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COA NO. 52493-7-II

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

IN RE DETENTION OF MICHAEL A. MCHATTON:

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL A. MCHATTON,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable James Orlando, Judge

SUPPLEMENTAL BRIEF OF APPELLANT

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A. ISSUE

Whether the superior court's revocation of a less restrictive alternative placement under chapter 71.09 RCW is appealable as a matter of right under RAP 2.2?

B. ARGUMENT

1. THE ORDER REVOKING THE LESS RESTRICTIVE ALTERNATIVE IS APPEALABLE AS A MATTER OF RIGHT.

RAP 2.2 sets forth a list of orders that are appealable as a matter of right. The order revoking McHatton's less restrictive alternative (LRA) and committing him to total confinement is appealable as a matter of right because it is an order of commitment under RAP 2.2(a)(8) or a final order after judgment under RAP 2.2(a)(13).

a. Order of Commitment

The language of a court rule "must be given its plain meaning according to English grammar usage. When the language of a rule is clear, a court cannot construe it contrary to its plain statement." State v. Raper, 47 Wn. App. 530, 536, 736 P.2d 680, review denied, 108 Wn.2d 1023 (1987). Under RAP 2.2(a)(8), a party may appeal an "*Order of Commitment*." The plain language of RAP 2.2(a)(8) allows for appeal of "[a] decision ordering commitment, entered after a sanity hearing or after a sexual predator hearing."

The LRA revocation hearing is a type of sexual predator hearing. RCW 71.09.098(5) ("At any hearing to revoke or modify the conditional release order: . . . "). An LRA revocation order is an order of commitment. See RCW 71.09.098(8) ("A person whose conditional release has been revoked shall be remanded to the custody of the secretary for control, care, and treatment in a total confinement facility"). The trial court ordered McHatton's confinement at the Special Commitment Center. CP 638.

The State primarily relies on In re Detention of Petersen, 138 Wn.2d 70, 980 P.2d 1204 (1999) to argue an order revoking an LRA is not appealable as of right. Petersen held there is no right to appeal a trial court's probable cause decision at the annual show cause stage under RCW 71.09.090. Petersen, 138 Wn.2d at 95. Petersen did not address an LRA revocation order, which involves a separate proceeding.

Petersen explained "[a]n order denying a petition for a show cause hearing is not an 'order of commitment'" because "[t]he show cause hearing is in the nature of a summary proceeding wherein the trial court makes a threshold determination of whether there is evidence amounting to probable cause to hold a full hearing." Id. at 85-86.

By contrast, revocation of an LRA order is not a summary proceeding. Revocation takes place only after an evidentiary hearing is

held, the trial court weighs the evidence, and from that determines whether the State has met its burden of proof such that revocation of the LRA and return to total confinement is appropriate. RCW 71.09.098(5), (6).

The State contends the LRA revocation hearing is summary procedure akin to denial of an evidentiary hearing at the annual show cause stage. It does not explain how this so.

The annual show cause proceeding "is a summary proceeding designed to determine if an evidentiary hearing on the merits as to the person's condition is warranted." Petersen, 138 Wn.2d at 83. This hearing is limited to verification of the detainee's identity and the determination of probable cause. In re Pers. Restraint of Young, 122 Wn.2d 1, 46, 857 P.2d 989 (1993). In determining probable cause, a court cannot "weigh and measure asserted facts against potentially competing ones." State v. McCuiston, 174 Wn.2d 369, 382, 275 P.3d 1092 (2012) (quoting In re Detention of Petersen, 145 Wn.2d 789, 797, 42 P.3d 952 (2002)). The court thus does not weigh competing expert opinions or resolve evidentiary disputes. In re Detention of Elmore, 162 Wn.2d 27, 37, 168 P.3d 1285 (2007). Rather, the court "must assume the truth of the evidence presented" and from that determine whether probable cause is satisfied, such that an evidentiary hearing is required to ultimately

determine whether unconditional release or an LRA is appropriate. McCouston, 174 Wn.2d at 382.

It thus becomes clear why McHatton's revocation hearing was not a summary proceeding. Witnesses testified at the revocation hearing. The judge, as trier of fact, weighed and resolved competing evidence, including the expert testimony offered by McHatton, listened to each side's argument about what should be done with the LRA, and entered findings of fact and conclusions of law based on its resolution of the evidence in its order revoking the LRA. That the LRA revocation proceeding is not a summary proceeding supports the conclusion that the revocation order is appealable as of right.

Petersen, in holding there is no right to appeal the denial of an evidentiary hearing at the annual show cause stage, relied in large measure on the nature of that proceeding. Petersen, 138 Wn.2d at 85. It observed "such commitments are of an indefinite duration, persisting 'until such time as the person's mental abnormality or personality disorder has so changed that the person is safe either (a) to be at large, or (b) to be released to a less restrictive alternative as set forth in RCW 71.09.092.'" Id. at 78 (quoting RCW 71.09.060(1) (emphasis added). Petersen thus drew a distinction between the initial commitment order, which subjects the person to indefinite confinement, and *release from indefinite*

confinement via a less restrictive alternative placement. Annual reviews do not change the indefinite nature of the commitment. Id. at 83. The LRA does, as recognized by Petersen: "the statutory scheme of chapter 71.09 RCW provides for commitment of a sexually violent predator for an indefinite period, *until that person's condition has changed sufficiently that he or she is safe to be either at large or in a less restrictive setting.*" Petersen, 138 Wn.2d at 82. It is that distinction that separates the LRA revocation order from the mere denial of an evidentiary hearing at the show cause stage.

In holding RAP 2.2(a)(8) does not apply to orders finding no probable cause at the annual review stage, Petersen relied on what it described as the "analogous statutory scheme" for dependency review hearings analyzed in In re Dependency of Chubb, 112 Wn.2d 719, 773 P.2d 851 (1989). Petersen, 138 Wn.2d at 86. The comparison helps show why an LRA revocation order is appealable as a matter of right.

Under Chubb, "[t]he juvenile court is not required to make the determination of dependency anew at each hearing. Its function is to determine whether court supervision should *continue*. Essentially, if this supervision is to continue, then what the juvenile court has decided is to abide by the status quo: the determination of dependency." Chubb, 112 Wn.2d at 724. "The language of RAP 2.2(a) and RCW 13.34.130

indicates that appeal by right applies only to the disposition decision following the finding of dependency or to a marked change in the status quo, which in effect amounts to a new disposition." Id. at 724-25. Petersen saw "no principled distinction" between the analysis in Chubb and the review of an adverse probable cause determination under chapter 71.09 RCW. Petersen, 138 Wn.2d at 87.

There is a principled distinction when it comes to LRA revocation orders. An order finding no probable cause and denying a new trial at the show cause stage does not change the status quo. Petersen, for example, remained in total confinement following the denial of his show cause petition. The show cause order changed nothing. An order revoking an LRA, however, significantly alters the status quo. It removed McHatton from the community and placed him back into total confinement. Unlike in Petersen and Chubb, where the trial court simply abided by the status quo in entering its order, a trial court's LRA revocation markedly changes the status quo by requiring removal from the community and placement into total confinement. A "marked change in the status quo," which in effect amounts to a new disposition, is appealable as a matter of right. Chubb, 112 Wn.2d at 725.

Citing to a 1994 draft comment, Petersen stated "our initial intent was to provide an appeal as of right only from the initial commitment

order that followed the full evidentiary adjudication of an individual as a sexually violent predator." Petersen, 138 Wn.2d at 85. The State seizes on the word "only" to argue LRA revocation order are not commitment orders. Petersen, though, had no occasion to consider whether LRA revocation orders qualify as an order of commitment under RAP 2.2(a)(8). "By necessity, judicial opinions focus on the case, facts, and parties at hand, and any opinion reflects that focus." Washburn v. City of Federal Way, 178 Wn.2d 732, 751-52, 310 P.3d 1275 (2013). Petersen, in deciding whether denial of an evidentiary hearing at the annual review stage is appealable, focused its analysis by contrasting such a denial with appeal from an initial commitment order. It had no cause to consider whether appeal from an LRA revocation was available, and whether an LRA revocation order qualifies as a commitment order. "In cases where a legal theory is not discussed in the opinion, that case is not controlling on a future case where the legal theory is properly raised." Berschauer/Phillips Constr. Co. v. Seattle Sch. Dist. No. 1, 124 Wn.2d 816, 824, 881 P.2d 986 (1994).

The plain language of RAP 2.2(a)(8) is not as restrictive as the State wishes, as Petersen itself recognized. Petersen noted an order of commitment following an evidentiary hearing held pursuant to RCW 71.09.090, at which the State has the burden of proof, would arguably be

appealable as a matter of right as well, even though commitment status remains unchanged. Id. at 84, 87 n.13. Although the State seeks to downplay the Supreme Court's observation because it did not decide the issue, the Court of Appeals subsequently endorsed this "strongly suggested" view by incorporating it into its appealability analysis. State v. Coleman, 6 Wn. App.2d 507, 513, 431 P.3d 514 (2018), review denied, 193 Wn.2d 1005, 438 P.3d 122 (2019). Orders issued following an RCW 71.09.090 evidentiary hearing are routinely appealed as of right, with no challenge from the State.¹

The point is that an "order of commitment" under RAP 2.2(a)(8) is not limited to the initial commitment order issued under chapter 71.09 RCW. Here, the initial commitment order required McHatton to be in total confinement. CP 633. He subsequently achieved freedom from total confinement via his LRA. Following an evidentiary hearing, the trial court revoked his LRA and ordered McHatton back into total confinement. CP 638. The change in confinement status following an evidentiary

¹ See, e.g., In re Detention of Harell, 5 Wn. App. 2d 357, 367-68, 426 P.3d 260 (2018), review denied, 192 Wn.2d 1019, 433 P.3d 809 (2019); In re Detention of Belcher, 196 Wn. App. 592, 597, 385 P.3d 174 (2016), aff'd, 189 Wn.2d 280, 399 P.3d 1179 (2017); In re Detention of Bergen, 146 Wn. App. 515, 520, 195 P.3d 529 (2008), review denied, 165 Wn.2d 1041, 205 P.3d 132 (2009).

hearing — one that is not of a summary nature — triggers appealability under RAP 2.2(a)(8).

The State contends an LRA revocation order is not an "order of commitment" under RAP 2.2(a)(8) because it does not change McHatton's commitment status. According to the State, only an order that changes commitment status, as opposed to LRA status, is appealable as a matter of right under RAP 2.2(a)(8), citing In re Detention of Jones, 149 Wn. App. 16, 30, 201 P.3d 1066 (2009).

Care must be taken in lifting language from a decision that addressed a different issue and applying it to a different legal question. In rejecting the State's claim that Jones did not establish probable cause for an LRA trial, the Jones court interpreted the phrase "commitment trial proceeding" in former RCW 71.09.090(4)(a) to mean something different than an LRA revocation proceeding. Jones, 149 Wn. App. at 30. In this context, Jones observed "an SVP's commitment status is not at issue at an LRA revocation hearing" and "[w]hether or not the court decides to revoke the LRA, the SVP remains a 'committed person.'" Id.²

Jones neither addressed appealability of an LRA revocation order nor the meaning of an "order of commitment" under RAP 2.2(a)(8).

² The legislature subsequently amended the statute to expressly include LRA revocation proceedings. RCW 71.09.090(4)(a).

Petersen did, and its analysis is more nuanced than the State would have it. If deciding the question of appealability were a simple matter of determining whether an order changes a person's "commitment status," then there is no reason why Petersen would justify its holding by tying it to what it described as the analytically indistinguishable decision in Chubb. Petersen, 138 Wn.2d at 87. The reasoning in Chubb, considered in conjunction with Petersen, shows why a change in LRA status constitutes a marked change in the status quo such that the LRA revocation order is a commitment order under RAP 2.2(a)(8). In determining appealability, Petersen relied on the nature of the proceeding at issue, and specifically contrasted the denial of an evidentiary hearing, which does not alter the petitioner's indefinite confinement status, with release from indefinite confinement by means of an LRA. Petersen, 138 Wn.2d at 82-83.

Petersen reasoned "[b]ecause it can result in a person's indefinite confinement, there should clearly be a right to appeal the commitment order." Petersen, 138 Wn.2d at 85. When a trial court simply denies an evidentiary hearing on whether release is appropriate at the show cause stage, nothing about the person's confinement status has changed. An LRA, however, releases the person from indefinite confinement. Revocation of the LRA places the person back into indefinite

confinement. Revocation removed McHatton from the community and put him back at the SCC, potentially for the rest of his life. Following the logic of why RAP 2.2(a)(8) was inserted, McHatton should have the right to appeal the revocation order because it constitutes a commitment order. Unlike the denial of an evidentiary hearing at the show cause stage, LRA revocation following an evidentiary hearing affects a substantial liberty interest and significantly changes the status quo, once again subjecting the person to indefinite confinement.

b. Final order after judgment.

Alternatively, the LRA revocation order is appealable as a final order after judgment under RAP 2.2(a)(13). That provision permits appeal of "[a]ny final order made after judgment that affects a substantial right."

A final order entered after judgment is appealable under RAP 2.2(a)(13) "if it affects a right other than those adjudicated by the earlier final judgment." State v. Campbell, 112 Wn.2d 186, 190, 770 P.2d 620 (1989) (citing Seattle-First Nat. Bank v. Marshall, 16 Wn. App. 503, 508, 557 P.2d 352, 355 (1976)). To appeal "from orders entered subsequent to a final judgment, the record must demonstrate that the later order prejudicially affects a substantial right other than rights adjudicated by the earlier final judgment." Seattle-First Nat. Bank, 16 Wn. App. at 508.

There is no debate that revocation of McHatton's LRA affects a substantial right that was not adjudicated at the original commitment hearing. While there is no liberty interest in an LRA before one is granted, an order revoking an LRA deprives the person of a liberty interest in conditional release. In re Detention of Wrathall, 156 Wn. App. 1, 6-7, 232 P.3d 569 (2010). An order revoking an LRA requires the person be returned to total confinement. RCW 71.09.098(8). That person remains committed unless and until at some future date he is once again able to satisfy the requirements of RCW 71.09.090 and RCW 71.09.092 providing for release to an LRA. RCW 71.09.098(8). Wrathall equated the revocation of an LRA with the revocation of parole. Wrathall, 156 Wn. App. at 6-7. The revocation of parole has long been reviewed as appealable as a matter of right. State v. Pilon, 23 Wn. App. 609, 611, 596 P.2d 664 (1979). The confinement resulting from the order in question establishes the substantial right at stake, making the order appealable.

A final judgment or order "leaves 'nothing else to be done to arrive at the ultimate disposition of the petition.'" Coleman, 6 Wn. App.2d at 511 (quoting State v. Gossage, 138 Wn. App. 298, 302, 156 P.3d 951 (2007), rev'd in part on other grounds, 165 Wn.2d 1, 195 P.3d 525 (2008)). The "petition" at issue here is the State's petition to revoke McHatton's LRA. The court granted that petition and ordered McHatton's commitment to the

SCC. By granting the State's petition, nothing else was to be done to arrive at the ultimate disposition of that petition and McHatton's LRA. The order is therefore final.

Per Petersen, "[a] decision under RCW 71.09.090(2) finding no probable cause is not a final order after judgment in light of the court's continuing jurisdiction over the committed persons until their unconditional release," as it "disposes only of the petition before the trial court and achieves no final disposition of the sexually violent predator." Petersen, 138 Wn.2d at 88. In that context, the denial of an evidentiary hearing is simply "an interlocutory order." Id. Here, by contrast, the order granting the State's petition and revoking McHatton's LRA is a final disposition of the SVP's LRA. McHatton succeeded in obtaining release from confinement via his LRA. The revocation order takes that away.

Again, Petersen analogized to Chubb. Petersen, 138 Wn.2d at 86-87. In Chubb, the Supreme Court held periodic review orders in dependency proceedings were not "final" because the dependency statute "mandates that review hearings occur every 6 months after the original disposition. This review process continues until either the status quo changes and the court decides that its supervision should not continue or until a petition for termination is made. Because they take place on an ongoing process, the review hearings and the orders issued from them are

interlocutory: they are not final, but await possible revision in the next hearing." Chubb, 112 Wn.2d at 724.

There is no "next hearing" for McHatton at which the trial court may revise its determination that his LRA should be revoked. There is nothing more for the trial court to do in terms of revocation. Chubb reasoned the function of the review hearing is to "determine whether court supervision should *continue*," and, when it makes that determination, it has decided "to abide by the status quo." Chubb, 112 Wn.2d at 724. This is the context in which Petersen held denial of a hearing at the show cause stage was not a final order because of the court's continued jurisdiction.

Petersen is a review hearing case. Chubb, upon which Petersen relies, is a review hearing case. The driving force behind Petersen and Chubb is the certainty of future, regularly occurring proceedings mandated by statute at which the same issue could be litigated. See Gossage, 138 Wn. App. 298, 302 n.7 ("A renewed petition for termination of registration obligations is a mere potentiality, dependent entirely on the offender filing anew, whereas in Petersen [and] Chubb, . . . future proceedings were certain."). There can be no finality when the same petition is brought again and again on a regularly recurring basis as mandated by statute. The State's petition to revoke McHatton's LRA stands on a different footing. The order granting that petition is a one-time event.

State v. Howland, 180 Wn. App. 196, 198, 321 P.3d 303 (2014), review denied, 182 Wn.2d 1008 (2015) held the trial court's order dismissing an insanity acquittee's petition for conditional release under chapter 10.77 RCW was not appealable. Howland relied on Petersen to conclude the order was not "final" under RAP 2.2(a)(13) because the trial court has continuing jurisdiction over the petitioner, who may bring the same petition for conditional release every six months as authorized by statute. Id. at 202-03.

McHatton has shown why the analysis in Petersen supports the conclusion that an order revoking an LRA, as opposed to an order that merely denies the request for conditional release, is appealable as a matter of right. Unlike Howland, McHatton was not the petitioner at the trial level. He did not petition for anything. Rather, he defended against the State's petition to take away his LRA. And unlike Howland, where the petitioner could bring the same claim again and again, McHatton does not enjoy the luxury of undoing the revocation at some future proceeding. The revocation order is a one and done deal. While he can petition for conditional release in the future, there are formidable barriers to obtaining a new LRA once a previous LRA is revoked, including showing change through treatment and a placement that meets specific statutory criteria. RCW 71.09.090; RCW 71.09.092; RCW 71.09.098(8). The ability to

petition for conditional release in the future does not ameliorate the momentous consequences of losing an LRA that he already had.

Coleman held an order granting or denying a petition for final release pursuant to RCW 10.77.200 is appealable as a matter of right under RAP 2.2(a)(13). Coleman, 6 Wn. App. 2d at 510. Coleman contrasted a petition for final release, which carries the possibility of finality, with a petition for conditional release, which it said does not, analogizing to Petersen. Id. at 512. Coleman involved review of a committed person's petition for release, as opposed to the State's petition to revoke conditional release. As argued, revocation implicates different interests and has different analytical consequences in terms of finality. A revocation order is final because it finally disposes of the State's petition and revokes the right to live in the community, returning the subject to total confinement status.

The State's citation to In Re the Detention of Turay, 139 Wn.2d 379, 986 P.2d 790 (1999) misses the mark. Turay involved an attempted appeal from an order denying a post-commitment motion to dismiss the case. Turay, 139 Wn.2d at 387, 391-92. Turay held the order was not a final judgment and thus not appealable under RAP 2.2(a)(1). Turay, 139 Wn.2d at 392-93. McHatton does not contend the order revoking his LRA is a final judgment under RAP 2.2(a)(1). Rather, the basis for appeal as a

matter of right stems from RAP 2.2(a)(8) and (13). Turay did not involve LRA revocation and did not address either of those provisions.

It is appropriate to consider policy ramifications. See In re Dependency of Chubb, 52 Wn. App. 541, 544, 762 P.2d 352 (1988) ("no policy interest justifies an appeal as of right."), aff'd, 112 Wn.2d 719, 773 P.2d 851 (1989); Herzog v. Foster & Marshall, Inc., 56 Wn. App. 437, 445, 783 P.2d 1124 (1989) (factoring policy considerations into its holding on appealability). To avoid unwarranted consumption of limited judicial resources, discretionary review may be the proper procedure where the court has continuing jurisdiction over a case in which the status quo has not changed, and in which the same issue recurs on an automatically recurring basis in a summary proceeding. That is a far cry from McHatton's situation. While the court retains jurisdiction over McHatton, the trial court has snatched away his LRA after a full-blown evidentiary hearing, upending the status quo and sending McHatton back into confinement.

The Rules of Appellate Procedure are to be "liberally interpreted to promote justice and facilitate the decision of cases on the merits." RAP 1.2(a). It is appropriate to take this policy into account in determining the appealability of an order. Alpine Indus., Inc. v. Gohl, 101 Wn.2d 252, 255, 676 P.2d 488 (1984) (considering RAP 1.2(a) in holding an order

appealable under RAP 2.2(a)(13)). Discretionary review is confined to "rare instances." Minehart v. Morning Star Boys Ranch, Inc., 156 Wn. App. 457, 462, 232 P.3d 591, review denied, 169 Wn.2d 1029, 249 P.3d 623 (2010). It is "seldom granted." State v. Richardson, 177 Wn.2d 351, 365, 302 P.3d 156 (2013). The overwhelming majority of motions for discretionary review are denied, meaning the merits of the claims are never adjudicated on appeal. Were this Court to hold LRA revocation orders are not appealable, the result will be most challenges to revocation will never be adjudicated on their merits. This may not be a concern for something like the denial of an evidentiary hearing at the annual show cause stage because there is always an automatic opportunity for litigation of the same issue the next year. But the revocation of an LRA is a unique, non-recurring action with tremendous consequence.

What the Court decides in McHatton's case will have far reaching effects. Appeals are routinely taken from LRA revocation orders in analogous commitment contexts without anyone giving it a second thought, including revocation of LRAs under chapter 71.05 RCW and revocation of an insanity acquittee's conditional release under chapter 10.77 RCW.³ In the RCW 71.05 and RCW 10.77 context, the superior

³ See, e.g., In re Detention of P.K., 189 Wn. App. 317, 318-19, 358 P.3d 411, 412 (2015) (appeal from LRA revocation under chapter 71.05 RCW);

court retains continuing jurisdiction over LRA and conditional release recipients. RCW 71.05.590(6)(c); RCW 10.77.190(4). If the be all and end all of appealability turned solely on continuing jurisdiction, then none of those cases can be appealed as of right. The appealability analysis is more nuanced. The determination cannot be reduced to a question of continuing jurisdiction. Other factors are at play and they favor the argument that LRA revocation orders are appealable as of right.

2. IF THE ORDER IS NOT APPEALABLE AS A MATTER OF RIGHT, DISCRETIONARY REVIEW SHOULD BE GRANTED.

RAP 2.3(b)(2) allows for discretionary review when "[t]he superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act." As set forth in the opening brief of appellant, the trial court erred in revoking McHatton's LRA without taking improper implementation of the LRA into account. The superior court's decision substantially alters the status quo by removing McHatton from the

In re Detention of R.R., 77 Wn. App. 795, 796, 802 n.8, 895 P.2d 1 (1995) (appeal from order dismissing petition to revoke LRA under chapter 71.05 RCW); State v. Beaver, 184 Wn. App. 235, 241, 336 P.3d 654 (2014), aff'd, 184 Wn.2d 321, 358 P.3d 385 (2015) (appeal from conditional release revocation in insanity acquittee case); State v. Derenoff, 182 Wn. App. 458, 460, 332 P.3d 1001 (2014) (same); State v. Bao Dinh Dang, 168 Wn. App. 480, 483, 280 P.3d 1118 (2012), aff'd, 178 Wn.2d 868, 312 P.3d 30 (2013) (same).

community and placing him into total confinement at the SCC. That order immediately affects McHatton's liberty.

It has been said that "discretionary review is not favored because it lends itself to piecemeal, multiple appeals." Right-Price Recreation, LLC v. Connells Prairie Cmty. Council, 105 Wn. App. 813, 820, 21 P.3d 1157, 1161 (2001). The idea is that "the remedy by appeal is generally adequate." State v. State Credit Ass'n, Inc., 33 Wn. App. 617, 622, 657 P.2d 327, 330 (1983), review granted, cause remanded, 102 Wn.2d 1022, 689 P.2d 403 (1984). There is no concern about piecemeal litigation here. If there is no right to appeal the revocation order, then discretionary review is McHatton's only opportunity to challenge the order. There is no appeal as of right waiting for McHatton down the road.

C. CONCLUSION

For the reasons stated, McHatton requests that this Court hold revocation of the LRA is appealable as a matter of right. If this Court declines to do so, then discretionary review should be granted.

DATED this 27th day of November 2019.

Respectfully submitted

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