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No. 51826-1-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

In re the Detention of

Michael Canty,

Appellant.

Clark County Superior Court Cause No. 16-2-01450-3

The Honorable Judge Derek Vanderwood

Appellant's Reply to Supplemental Brief

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ARGUMENT

MR. CANTY WAS NOT REQUIRED TO WAIT A YEAR FOLLOWING COMMITMENT BEFORE SEEKING CONDITIONAL RELEASE.

The plain language of RCW 71.09.090 places no temporal restriction on a patient's ability to seek conditional release following commitment. RCW 71.09.090(2)(d). Nor does the holding of any Supreme Court decision require a person eligible for conditional release to endure total confinement at the Special commitment Center (SCC) until the department completes its first annual review.

Respondent "concedes that *Brooks* is not dispositive of the issue." Supplemental Brief of Respondent, p. 5 (citing *In re Detention of Brooks*, 145 Wn.2d 275, 287, 36 P.3d 1034 (2001), *overruled by In re Det. of Thorell*, 149 Wn.2d 724, 72 P.3d 708 (2003)). Instead, Respondent suggests that any position taken by the *Brooks* court "is directly inconsistent with *Thorell* and is thus overruled." Brief of Respondent, p. 4.

In fact, neither case made any holding with respect to the question presented in Mr. Canty's case. *Brooks* involved the admission of less restrictive alternative (LRA) evidence at the initial commitment trial.¹ *Brooks*, 145 Wn.2d at 281.

¹ In addition, the opinion predated the provision at issue here (RCW 71.09.090(2)(d)).

Similarly, *Thorell* involved an equal protection challenge to a statute “prohibit[ing] consideration of LRAs at the initial commitment trial.”² *Thorell*, 149 Wn.2d at 751. The issue addressed in *Thorell* was “whether the fact finder must consider less restrictive alternatives (LRAs) to total confinement during the initial commitment hearing.” *Thorell*, 149 Wn.2d at 730.

The *Thorell* court rejected the equal protection challenge and upheld the prohibition. *Id.*, at 753. It did not mention RCW 71.09.090(2)(d) and did not purport to offer an interpretation of that provision.

The *Thorell* court did not address the issue presented here. Any language supporting Respondent’s position is *dicta*, because it is “not necessary to the court’s decision.” *State v. Burch*, 197 Wn. App. 382, 403, 389 P.3d 685 (2016). It is “not binding authority.” *Id.*

In the absence of any controlling authority, the issue here must be resolved by examining the plain language of RCW 71.09.090(2)(d). The provision applies when a patient has not previously sought conditional release. RCW 71.09.090(2)(d).

² The detainees in *Thorell* sought to compare civil commitment under Chapter 71.09 RCW with involuntary treatment under Chapter 71.05 RCW. *Thorell*, 149 Wn.2d at 751.

Under the statute's plain language, the trial court "shall consider" a petition for conditional release if the patient submits a qualifying plan. RCW 71.09.090(2)(d). The provision does not require the patient to wait a year before submitting a petition.

The trial court's decision must be reversed.

CONCLUSION

No statutory provision imposes a waiting period on a patient's right to seek conditional release following commitment. Nor are there any cases controlling the issue presented here.

The *Thorell* court did not purport to discern a waiting period from the statutory scheme; it merely concluded that the legislature could constitutionally bar consideration of conditional release at the initial commitment trial.

The trial court should have considered Mr. Canty's petition for conditional release. Its decision in this case must be reversed.

Respectfully submitted on October 14, 2019,

BACKLUND AND MISTRY



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A handwritten signature in blue ink that reads "Manek R. Mistry". The signature is fluid and cursive, with the first name "Manek" and last name "Mistry" clearly legible.

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CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Reply to Supplemental Brief, postage prepaid, to:

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With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

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I filed the Appellant's Reply to Supplemental Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on October 14, 2019.



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BACKLUND & MISTRY

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