However, the court may properly

look to the underlying *facts* to determine whether they support the expert's conclusions. *Jacobson*, 120 Wn. App. at 780. This includes evidence submitted by the State. *McCuiston*, 174 Wn.2d at 382.

Dr. Franklin completed her evaluation in February 2017. *See* CP at 102. Taylor-Rose did not schedule a hearing to address this evaluation until November 2017. *See* CP 405-06. Due to Taylor-Rose's nine-month delay in scheduling the hearing, Dr. Franklin's evaluation was no longer current because it relied on inaccurate facts. Dr. Franklin reported that Taylor-Rose is committed to his sobriety and "has been drug- and alcohol-free for more than two years." CP at 150.⁷ She opined that this is a "significant area of reduced risk." CP at 150. However, two months after Dr. Franklin reported these facts, Taylor-Rose tested positive for amphetamine and MDA. *See* CP at 38, 47.⁸ Thus, Dr. Franklin's opinion about the importance of Taylor-Rose's sobriety was not supported by the factual record. His continued use of illegal drugs indicates that he is unable to manage this risk factor even while confined in a highly secure facility. CP at 68.

⁷ Dr. Franklin reported that Taylor-Rose admitted to using drugs and alcohol at the SCC, but that he reported quitting in September 2014. CP at 127.

⁸ MDA refers to "methylenedioxyamphetamine," which is used illicitly as a hallucinogenic. "MDA." *Merriam-Webster Dictionary*, Merriam-Webster.com, <https://www.merriam-webster.com/medical/methylenedioxyamphetamine> (last visited Sep. 7, 2018).

Similarly, Dr. Franklin concluded that Taylor-Rose’s “ability to obey rules and avoid infractions is substantially improved, such that he is no longer incurring frequent behavioral infractions.” CP at 150; *see also* CP at 126-27. However, the factual record does not support this opinion. The 2017 annual review indicated that Taylor-Rose continued to receive multiple infractions and that he had “continued significant difficulty” following the rules at the SCC. CP at 46-48, 63-65. Although Dr. Franklin reported that his rule compliance resulted in an increase to privilege level 4, his privilege level was subsequently reduced on multiple occasions in 2017, resulting in privilege level 2. *See* CP at 45-47, 126-27.

The statute requires that an evaluator provide “current evidence” to support the conclusions reached. RCW 71.09.090(4). Dr. Franklin’s opinion was based on a faulty premise because she relied on outdated and inaccurate facts that were no longer current. Although the trial court may not weigh conflicting *opinions* of evaluators or judge the credibility of an expert’s conclusion, the court does not engage in improper weighing by looking at whether the *facts* support the conclusions reached. *See Elmore*, 162 Wn.2d at 37; *see also Jacobson*, 120 Wn. App. at 780-81. By relying on outdated and inaccurate facts, Dr. Franklin’s evaluation was not based on “current evidence” and was insufficient to meet Taylor-Roses’ burden for a new trial.

Moreover, evidence of good behavior at the SCC does not establish probable cause to believe a person's mental condition has changed such that he no longer meets SVP criteria. *See McCuiston*, 174 Wn.2d at 383. Rather, this merely demonstrates that the person behaves appropriately in a secure and highly structured environment. *See id.*

5. The Facts Relied on by Dr. Franklin Do Not Support the Conclusion that Taylor-Rose's Mental Condition Has Substantially Changed

The facts relied on by Dr. Franklin do not support the conclusion that there has been a "substantial change" in Taylor-Rose's mental condition since trial due to treatment. Dr. Franklin relied on the 2016 annual review in an attempt to bolster her opinion that Taylor-Rose has changed. *See* CP at 124-26. She reported that the treatment provider, Dr. Lopez, described Taylor-Rose's treatment participation in "generally favorable terms." CP at 125. However, Dr. Lopez's summary of his treatment progress does not support a substantial change in condition due to treatment. *See* CP at 470-73, 488.

Dr. Lopez described Taylor-Rose as being in the "contemplation stage in treatment, a treatment stage characterized by ambivalence and vacillation about addressing issues." CP at 470. "Although he expresses a *desire* to make progress, he struggles to follow through with this desire." CP at 470 (emphasis added). Dr. Lopez reported that although he has been an active treatment participant, he continues to experience motivational and treatment

readiness issues that need to be addressed if he is going to progress in treatment. CP at 471. She “does not currently perceive him as wholly invested and committed to the therapeutic change process” and identified numerous issues that he needs to address in order to make progress in treatment. *See* CP at 472.

Rather than showing a substantial change in mental condition, these facts suggest that although he is “participating reasonably well in treatment” in light of his Phase 2 status, he still needs to address a number of treatment-related issues and fully engage in the therapeutic change process in order to show a substantial change in his condition. *See* CP at 470-73, 482-90. Taylor-Rose has remained in Phase 2 of treatment, a beginning level phase, since he started treatment. *See* CP at 45, 48, 51, 470-71.

Furthermore, Taylor-Rose’s reported sexual interest in adult males does not provide evidence of a substantial change in mental condition because the record does not suggest that his sexual attraction to children used to be exclusive. *See* CP at 54-55, 476 (diagnosing pedophilia, “Nonexclusive Type”). He has a history of engaging in sexual activity with adult males while in prison and at the SCC. *See* CP at 42, 118, 122, 142, 480. Thus, this does not reflect a change in condition since trial due to treatment. In addition, while the most recent penile plethysmograph (PPG) test reportedly showed sexual arousal to male adults engaged in consensual sexual behavior, it did not

conclude that there was no arousal to all prepubescent children as Dr. Franklin asserted. *See* CP at 126, 473. Rather, the PPG evaluator limited his findings to prepubescent males and females “in the preschool to grammar school ranges[.]” CP at 473. While at the SCC, Taylor-Rose reported that his preferred victim age range is “age 12-16.” CP at 43. Thus, the evaluator either did not conduct testing on this age range or did not report his findings regarding this age range.

Despite Taylor-Rose’s repeated admissions to sexually assaulting multiple children and experiencing ongoing fantasies of sexual activity with children over the years,⁹ he now denies committing nearly all of these offenses, denies a history of arousal to children, and refuses to acknowledge a former or current problem with sexual deviancy. When asked when this change in his self-report occurred, he said that his attorney pointed out that those statements were only his self-report and there was no other documentation to indicate they occurred. *See* CP at 53. Rather than reflecting a change in his mental condition due to the positive effects of treatment, these denials reflect a regression in treatment and raise transparency concerns that create a “treatment roadblock.” *See* CP at 485.

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⁹ He passed a polygraph examination about this history. *See* CP at 44, 53.

V. CONCLUSION

For the foregoing reasons, this Court should affirm the trial court's order denying an unconditional release trial. The trial court properly concluded that Taylor-Rose failed to present prima facie evidence of a substantial change in his mental condition since trial due to treatment.

RESPECTFULLY SUBMITTED this 19th day of September, 2018.

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NO. 51246-7-II

WASHINGTON STATE COURT OF APPEALS, DIVISION II

In re the Detention of:

Brian Taylor-Rose,

Appellant.

DECLARATION OF
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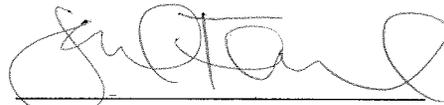
I, Jade Freund, declare as follows:

On September 19, 2018, I sent via electronic mail, per service agreement, a true and correct copy of Brief of Respondent and Declaration of Service, addressed as follows:

Jodi Backlund & Manek Mistry
backlundmistry@gmail.com

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

DATED this 19th day of September, 2018, at Seattle, Washington.



JADE FREUND

WASHINGTON STATE ATTORNEY GENERAL'S OFFICE - CRIMINAL JUSTICE DIVISION

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